



# FEA PLANTATIONS Project 2009

ARSN: 136 438 616

## CBA/FEA Finance Application

### Features

- A wide range of competitive loan options.
- Fixed and variable interest rates available.
- Interest only periods available on most terms.
- Low establishment fee which can be added to the loan.
- Finance calculator available to be used by financial advisers to assist with the assessment process.

**For initial assessment, completed finance applications (with attached supporting documentation) may be faxed or emailed and must be received by 5.00pm Friday 26th June 2009.**

**Original documentation must be received by 5.00pm Monday 29th June 2009.**

### Lodgement of Application Forms

Applications should be mailed to:  
FEA Plantations Project 2009  
Forest Enterprises Australia Limited  
PO Box 733  
Launceston TAS 7250

**CommonwealthBank** 

 **FEA**  
GROUP OF COMPANIES

## Checklist for Applicants

Please refer to the following checklists when completing the finance application as different sections are applicable depending on whether you are an individual, a company or a trust.

**For initial assessment, completed finance applications and supporting documentation may be faxed or emailed and must be received by 5.00pm Friday 26th June 2009. Please only fax or email relevant application/signature pages. All original documentation (including this Finance Application in its entirety) must be received by 5.00pm Monday 29th June 2009. If you have any questions, please contact your financial adviser or call one of our Business Services Officers on Freecall 1800 600 009.**

### Commonwealth Bank of Australia

Individual/Joint Applicants	Corporate Applicants	Trust Applicants
1 Personal Details <input type="checkbox"/> Identification Documents <input type="checkbox"/>	2 Company/Trust Applicant <input type="checkbox"/> Identification Documents <input type="checkbox"/>	2 Company/Trust Applicant <input type="checkbox"/> Identification Documents <input type="checkbox"/>
3 Details of Loan <input type="checkbox"/>	3 Details of Loan <input type="checkbox"/>	3 Details of Loan <input type="checkbox"/>
4 Statement of Position <input type="checkbox"/> Proof of Income <input type="checkbox"/>	4 Statement of Position <input type="checkbox"/> Proof of Income <input type="checkbox"/>	4 Statement of Position <input type="checkbox"/> Proof of Income <input type="checkbox"/>
5 Acknowledgements <input type="checkbox"/>	5 Acknowledgements <input type="checkbox"/>	5 Acknowledgements <input type="checkbox"/>
6 Authority to Accept Faxes <input type="checkbox"/>	6 Authority to Accept Faxes <input type="checkbox"/>	6 Authority to Accept Faxes <input type="checkbox"/>
8 Important Information <input type="checkbox"/>	7 Authorised Signatures <input type="checkbox"/>	7 Authorised Signatures <input type="checkbox"/> Required if Trustee is a Company
9 Execution <input type="checkbox"/>	8 Important Information <input type="checkbox"/>	8 Important Information <input type="checkbox"/>
10 Direct Debit Request <input type="checkbox"/>	9 Execution <input type="checkbox"/>	9 Execution <input type="checkbox"/>
	10 Direct Debit Request <input type="checkbox"/>	10 Direct Debit Request <input type="checkbox"/>
	11 Guarantor <input type="checkbox"/>	11 Guarantor <input type="checkbox"/>

### PLEASE RETURN ENTIRE FINANCE APPLICATION WITH ORIGINAL SIGNATURES

### Forest Enterprises Australia Limited

Individual/Joint Applicants	Corporate Applicants	Trust Applicants
1 Personal Details <input type="checkbox"/>	2 Company/Trust Applicant <input type="checkbox"/>	2 Company/Trust Applicant <input type="checkbox"/>
3 Details of Loan <input type="checkbox"/>	3 Details of Loan <input type="checkbox"/>	3 Details of Loan <input type="checkbox"/>
4 Statement of Position <input type="checkbox"/> Proof of Income <input type="checkbox"/>	4 Statement of Position <input type="checkbox"/> Proof of Income <input type="checkbox"/>	4 Statement of Position <input type="checkbox"/> Proof of Income <input type="checkbox"/>
6 Execution <input type="checkbox"/>	6 Execution <input type="checkbox"/>	6 Execution <input type="checkbox"/>
9 Direct Debit Request <input type="checkbox"/>	7 Guarantor <input type="checkbox"/>	7 Guarantor <input type="checkbox"/>
	8 Authorised Signatures <input type="checkbox"/>	8 Authorised Signatures <input type="checkbox"/> Required if Trustee is a Company
	9 Direct Debit Request <input type="checkbox"/>	9 Direct Debit Request <input type="checkbox"/>

**Note: Guarantor details are mandatory where applicant is a corporate or trust borrower**

# PLEASE RETURN ENTIRE FINANCE APPLICATION WITH ORIGINAL SIGNATURES

## Finance Options

You should complete this section to indicate the finance option you wish to apply for, then proceed to the corresponding tab in this finance pack.

### Commonwealth Bank of Australia

#### Principal & Interest Loans

<u>Total Loan Term</u>	<u>Availability</u>	<u>Interest Only Option</u>
<input type="checkbox"/> 1 Year	All Woodlot Options	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> 3 Year	All Woodlot Options	Woodlot Option 1: 2 year interest only period available for all loan terms greater than 3 years.
<input type="checkbox"/> 5 Year	All Woodlot Options	
<input type="checkbox"/> 7 Year	All Woodlot Options	Woodlot Options 2, 3, 4 and 5: 3 year interest only period available for all loan terms greater than 3 years.
<input type="checkbox"/> 10 Year	All Woodlot Options	
<input type="checkbox"/> 12 Year	Woodlot Options 2, 3, 4 and 5	
<input type="checkbox"/> 15 Year	Woodlot Options 3 and 5	

Please note that following the interest only period, the loan will revert to a Principal and Interest loan for the remainder of the total loan term.

<b>Minimum Loan</b>	\$10,000 – Fixed rate \$4,000 – Variable rate	<b>Maximum Loan</b>	\$250,000
		Loans above this amount can be submitted for consideration.	

**Interest Rate**  Fixed  Variable

**Deposit** Optional

**Establishment Fee** \$250 or 0.25% of the loan amount, whichever is the greater (can be capitalised).

If you have selected a finance option in this section, please proceed to the Commonwealth Bank of Australia tab.

The Commonwealth Bank of Australia/Preferred Financier does not sanction, guarantee or recommend the MIS product in any way and provides no assurance that the product is commercially viable or that the projected returns will be achieved or are reasonably based.

**For indicative interest rates please go to [www.fealtd.com](http://www.fealtd.com)**

### Forest Enterprises Australia Limited

<u>Total Loan Term</u>	<u>Availability</u>	<u>Interest Rate</u>
<input type="checkbox"/> 1 Year Interest Free	All Woodlot Options	
<input type="checkbox"/> 2 Year Principal and Interest	All Woodlot Options	10.75%
<b>Minimum Loan</b>	No minimum	
<b>Maximum Loan</b>	No maximum	
<b>Deposit</b>	Minimum 20% deposit required	
<b>Establishment Fee</b>	\$250 or 0.25% of loan amount whichever is the greater (can be capitalised).	

If you have selected a finance option in this section, please proceed to Forest Enterprises Australia Limited tab.

#### Loan Application Requirements

- Applicants must complete and sign the Loan Application and Direct Debt Authority.
- Applicants requiring a Guarantor(s) to qualify for their loan must complete the Guarantor section.
- Proof of identity as per AML/CTF requirements must be included as per the PDS.
- Company/Trust – copy of last 2 years financial statements.
- Loans above \$100,000 – confirmation of ownership of any major asset by providing a rates notice, a title search, a listed shares brokers statement, a Margin Loan Statement or in each case as appropriate having regard to the nature of the asset.

#### Proof of income required:

- PAYG – copy of last two tax returns or last tax return and a recent payslip or two most recent payslips confirming income.
- Self employed – last two tax returns or letter from Accountant re estimated income.
- Other third party – confirmation of income declared (e.g. verified letter from employer).

Processing of your application will be delayed if you do not supply this information with your application.

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1. PERSONAL DETAILS



CBA Loan Application
FEA Plantations Project 2009

Commonwealth Bank of Australia
(ABN 48 123 123 124)

COMMONWEALTH BANK OF AUSTRALIA

PERSONAL DETAILS - APPLICANT 1

Form for Applicant 1 with fields for Title, First Name, Second Name, Surname, Date of Birth, Other names known by, Drivers Licence No., Current Residential Address, Suburb, State, Postcode, Years at address?, Postal Address, Telephone BH, Mobile, Facsimile, Email, Employer, Occupation, Employment Status, Number of Years Employment, Previous Employer, Marital Status, Number of Dependent Children, Existing CBA customer?, and Account Number.

PERSONAL DETAILS - APPLICANT 2

Form for Applicant 2 with fields for Title, First Name, Second Name, Surname, Date of Birth, Other names known by, Drivers Licence No., Current Residential Address, Suburb, State, Postcode, Years at address?, Postal Address, Telephone BH, Mobile, Facsimile, Email, Employer, Occupation, Employment Status, Number of Years Employment, Previous Employer, Marital Status, Number of Dependent Children, Existing CBA customer?, and Account Number.

IF NOT AN EXISTING CBA CUSTOMER PLEASE SEE AML/CTF ON PAGE 52

## 2. CORPORATE/TRUST APPLICANT

Company Name or Trustee

Contact Person

Trust Name

ABN/ACN

Telephone

Mobile

Facsimile

Are you a Sole Director?  Yes  No

Existing CBA customer?  Yes  No

If Yes, Account Number

Registered Business Address

Suburb

State  Postcode

Postal Address (if different from above)

Suburb

State  Postcode

Email

Existing CBA customer?  Yes  No

If Yes, Account Number

**IF NOT AN EXISTING CBA CUSTOMER PLEASE SEE AML/CTF ON PAGE 52**

Copy of original deed/trust deed is required. Please refer to AML/CTF on page 52.

## 3. DETAILS OF LOAN

Finance Required - from page 67 of PDS (C)  
 .

Loan Establishment Fee - \$250 or 0.25% of the finance required, whichever is the greater  
 .

Stamp Duty Administration Fee - 0.20% of the finance required  
 .

Total Loan Amount  
 .

**Loan Period** (Please tick relevant box)

1 Year  3 Years  5 Years  7 Years  10 Years  12 Years  15 Years

**Interest Only Option**  Yes  No (Please tick relevant box)

2 year interest only on Woodlot Option 1

3 year interest only on Woodlot Options 2, 3, 4, 5

**Interest Rate Option**  Fixed\*  Variable\*\* (Please tick relevant box)

\* minimum fixed interest rate loan amount is \$10,000

\*\* minimum variable interest rate loan amount is \$4,000

### Capitalisation of Fees

The Loan Establishment Fee, Trust Review Fee (if any) and the Stamp Duty Administration Fee by default will be capitalised in the loan amount. Please tick the below box if you do not want to capitalise these fees:

I/We do not wish to capitalise the Loan Establishment Fee, Trust Review Fee (if any) and the Stamp Duty Administration Fee in the loan amount.

## 4. STATEMENT OF POSITION

### STATEMENT OF INCOME

Gross Monthly Salary/Wage Income (\$) – Applicant 1  
  
 Monthly Net Rental Income (\$)  
  
 Other Income (\$)

Gross Monthly Salary/Wage Income (\$) – Applicant 2  
  
 Monthly Investment/Dividend Income (\$)  
  
 Other Income Details

### STATEMENT OF ASSETS OF APPLICANT(S)

Residential Property	<input type="text"/>	Estimated Value (\$)	<input type="text"/>
Investment Property	<input type="text"/>		<input type="text"/>
Cash/Deposits	<input type="text"/>		<input type="text"/>
Hard Property (vehicles, boats, shares etc.)	<input type="text"/>		<input type="text"/>
Other Assets (household contents, jewellery, artwork etc.)	<input type="text"/>		<input type="text"/>
Other Assets (not already included above – please specify)	<input type="text"/>		<input type="text"/>
		Total Assets	<input type="text"/>

### STATEMENT OF LIABILITIES OF APPLICANT(S)

#### Loans

Residential Property	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>		
Investment Property/Shares	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>		
Personal Loans	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>		
Credit Cards	<input type="text"/>	Credit Limit	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
All Other Liabilities (please specify)	<input type="text"/>				Balance Owing (\$)	<input type="text"/>	
				Total Liabilities/Commitments	<input type="text"/>		

- Applicant   
  Joint   
  Company   
  Trust   
 (Please tick relevant box)
- I/We have enclosed our tax return/s   
  I/We have enclosed our payslip/s   
 (Please tick relevant box)

### SUPPORTING DOCUMENTATION REQUIRED

#### Proof of income required

- PAYG – Copy of last two tax returns or last tax return and a recent payslip or two most recent payslips confirming income.
- Self employed – last two tax returns or letter from Accountant re estimated income.
- Other third party – confirmation of income declared (e.g. verified letter from employer).
- Company/Trust - copy of financial statements from previous 2 years.
- Proof of identity requirements as per AML/CTF identification information and documents on page 52.
- If a loan is above \$100,000 confirmation of ownership of any major asset by providing a rates notice, a title search, a listed shares brokers statement, a Margin Loan Statement or in each case as appropriate having regard to the nature of the asset.

Processing of your application will be delayed if you do not supply this information with your application.

## 5. ACKNOWLEDGMENTS

I/We hereby apply to the Commonwealth Bank of Australia ABN 48 123 123 124 (the Lender) for loan finance in consideration of the amount that is due and payable by me/us in the 2009 Application Form for the FEA Plantations Project 2009.

I/We warrant that all of the personal information including asset and liability information provided by me/us at the date of my/our application is true and correct. I/We acknowledge that the Lender is not obligated to accept my/our finance application.

### PRIVACY ACT 1988 (Cth) CONSENT AND DECLARATION FOR THE PURPOSES OF THE CONSUMER CREDIT CODE

I/We acknowledge that the Lender or Forest Enterprises Australia Limited on its behalf may give information about me/us to a credit reporting agency for the following purposes:

- to obtain a commercial/consumer credit report about me/us; and/or
- to allow the credit reporting agency to create or maintain a credit information file containing information about me/us.

The Lender may give information which is required or permitted to be given to a credit reporting agency by the Privacy Act, including:

- identity particulars – my/our name(s), including any known aliases, sex, address (and the previous two addresses), date of birth, name of employer and drivers licence number;
- my/our application for commercial credit – the fact that I/we have applied for credit and the amount;
- the fact that the Lender is a current credit provider to me/us;
- loan repayments which are overdue by more than 60 days and for which debt collection action has started;
- advice that my/our loan repayments are no longer overdue in respect of any default that has been listed;
- information that, in the opinion of the Lender, I/we have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with my/our credit obligations);
- dishonoured cheques – drawn by me/us for \$100 or more which have been dishonoured more than once; and
- that the Lender has ceased to be a credit provider for me/us.
- information for assessing whether to authorise a large credit transaction outside of my/our normal transactional activities; and/or
- information used for assisting me/us to avoid defaulting on my/our credit obligations.

I/We understand this information may be given before, during or after the provision of credit to me/us.

I/We consent to the Lender providing to Forest Enterprises Australia Limited or their agents any commercial/consumer credit report or any other credit information about me/us.

### Assessing commercial credit application

I/We agree that the Lender may obtain a commercial/consumer credit report containing information about me/us from a credit reporting agency for the purpose of assessing my/our application for commercial credit.

### Business purpose declaration

I/We declare that the credit to be provided to me/us by the Lender is to be applied wholly or predominantly for business or investment purposes (or for both purposes).

#### Important

You should not sign this declaration unless this loan is wholly or predominantly for business or investment purposes. By signing this declaration you may lose your protection under the Consumer Credit Code.

I/We declare that I/we signed this declaration before entering into this credit contract.

Signature (Applicant 1/Director)

Date

 /  / 

Print Name

Signature (Applicant 2/Director)

Date

 /  / 

Print Name

## 6. AUTHORITY TO ACCEPT FACSIMILE INSTRUCTION (INDIVIDUAL AND CORPORATE BORROWERS)

To Commonwealth Bank of Australia,  
ABN 48 123 123 124 ("the Lender")

Name (the "Client")

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Account number/s Account

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

or

All accounts ("the Account" or "the Accounts")

### 1. Authorisation

1.1 The Client and the Lender agree that this Authority applies to the Facsimile Instructions in respect of the Client's Accounts.

1.2 The Client acknowledges that:

- (i) A Facsimile Instruction received by the Lender which is complete and regular on its face shall be deemed to be an original document and to have been sent by the Client to the Lender and as between the Client and the Lender shall be conclusive evidence that the Lender had authority to comply with the Facsimile Instruction. In the event of any dispute in connection with a Facsimile Instruction given under this Authority the Client waives the right to claim that any signature on the Facsimile Instruction is not genuine or that the Facsimile Instruction was sent to the Lender without the authority of the Client.
- (ii) The Lender may at its sole discretion refuse to accept any Facsimile Instructions provided that the Client is notified of such refusal as soon as practical.
- (iii) Facsimile Instructions are not subject to further written or oral confirmation or verification and the Client undertakes to reimburse the Lender for all costs incurred by it if a further written confirmation sent by the Client causes error or duplication of payment in the funds transfer process.

1.3 The Client shall pay the Lender's fees (and any costs or expenses incurred by the Lender) in connection with this Authority or payments made pursuant to Instructions. The Lender is authorised to debit the Client's accounts with all such fees costs or expenses.

### 2. Contents of Facsimile Instructions and Verification Procedures

2.1 Facsimile Instructions which include the name and signature of the Authorised Signatory, and appear to have been signed in accordance with the Client's Account Authority, will be deemed to be valid and the Lender is authorised to act upon and to debit the Client's Account in accordance with the Facsimile Instructions.

2.2 Upon receipt of the Facsimile Instruction appearing to comply with paragraph 2.1 the Lender may (but will not be obliged to) telephone an Authorised Signatory ("the Verifier"), other than the Authorised Signatory who gave the Facsimile Instruction, to confirm authenticity of the Facsimile Instruction. If and only if the Lender elects to verify the Facsimile Instruction under this clause, the Lender is entitled to assume when it telephones the Client's telephone number and asks to speak to the Verifier that the person who identifies himself or herself as the Verifier is that person and if that person verifies the authenticity of the Facsimile Instruction, the Client's Facsimile Instruction is genuine.

2.3 The Lender is not obliged to honour the Client's Facsimile Instructions until the verification procedures described in clause 2.2 have been fully completed or if it for any other reason doubts the authenticity of the instruction. Should this result in a payment being delayed beyond relevant cut off times, the Lender shall not incur any liability whatsoever to the Client. The Lender will not be responsible for any delay due to Facsimile Instructions which are incomplete or unclear.

### 3. Release and Indemnity

In consideration of the Lender agreeing to act in accordance with this Authority, the Client:

- 3.1 releases the Lender from any and all actions, suits, proceedings, claims, accounts and demands of all kinds which the Client may make or have against the Lender for any direct or indirect damage, loss or expense suffered or incurred by the Client; and
- 3.2 indemnifies the Lender and agrees to keep the Lender indemnified against all losses, costs, expenses and liabilities incurred, paid or payable by the Lender and in connection with all actions, suits, proceedings, claims, accounts and demands of all kinds which may be taken or made against the Lender and against all costs, charges and expenses incurred, paid or payable by the Lender in respect of all such actions, suits, proceedings, claims, accounts and demands, in each case in connection with the Lender acting in good faith upon the Facsimile Instructions (including any unauthorised or incorrect Facsimile Instructions) given to the Lender in accordance with this Authority.

### 4. General

- 4.1 This Authority may be terminated by the Client or the Lender by giving written notice thereof to the other, but without prejudice to the Client's liability in respect of any Facsimile Instruction received and acted upon by the Lender prior to the receipt by the Lender or the Client of such notice. Upon giving or receipt of such notice by the Client, the Client must not give any further Facsimile Instruction to the Lender.
- 4.2 This agreement is governed by and construed in accordance with the laws of Victoria and the Client and the Lender irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state and its courts of appeal.

### 5. Interpretation

Unless inconsistent with the context:

- 5.1 Any reference to the singular number shall include a reference to the plural number and vice versa where two or more persons are parties to this Authority the Authority shall bind them jointly and each of them severally.
- 5.2 The following expressions shall have the following meanings:
  - Account Authority means the authority provided to the Lender as amended or substituted from time to time authorising one or more persons to be the Authorised Signatory to operate the Client's accounts with the Lender;
  - Authorised Signatory means a person authorised to operate the Client's account in accordance with the Client's Account Authority;
  - Facsimile Instructions means payment instructions given to the Lender by facsimile transmission and appearing or purporting to be a facsimile copy of the signature of the Authorised Signatory and signed or purporting to have been signed in accordance with the Client's Account Authority.

## 7. AUTHORISED SIGNATORIES (CORPORATE BORROWERS ONLY)

I/We refer to the loan agreement (Loan Agreement) between us  
Borrower

and Commonwealth Bank of Australia ACN 123 123 124.

Terms used in this notice and defined in the Loan Agreement have the meaning given to them in the Loan Agreement.

Any 2 persons/1 person (delete as appropriate) referred to below (the "Authorised Signatories") are authorised to sign for and on behalf of the Borrower all notices and to endorse, accept, sign and execute for and on behalf of the Borrower all other documents arising under or relating to the Loan Agreement:

### Name of Authorised Signatory

Name (please print)

Signature

Name (please print)

Signature

Name (please print)

Signature

The signatures appearing next to the names of the Authorised Signatories above are true specimens of the signatures of those persons.

Executed for and on behalf of the Borrower in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary in full



## 9. EXECUTION

Executed as a deed poll.

### Individual Applicant/s

Signed, sealed and delivered

Signature of Applicant 1

Date

 /  / 

Print Name

Signature of Witness

Date

 /  / 

Print Name

Signature of Applicant 2

Date

 /  / 

Print Name

Signature of Witness

Date

 /  / 

Print Name

### CORPORATE APPLICANTS

Executed for and on behalf of the Borrower in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/Other Director

Name of Secretary/Other Director (in full)

Signature of Director or sole Director and sole Secretary

Name of Director or sole Director and sole Secretary (in full)

**10. DIRECT DEBIT REQUEST**  
**CBA Direct Debit Request**  
**FEA Plantations Project 2009**

**Commonwealth Bank of Australia**  
**(ABN 48 123 123 124)**

**PART 1 – DIRECT DEBIT REQUEST SERVICE AGREEMENT**

- We may vary the terms of this Direct Debit Request Service Agreement at any time by giving you at least 14 days notice.
- By signing the Direct Debit Request below, you request and authorise us to arrange for funds to be debited from your account:
- where an Establishment Fee, Trust Review Fee and/or Stamp Duty Administration Fee is applicable;
- either according to the loan agreement which we have with you (or either of you or a third party) or as provided in this Direct Debit Request Service Agreement. The amounts drawn will be as due under that loan agreement or any agreed variations to it thereafter or any greater amount which you, either of you, or a third party instruct us to draw, provided such instruction is given in the manner specified in the operating authority held by us in connection with the Direct Debit Account. Where the amount due under the loan agreement decreases, the Lender at its discretion may decrease the amount drawn from your account or, unless you instruct us to decrease it, continue to draw the higher amount.

We will arrange for funds to be debited from the Direct Debit Account:

- (i) as requested and authorised in the Direct Debit Request below; or
- (ii) according to any notice sent to you specifying the amount payable and the date the payment is due; or
- (iii) in accordance with this Direct Debit Request Service Agreement.

The payment will be deducted from the Direct Debit Account on the payment due date. If the due date for payment falls on a non-working day or a national public holiday the payment will be processed on the next working day.

- It is your responsibility to ensure that you have sufficient funds in the Direct Debit Account when payments are to be drawn. If you do not have sufficient funds, then:
  - the payment will be regarded as not having been made;
  - an administration fee will be charged to your account;
  - if the Direct Debit Account is conducted with the Lender then we may, on a day subsequent to the payment due date, debit funds from your account, either in full or partial payment of any amount overdue.
- You should be aware that:
  - Direct Debiting through Bulk Electronic Clearing System is not available on all accounts;
  - Direct Debit Account details should be checked against a recent statement from your financial institution. If you are in any doubt, you should check with your financial institution before completing the Direct Debit Request; and
  - it is your responsibility to advise us if your Direct Debit Account is altered, transferred or closed.
- Fees may be payable in respect of a Direct Debit Request, and additional fees may be payable in respect of direct debits from certain accounts or types of accounts such Visa or Mastercard credit card accounts. We will charge these fees to the Direct Debit Account at the time of the direct debit in accordance with our usual rates applying from time to time. As at the date of this Direct Debit Request Service Agreement the following fees apply in respect of direct debits from credit cards:
 

Standard Card	Visa 1.10%	MasterCard 0.95%
Premium Card	Visa 1.50%	MasterCard 1.52%
- If you believe there has been an error in debiting your account you should contact the branch where your loan account is held as soon as possible so that we can resolve your query quickly.
- Your records and account details will be kept private and confidential and will only be disclosed at your request or at the request of the financial institution in connection with a claim made to an alleged incorrect or wrongful debit, or otherwise as required by law.

**PART 2 – DIRECT DEBIT REQUEST**

I/We hereby authorise and request you, Commonwealth Bank of Australia (APCA User ID number 650 or 301813) to arrange for funds to be debited from the following account (the Direct Debit Account) and as prescribed above through the Bulk Electronic Clearing System or to debit the Direct Debit Account by any other means.

Account (or Card) Name	Account Bank
<input type="text"/>	<input type="text"/>
BSB	Account (or Card) Number
<input type="text"/> - <input type="text"/>	<input type="text"/>
	Expiry Date
	<input type="text"/> / <input type="text"/>

This authorisation is to remain in force in accordance with the terms described in the Direct Debit Request Service Agreement. I/We authorise the following:

1. The Commonwealth Bank of Australia to verify the details of the Direct Debit Account identified above with my/our financial institution with whom the Direct Debit Account is held; and
2. My/our financial institution with whom the Direct Debit Account is held to release information allowing Commonwealth Bank of Australia to verify the details of the Direct Debit Account.

Signature

X

Date

 /  / 

Print Name (if joint account, all names required)

Signature

X

Date

 /  / 

Print Name





# CBA Loan Application: Guarantor (continued)

## FEA Plantations Project 2009

### STATEMENT OF POSITION

#### STATEMENT OF INCOME - GUARANTOR 1

Gross Monthly Salary/Wage Income (\$)

Gross Monthly Salary/Wage Income from Business (\$)

Monthly Net Rental Income (\$)

Monthly Investment/Dividend Income (\$)

Other Income (\$)

Other Income Details

#### STATEMENT OF ASSETS OF APPLICANT - GUARANTOR 1

Residential Property  Estimated Value (\$)

Investment Property

Cash/Deposits

Hard Property (vehicles, boats, shares etc.)

Other Assets (household contents, jewellery, artwork etc.)

Other Assets (not already included above – please specify)

Total Assets

#### STATEMENT OF LIABILITIES OF APPLICANT - GUARANTOR 1

##### Loans

Residential Property  Payments Minimum Monthly (\$)  Balance Owing (\$)

Investment Property/Shares  Payments Minimum Monthly (\$)  Balance Owing (\$)

Personal Loans  Payments Minimum Monthly (\$)  Balance Owing (\$)

Credit Cards  Credit Limit  Payments Minimum Monthly (\$)  Balance Owing (\$)

All Other Liabilities (please specify)  Balance Owing (\$)

Total Liabilities/Commitments

Individual  Joint  Company (Please tick relevant box)

I/We have enclosed our tax return/s  I/We have enclosed our payslip/s (Please tick relevant box)

#### SUPPORTING DOCUMENTATION REQUIRED

##### Proof of income required

- PAYG - Copy of last two tax returns or last tax return and a recent payslip or two most recent payslips confirming income.
- Self employed – last two tax returns or letter from Accountant re estimated income.
- Other third party – confirmation of income declared (e.g. verified letter from employer).
- Company/Trust - copy of financial statements from previous 2 years.
- Proof of identity requirements as per AML/CTF identification information and documents on page 52.
- If a loan is above \$100,000 confirmation of ownership of any major asset by providing a rates notice, a title search, a listed shares brokers statement, a Margin Loan Statement or in each case as appropriate having regard to the nature of the asset.

Processing of your application will be delayed if you do not supply this information with your application.

## CBA Loan Application: Guarantor (continued)

### FEA Plantations Project 2009

#### STATEMENT OF POSITION

##### STATEMENT OF INCOME - GUARANTOR 2

Gross Monthly Salary/Wage Income (\$)

Gross Monthly Salary/Wage Income from Business (\$)

Monthly Net Rental Income (\$)

Monthly Investment/Dividend Income (\$)

Other Income (\$)

Other Income Details

##### STATEMENT OF ASSETS OF APPLICANT - GUARANTOR 2

Residential Property	<input type="text"/>	Estimated Value (\$)	<input type="text"/>
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Investment Property	<input type="text"/>	<input type="text"/>
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Cash/Deposits	<input type="text"/>	<input type="text"/>
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Hard Property (vehicles, boats, shares etc.)	<input type="text"/>	<input type="text"/>
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Other Assets (household contents, jewellery, artwork etc.)	<input type="text"/>	<input type="text"/>
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Other Assets (not already included above – please specify)	<input type="text"/>	<input type="text"/>
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Total Assets

##### STATEMENT OF LIABILITIES OF APPLICANT - GUARANTOR 2

###### Loans

Residential Property	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
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Investment Property/Shares	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
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Personal Loans	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
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Credit Cards	<input type="text"/>	Credit Limit	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
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All Other Liabilities (please specify)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
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Total Liabilities/Commitments

Individual    Joint    Company (Please tick relevant box)

I/We have enclosed our tax return/s    I/We have enclosed our payslip/s (Please tick relevant box)

#### SUPPORTING DOCUMENTATION REQUIRED

##### Proof of income required

- PAYG - Copy of last two tax returns or last tax return and a recent payslip or two most recent payslips confirming income.
- Self employed – last two tax returns or letter from Accountant re estimated income.
- Other third party – confirmation of income declared (e.g. verified letter from employer).
- Company/Trust - copy of financial statements from previous 2 years.
- Proof of identity requirements as per AML/CTF identification information and documents on page 52.
- If a loan is above \$100,000 confirmation of ownership of any major asset by providing a rates notice, a title search, a listed shares brokers statement, a Margin Loan Statement or in each case as appropriate having regard to the nature of the asset.

Processing of your application will be delayed if you do not supply this information with your application.



**CBA Loan Application: Guarantor (continued)**  
**FEA Plantations Project 2009**

Executed as a deed poll.

**INDIVIDUAL GUARANTORS**

Signed, sealed and delivered

Signature of Guarantor 1

Date

 /  / 

Print Name

Signature of Witness

Date

 /  / 

Print Name

Signature of Guarantor 2

Date

 /  / 

Print Name

Signature of Witness

Date

 /  / 

Print Name

**CORPORATE GUARANTORS**

Executed for and on behalf of the Guarantor in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/Other Director

Name of Secretary/Other Director (in full)

Signature of Director or sole Director and sole Secretary

Name of Director or sole Director and sole Secretary (in full)

## CBA Loan Application: Guarantor (continued) FEA Plantations Project 2009

### Privacy Acknowledgement and Consent – Individual Guarantor/s

I/We hereby apply to the Commonwealth Bank of Australia ABN 48 123 123 124 (the Lender) as guarantor(s) for loan finance to be provided to the Borrower to finance the amount that is due and payable in the [2009] Application Form for the FEA Plantations Project 2009.

I/We warrant that all of the personal information including asset and liability information provided by me/us at the date of my/our application is true and correct. I/We acknowledge that this form does not constitute an offer or acceptance of credit as defined in any legislation relating to the provision of credit.

By signing this application, I/we authorise the Lender and/or Forest Enterprises Australia Limited and any of their agents (as defined in the Privacy Act) to give to and obtain from a credit reporting agency:

- certain personal information about me/us to allow me/us to be identified;
- information that I/we have offered to act as a guarantor;
- personal information and information as to my/our creditworthiness, credit standing, credit history and credit capacity, for the purposes of assessing my/our guarantee for personal credit given to another person.

By signing this application, I/we acknowledge that:

- the Lender and/or Forest Enterprises Australia Limited may verify the identity of guarantors via the collection of personal information;
- I/we may (subject to permitted exceptions) access your information by contacting Customer Relations, Commonwealth Bank Group, Reply Paid 41, SYDNEY NSW 2001. I/we also acknowledge that charges may apply for this access.

In addition to the authorisations set out above in relation to credit reports, by signing this application I/we authorise the Lender and/or Forest Enterprises Australia Limited to:

- give to and obtain from my/our bank and/or other credit provider any record that has any bearing on my/our creditworthiness, credit standing, credit history or credit capacity for the purpose of:
  - (a) assessing whether to accept me/us as guarantor for personal credit applied for or provided to the Borrower/s;
  - (b) for any purpose related to the subsequent management of the personal credit guaranteed by me/us;
  - (c) for any purpose related to the enforcement or proposed enforcement of my/our guarantee, and/or
  - (d) for the purpose of assessing the risk in purchasing any credit facility (being a credit facility given to or applied for by the Borrower) from me/us and/or the risk in undertaking credit enhancement of any such credit facility, each as the case may be.
- obtain information about my/our commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of persons for the purpose of assessing whether to accept me/us as a guarantor for personal credit applied for, or provided to, the Borrower.

Signature of Guarantor 1

Date

Print Name

Signature of Guarantor 2

Date

Print Name

## Election Under Clause 28.16 of the Code of Banking Practice (Director Guarantors)

We are advised that you, as a Director of the Borrower, are considering providing a Guarantee in support of the Borrower's facilities.

Note This form may be used when the Director Guarantor is present ("Face to Face Option") or where the Director Guarantor is contacted by telephone ("Telephone Option").

Part 1 – General information (applies in all cases)

- A. Code of Banking Practice protections of Guarantors  
The Code of Banking Practice ("Code") has certain provisions designed to protect Guarantors and proposed Guarantors. Generally, we are required to:
- provide Guarantors with certain material concerning the Borrower and the proposed facilities; and
  - allow Guarantors until the next day following the receipt of that material, before we ask them to sign the Guarantee.
- B. Information which must be given to you  
Both the Code and the general law require that certain material must be provided to you:
- the Facility Terms and Conditions which incorporate the Facility Agreement you are being asked to Guarantee, together with a list of related security contracts (and you may ask us for a copy of any related security contract);
  - any final Letter of Offer provided to the Borrower (with details of any conditions contained in any earlier version of the Offer Letter which were satisfied before the final Letter of Offer was issued);
  - a listing with details of any notices of demand made on or after 1 June 2003 in relation to any facility of the Borrower with us, together with copies of statement of account covering the period during which any such notice was issued;
  - a listing of all dishonours on or after 1 June 2003 on any facility of the Borrower with us, together with copies of statements of account covering the period during which any such dishonour occurred;

We will also tell you:

- whether there have been any excesses or overdrawings of \$100 or more during the past six months on any facility of the Borrower with us.
- C. Further information – waiver rights  
In addition to the above material, the Code requires the provision of further information to you. Clause 28.16 of the Code provides, however, that Director Guarantors (that is, Guarantors who are Directors of the Borrower company, other than Sole Director Guarantors or Commercial Asset Financing Guarantors) may advise us that they elect:
- not to receive some of the further information required to be provided under the Code; and/or
  - to sign the Guarantee without waiting until the next day.

D. Further information – details

The following is the further information we are required to provide. The boxes are for noting your election regarding the provision of this information.

Documents not required

- any related credit report from a credit reporting agency;
- any current credit-related insurance contract in our possession;
- any financial accounts or statements of financial position given to us by the Borrower for the purposes of the Facility within 2 years prior to the day we provide this information to you;
- the latest statement of account relating to the Facility (and any other statement of account for a period during which a notice of demand was made by the Bank, or a dishonour occurred; in relation to which we are required to give you information under clause 28.4(b)(i)); and
- any unsatisfied notice of demand made by us on the Borrower in relation to the Facility where the notice was given within 2 years prior to the day we provide you with this information.

Part 2 – "Face to Face"

- E. Elections under clause 28.16 of the Code
- (a) The nominations you have made regarding the information and documentation required to be provided by us to you are noted in clause D above. Where the boxes are ticked, this indicates that you have advised us that you are electing not to receive the information described in the sub-clause opposite that box.
- (b) You have also advised us that you have elected to wait or not to wait until the next day after receiving the information required to be given to you under clause 28.4 [including any information under clause 28.4(d)].

Acknowledgement by Proposed Director Guarantor

Please note that, by signing below, you are confirming that you:

- have read and understood the information set out above in relation to your rights to receive material under the Code of Banking Practice; and
- do not wish to receive the information relating to the Borrower nominated by ticking the boxes in Clause D above.

You also confirm that you have indicated to us your election as to whether you wish to wait until the next day to consider the information you receive from us.

Signature:

Date:

/  /

## Election Under Clause 28.16 of the Code of Banking Practice (Director Guarantors) continued

### Part 3 – “Telephone”

- F. Elections under Clause 28.16 of the Code
- (a) Where we have spoken to you already, the nominations you have made regarding the information and documentation required to be provided by us to you are noted in clause D above. Where the boxes are ticked, this indicates that you have advised us that you are electing not to receive the information described in the sub-clause opposite that box.
- (b) If, however, the nominations are incorrect or the information or documentation you have received is incomplete and you wish to receive further information, please contact us immediately. If we do not hear from you prior to you executing the Guarantee, we will assume that you are satisfied with the information and documentation provided. Please also ensure that we have correctly recorded your election regarding the next day requirement.
- G. Contact unable to be made
- Where we have not been able to contact you, we have assumed that your election is to receive all of the required information and not to waive the next day requirement for signing the Guarantee.

### Agent use only

To be signed only after telephone interview

I certify that I have explained to the Guarantor above their entitlements under Clause 28.1 of the Code of Banking Practice. I have also recorded the Guarantor's nominations by ticking the boxes above.

OR

To be signed where Agent unable to contact Director Guarantor

I certify that, on

/   /

I attempted to contact the Guarantor above by telephone but was unable to do so.

Signature of Agent:

X

Name of Agent (please print)

## 12. CBA LOAN AGREEMENT

This loan agreement is made on the Acceptance Date

Parties Commonwealth Bank of Australia  
ABN 48 123 123 124 (Lender)

The entity whose name and address are set out in the Application as borrower (Borrower)

The entity (if any) whose name and address are set out in the Application as guarantor (Guarantor)

### Background

- A. The Responsible Entity has established the Project in accordance with the Product Disclosure Statement relating to the Project.
- B. The Borrower has decided to participate in the Project to carry on the relevant Business.
- C. The Lender will finance a portion of the Borrower's interest in the Project on the terms and conditions set out in this Loan Agreement.
- D. The Guarantor (if any) will guarantee the Borrower's obligations under this Loan Agreement.

### Operative provisions

1. Definitions and interpretation

- 1.1 Definitions

In this document:

**Acceptance Date** means the date on which the Lender accepts the Application signed by the Borrower being the date on which it advances the Funds in accordance with clause 2.

**Advance** means an advance of funds under this Loan Agreement.

**Application** means the application signed by the Borrower for funding to be provided by the Lender in relation to the Borrower's investment in the Project.

**Authorised Signatory** means, where the Borrower is a corporation, any person named in the Application as being authorised to sign notices and to endorse, accept, sign and execute for and on behalf of the Borrower all documents arising under or relating to this Loan Agreement.

**Borrower's Covenants** means the covenants, agreements and obligations contained or implied in this Loan Agreement or the Agreement or imposed by law to be observed and performed by any person other than the Lender.

**Base Rate** means:

- (a) in respect of Variable Interest Rates, the rate published by the Lender at [www.commbank.com.au](http://www.commbank.com.au) as the variable rate for "Better Business Loans (Where security is other than Residential)"; and
- (b) in respect of Fixed Interest Rates, the "Better Business Loan Fixed Term Benchmark Rate" advised by the Lender on the Date of Advance.

These details will be included in the Confirmation Notice.

**Business** means the Borrower's long term business of cultivating and harvesting trees.

**Business Day** means a business day in Melbourne.

**Charge** means the charge referred to in clause 8.1(a).

**Charged Debts** means all unrealised book debts and other debts whether actual or contingent at any time owing to the Lender together with all books or documents of account or records evidencing or recording such debts.

**Charged Property** means the property charged under the Charge as described in clause 8.1(a) and as referred to in clause 8.4.

**Confirmation Notice** means a notice provided by the Lender to the Borrower in accordance with clause 4.5 substantially in the form of Schedule 7.

**Constitution** means the replaceable rules, constitution or combination of both as those terms are used in section 134 of the Corporations Act 2001 (Cth).

**Controller** has the meaning given in section 9 of the Corporations Act.

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

**Costs and Expenses** means the costs and expenses mentioned in clause 7.

**Date of Advance** means the date on which the Borrower is required to fund its investment in the Project.

**Delegate** means any agent, attorney or other delegate appointed under this Loan Agreement by the Lender or by any receiver or receiver and manager appointed under this Loan Agreement.

**Direct Debit Account** means the bank account specified by the Borrower in the Direct Debit Request.

**Direct Debit Request** means the direct debit request as set out in the Application.

**Direct Debit Request Service Agreement** means the agreement between the Borrower and the Lender as set out in the Application.

**Director Guarantor Election** means the election under clause 28.16 of the Code of Banking Practice as set out in the Application.

**Dispose** in relation to any property or right means to transfer, sell, assign, surrender, convey, lease, licence, discount, lend or otherwise dispose of any interest in the property or right and Disposal has a corresponding meaning.

**Early Repayment Administration Fee** is equal to:

- (a) in respect of partial repayments of the Principal Outstanding over \$1,000, \$300; and
- (b) in respect of early repayment in full of the Principal Outstanding, \$500.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person.

**Establishment Fee**, means the fee (which may be capitalised) payable by the Borrower to the Lender in consideration for the Lender providing the loan, and calculated as an amount equal to 0.25% of the Principal Amount or \$250, whichever is the greater.

## CBA Loan Agreement

**Event of Default** means the occurrence of one of the events set out in clause 13.1.

**Fax Indemnity** means the fax indemnity given by the Borrower as set out in the Application.

**Fees** means the fees payable by the Borrower to the Responsible Entity under an Agreement including any applicable GST and including any management fees, licence fees and operating costs and expenses payable by the Borrower under an Agreement.

**Fixed Interest Rate** means, where the Borrower has selected a fixed Base Rate for the duration of the loan, paragraph (b) of the Base Rate plus or minus the Margin.

**Funds** means the amounts Advanced under clause 2(a).

**GST** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or otherwise on a supply.

**Guarantee** means the guarantee given by the Guarantor pursuant to the Guarantee Documents.

**Guarantee Documents** means the documents included at Schedule 4 (in respect of a Guarantor that is an individual) and Schedule 5 (in respect of a Guarantor that is a corporation).

**Harvest Proceeds** means the proceeds from the sale of any or all of the Timber Produce which the Borrower is or may be entitled to.

**Insurance Proceeds** means the proceeds of the Timber Insurance which the Borrower is or may be entitled to.

**Interest** means the interest payable under clause 5.

**Loan Agreement** means the loan agreement constituted by the Application and this document.

**Margin** means the margin notified to the Borrower by the Responsible Entity and confirmed by the Lender in the Confirmation Notice (and to the extent of any inconsistency the margin advised by the Lender will prevail).

**Moneys Payable** means the aggregate of:

- (a) the Principal Outstanding;
- (b) Interest; and
- (c) any other moneys payable to or recoverable by the Lender under the terms of the Transaction Documents including without limitation, other Costs and Expenses.

**Monthly Loan Service Fee** means the fee payable by the Borrower in accordance with clause 7.1(c).

**Overdue Rate** means the rate per annum equal to the Fixed Interest Rate or the Variable Interest Rate, whichever is selected by the Borrower in the Application, plus 4.5% per annum.

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Lender, any Receiver or any Delegate, in any case, under the Charge, under any other Transaction Document or by law.

**Principal Amount** means the amount to be advanced to the Borrower under this Loan Agreement equal to the value of the Borrower's investment in the Project.

**Principal Outstanding** means the amount of the Funds advanced and which have not been repaid by the Borrower.

**Project** means the project specified in the Application.

**Purpose** means the purpose for which the Funds are advanced to the Borrower, being the financing of the Borrower's investment in the Project.

**Receiver** means a receiver or a receiver and manager appointed under clause 14.1.

**Receiver's Powers** means the rights, powers and remedies contained or implied in this document or granted by law exercisable by the Receiver against any person.

**Repayment Amount** means the amount or amounts of Principal Outstanding and Interest payable each month as set out in each Confirmation Notice.

**Repayment Dates** means the dates for payment of Principal Outstanding and Interest each month as set out in each Confirmation Notice.

**Responsible Entity** means FEA Plantations Limited.

**Stamp Duty Administration Fee** means the fee (which may be capitalised) payable by the Borrower in accordance with clause 7.1(b).

**Taxable Supply** means any supply of goods, services or other things (and includes any supply by the Lender of any Charged Property to any person in connection with the enforcement of the Charge) which is, or becomes subject to, GST.

**Taxes** means all taxes, levies, imposts, deductions, charges and withholdings assessed, imposed, collected or withheld under any legislation and, in each case, all interest, fines, penalties, charges, fees or other amounts in respect of them.

**Timber Insurance** means the policies of insurance in respect of loss or damage to the Trees, Woodlots or Timber Produce entered into pursuant or referred to in the Agreements.

**Timber Produce** means all timber to be grown or growing on the woodlots and all cut timber products from the woodlots.

**Transaction Documents** means:

- (a) this document (including each Schedule);
- (b) the Application;
- (c) the Guarantee Document;
- (d) the Direct Debit Service Request Agreement and Direct Debit Request;
- (e) any Confirmation Notice; and
- (f) any other document agreed by the Lender and the Borrower to be a "Transaction Document".

**Trees** means the actual growing timber from which distributions to the Borrower will be generated.

## CBA Loan Agreement (continued)

**Trust** means the trust of which the Borrower is the trustee (if any) as referred to in clause 12 details of which are set out in the Application.

**Trust Deed** means the trust deed constituting the Trust, and any other relevant documents of appointment whereby the Borrower is appointed as trustee of the Trust.

**Trust Review Fee** means the fee (which may be capitalised) payable by the Borrower in accordance with clause 7.1(d).

**Variable Interest Rate** means, where the Borrower has selected a variable Base Rate for the duration of the loan, paragraph (a) of the Base Rate plus or minus the Margin.

**Woodlot** means an area of land and Trees which equates to approximately 200 or 500 square metres depending on Woodlot Options selected, and in relation to this Loan Agreement means each woodlot the subject of the Agreement, the total number of which are specified in the Application.

### 1.2 Interpretation

In this document:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) if more than one person is identified as the Borrower or Guarantor, that expression refers to them, and the obligations of the Borrower or Guarantor under this document bind them, jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, a government authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a Statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this document, and a reference to this document includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form

of that word or phrase has a corresponding meaning;

- (j) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid and that act, matter or thing will be done on the immediately preceding Business Day;
- (k) any agreement, undertaking, acknowledgement, condition or other term that is made or given by the Borrower will be deemed to be a covenant by the Borrower in favour and for the benefit of the Lender;
- (l) all accounting terms used in this document have the meaning given to them under Australian accounting standards;
- (m) "includes" in any form is not a word of limitation; and
- (n) a reference to "\$" or "dollar" is to Australian currency.

### 2. Provision of Funds

- (a) Subject to the Lender's acceptance of the Application and the satisfaction of the conditions precedent set out in clause 3, the parties agree that the Lender will on the Date of Advance make an Advance in an amount equal to the Principal Amount and any fees capitalised in accordance with clause 7.2.
- (b) The Borrower irrevocably directs the Lender to advance the Funds by satisfying on the due date:
- (i) the Establishment Fee, Trust Review Fee (if any) and Stamp Duty Administration Fee (where such amounts have been capitalised in accordance with clause 7.2);
- (ii) any other Costs and Expenses; and
- (iii) as applicable:
- A. the Fees payable under each Agreement; or
- B. the amount outstanding under an existing loan agreement in respect of Fees payable under each Agreement, or a portion of them equal to the balance of the Funds after the payment of the Costs and Expenses specified in sub-paragraph (i) above.
- (c) The Funds are provided on the terms and conditions of this Loan Agreement and for the Purpose.

## CBA Loan Agreement (continued)

### 3. Conditions precedent to facility

The Lender is not obliged to provide the Funds unless the Lender is satisfied:

- (a) that the Responsible Entity has received all of the documents required for the Borrower's involvement in the Project, in a satisfactory form and substance;
- (b) that each representation and warranty made by the Borrower under this Loan Agreement remains true at the Date of Advance;
- (c) that no Event of Default has occurred;
- (d) with any credit checks and searches that the Lender makes concerning the Borrower;
- (e) that the Direct Debit Request has been signed by the Borrower;
- (f) that the Fax Indemnity has been signed by the Borrower;
- (g) that, where applicable, it has received the Guarantee Documents signed by the Guarantor;
- (h) that, where a Guarantor is a director of the Borrower, the Director Guarantor Election has been signed;
- (i) that, where the Borrower is a corporation, it has received the names and signatures of all persons authorised to sign all notices and to endorse, accept, sign and execute for and on behalf of the Borrower all documents arising under or relating to this Loan Agreement as set out in the Application;
- (j) that, where the Borrower is a trustee, it has been provided with a copy of the current Trust Deed in form and substance satisfactory to it; and
- (k) that, where the Guarantor is a trustee, it has been provided with a copy of the current trust deed in form and substance satisfactory to it.

### 4. Repayment

#### 4.1 Repayment of Principal Outstanding and other Moneys Payable

- (a) Subject to clauses 4.5 and 4.6 the Borrower must make payments or repayment of Interest and/or Principal Outstanding in the amounts and on the Repayment Dates set out in each Confirmation Notice.
- (b) The Borrower must pay any outstanding balance on the Moneys Payable on the Final Repayment Date.
- (c) Where the Borrower selects the 3 year interest only option in the Application the amounts payable under clause 4.1(a) for the first 36 months after the Date of Advance are payments of Interest only.
- (d) The first Repayment Date in respect of principal and interest will be on the first Business Day of the month immediately following the Date of Advance, unless the Date of Advance is within 2 days of the end of the month, in which case the first Repayment Date will be on the first Business Day of the month after the month immediately following the Date of Advance.

#### 4.2 No deduction

The Borrower must pay all amounts payable to the Lender under this Loan Agreement without any deduction, withholding, set off or counterclaim whatsoever, whether the benefit of a deduction, withholding, set off or counterclaim is alleged to exist in favour of the Borrower as against the Lender in any capacity whatsoever or any other person including any assignor of the Lender's interests under this Loan Agreement.

#### 4.3 Early repayment

- (a) Early repayment of the Principal Outstanding (in whole or in part) may not take place except as permitted by the Lender, in its sole discretion.
- (b) The Borrower acknowledges that the Lender may charge the Borrower:
  - (i) its costs and expenses (including any break fees or break costs for which the Lender may be liable however arising) and an administration fee connected with early repayment. Any break fee will be calculated as being the difference between the cashflows the Lender received under this Loan Agreement at the swap rate on the Date of Advance and the present value of cashflows the Lender will receive under this Loan Agreement at the swap rate on the break date; and
  - (ii) any applicable Early Repayment Administration Fee.
- (c) Requests for early repayment of the Principal Outstanding (in whole or in part) will be considered by the Lender on a case by case basis.
- (d) Requests for early repayment must be in writing and signed by an Authorised Signatory, addressed to the CBA Corporate Loan Administration Team (fax 1300 857 262, phone 1800 115 891) and should include the following details:
  - (i) the Funds (including Date of Advance of Funds);
  - (ii) the proposed date of the early repayment (which must be at least 2 Business Days after the date on which the written request for early repayment is sent by the Borrower);
  - (iii) the amount of principal and interest that it wishes to prepay; and
  - (iv) the account into which it proposes to make the prepayment.

#### 4.4 No Redraw

The Borrower may not reborrow any part of an Advance which has been repaid or prepaid.

#### 4.5 Confirmation Notice

The Lender will provide the Borrower with a :

- (a) Confirmation Notice within 30 days of the making of an Advance of the Funds, where the Borrower has selected a Fixed Interest Rate, detailing the Funds, the Margin, the Repayment Dates and Repayment Amounts over the life of the loan; or

## CBA Loan Agreement (continued)

- (b) loan statement every quarter, where the Borrower has selected a Variable Interest Rate, detailing the Margin and the relevant Base Rate(s) for the period; and
- (c) Confirmation Notice upon early repayment of the Principal Outstanding, including details of any revised Repayment Dates or Repayment Amounts and the amount of any break fees, break costs or administration fees to be charged by the Lender.
- 4.6 Application of Proceeds
- (a) Any Insurance Proceeds received by the Borrower that are not applied to the replacement of the damaged or destroyed Woodlots must be applied by the Borrower in prepayment of the principal component of the Repayment Amounts that would have been payable on and immediately to the Final Repayment Date (Prepayment).
- (b) On Prepayment, the Lender will calculate interest savings on the Prepayment with any savings deducted from the principal component of the Repayment Amounts which would have been payable on and immediately prior to the Final Repayment Date (Adjustment).
- (c) After the Adjustment, the Lender will advise the Borrower in writing (Adjustment Notice) of the adjusted Final Repayment Date and the amount of the final Repayment Amount.
- (d) The Adjustment Notice will, in the absence of manifest error, be conclusive evidence of the matters set out in it.
- (e) In the event that the Borrower has financial indebtedness to the Lender other than pursuant to this Loan Agreement, nothing in this clause 4.6 prejudices the Lender's absolute discretion to apply the Insurance Proceeds in reduction of any indebtedness of the Borrower to the Lender as the Lender sees fit.
5. Interest
- 5.1 Interest
- (a) The Borrower must pay to the Lender Interest on the Principal Outstanding from the Date of Advance calculated at the Fixed Interest Rate or the Variable Interest Rate, whichever is selected by the Borrower in the Application.
- Such interest is payable on each Repayment Date. Interest accrues daily and is computed on a daily basis on a year of 365 days.
- (b) The Borrower must pay interest on the Moneys Payable due and payable, but unpaid, at the Overdue Rate.
- 5.2 Accrual of Interest on overdue Moneys Payable
- Interest payable under clause 5.1(b):
- (a) accrues from day to day from and including the due date for payment up to the actual day of payment, before and as an additional and independent obligation, after a judgement or other thing into which the liability to pay the Moneys Payable becomes merged; and
- (b) may be capitalised by the Lender on the last day of the month in which interest became due (or any other day determined by the Lender in its discretion).
- 5.3 Application of payments
- Subject to clause 4.6 all payments by the Borrower to the Lender will be applied first, in payment of any Interest then due, second, in repayment of the Principal Outstanding and then in payment of other Moneys Payable to or recoverable by the Lender under the terms of this Loan Agreement.
- 5.4 Repayment Amounts include interest
- The Borrower and the Lender acknowledge that the Repayment Amounts will incorporate the payment of Interest payable under clause 5.1(a).
6. Manner of payment
- The Repayment Amounts and all other amounts payable by the Borrower under this Loan Agreement may be debited by the Lender from the Direct Debit Account in accordance with the Direct Debit Request Service Agreement.
7. Costs and expenses
- 7.1 Borrower's Costs
- The Borrower must pay to the Lender:
- (a) a loan Establishment Fee (including any applicable GST), which includes;
- an application fee; and
  - a fee to cover the Lender's legal and administrative costs and expenses in considering and approving the Application and preparing this Loan Agreement;
- (b) a Stamp Duty Administration Fee in an amount equal to 0.20% of the Principal Amount;
- (c) a Monthly Loan Service Fee in an amount of \$20 per month;
- (d) if there is a Guarantor that enters into the Guarantee in its capacity as trustee of a trust, a Trust Review Fee in an amount of \$300;
- (e) all costs and expenses incurred by the Lender in relation to the enforcement, protection or waiver of any rights under the Loan Agreement including any bank dishonour fees, legal costs and expenses and any professional or consultant fees, on a full indemnity basis;
- (f) all costs, expenses and fees connected with early repayment as set out in clause 4.3; and
- (g) all stamp duty, transaction, registration and similar Taxes, including fines and penalties and debits tax which may be payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution, delivery, performance or enforcement of the Transaction Documents or any payment, receipt or other transaction contemplated by them (to the extent not covered by the Stamp Duty Administration Fee), and indemnifies the Lender against any loss or liability incurred or suffered by it as a result of the delay or failure by the Borrower to pay Taxes.

## CBA Loan Agreement (continued)

### 7.2 Capitalisation of Fees

The Establishment Fee, Trust Review Fee (if any) and the Stamp Duty Administration Fee will be capitalised and Advanced by the Lender as part of the Funds on the Date of Advance unless the Borrower elects in the Application for such fees not be capitalised, in which case the Borrower must pay those fees to the Lender on the date of the Application or any later date notified by the Lender to the Borrower.

## 8. Charge relating to Project

### 8.1 Grant of charge

- (a) As security for the due and punctual payment of all Moneys Payable to the Lender under this Loan Agreement and for performance of the Borrower's obligations under this Loan Agreement, the Borrower hereby charges, by way of a fixed charge, all of the Borrower's interest in the Project to the Lender, including, without limitation:
- (i) all of the Borrower's right, title, estate and benefit in and to the Agreements whether proprietary, contractual or otherwise and the full benefit of all the rights, powers and remedies of the Borrower under the Agreements;
  - (ii) without limiting paragraph (i), all of the Borrower's right, title, estate and benefit in and to the Woodlots and all Timber Produce to be grown or growing on the Woodlots and the proceeds of sale thereof the subject of the Agreements; and
  - (iii) without limiting paragraph (i) and (ii), the proceeds of Disposal of all Timber Produce and the Insurance Proceeds.
- (b) The Charge is, until finally discharged by the Lender in writing, a continuing security for the performance of the Borrower's obligations to the Lender under this Loan Agreement (and any other arrangement between the Borrower and the Lender) and takes priority over all other mortgages, charges or other encumbrances.
- (c) The Borrower acknowledges that all or part of the Principal Outstanding is advanced to assist the Borrower to acquire the Charged Property and on the express understanding that the Charge would be granted over the Charged Property and accordingly:
- (i) the Borrower acquires legal title to the Charged Property subject to the Charge; and
  - (ii) the Charge ranks in priority to any other charge or mortgage presently or subsequently granted by the Borrower over the Charged Property.

### 8.2 Borrower's warranty and undertaking

The Borrower warrants that it has the power to grant the Charge and undertakes that it will not grant, and has not granted, any other mortgage, charge or other encumbrance over the Charged Property or Dispose of the Charged Property (other than to the Lender) without the consent of the Lender.

### 8.3 Insurance Proceeds

Where the Borrower has not applied the whole of the Insurance Proceeds in replacement of the damaged or destroyed Trees:

- (a) the Insurance Proceeds to which the Borrower is entitled must, subject to clause 4.6(e), be applied in reduction of Moneys Payable;
- (b) until the Moneys Payable is repaid in full, the Lender alone is entitled to give good receipt for the Insurance Proceeds;
- (c) the Borrower will, on the request of the Lender, direct any person responsible for payment of the Insurance Proceeds to pay the Insurance Proceeds to the Lender;
- (d) the Borrower will, on the request of the Lender, appoint the Lender as the Borrower's agent to give full effect to this clause 8.3;
- (e) payment to the Lender in terms of clause 8.3(c) will discharge the obligation of the person responsible for payment of the Insurance Proceeds to the same extent as if the payment was made to the Borrower;
- (f) to the extent the Borrower receives the Insurance Proceeds, the Borrower holds the Insurance Proceeds on trust for the Lender in terms of paragraph b;
- (g) until the Moneys Payable have been repaid in full the Lender alone has power to enforce, settle, compromise, sue on, recover, receive and discharge all claims under the Timber Insurance.

### 8.4 Charged Property

For the purposes of clause 8, the term Charged Property means the property described in clause 8.1(a).

## 9. Guarantee

- (a) Where a Guarantor is specified in and signs the Application, that Guarantor gives the guarantee as set out in the relevant Guarantee Documents.
- (b) Each Guarantor confirms that it has had regard to the important information for Guarantors set out in Schedule 3.
- (c) Each Guarantor that is a trustee gives the representations, warranties and undertakings set out in Schedule 6.
- (d) Each Guarantor gives the information acknowledgements and consents set out in Schedule 2.

## 10. Representations and Warranties

### 10.1 Representations

The Borrower represents and warrants that:

- (a) where the Borrower is an individual, that the Borrower is not an undischarged bankrupt and has not assigned its estate or entered into any arrangement or composition for the benefit of its creditors;

## CBA Loan Agreement (continued)

- (b) where the Borrower is an individual, that the Borrower is not less than eighteen years of age;
- (c) where the Borrower is a company, that
- (i) it is duly registered and remains in existence under the Corporations Act;
  - (ii) the execution, delivery and performance of each Transaction Document to which it is a party does not violate its Constitution or any law applying to it and, if it or any of its subsidiaries is listed on the Australian Securities Exchange or on any other stock exchange, those listing requirements or business rules;
  - (iii) it has taken all corporate and other action required to enter into any Transaction Document to which it is a party and to authorise the execution and delivery of that Transaction Document and the satisfaction of its obligations under it; and
  - (iv) it has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate.
- (d) it is not in any default that is material to this Loan Agreement under any agreement, undertaking or instrument to which the it is a party or by which it is bound. Also, no event has occurred which, with the giving of notice or lapse of time or both, would constitute a default (which is material to this Loan Agreement) under any agreement, undertaking or instrument;
- (e) there is no current, pending or threatened litigation, arbitration or administrative proceedings against or concerning the it which, if successful, would render the it substantially less likely to be able to perform its obligations under this Loan Agreement; and
- (f) all information relating to it or any Guarantor provided to the Lender in connection with the Funds and each Transaction Document is true in all material respects and is not, by omission or otherwise, misleading in any material respect.
- 10.2 Repetition of Representations and Warranties
- The representations and warranties in clause 10.1 are deemed to be repeated by the Borrower on each day that the Moneys Payable remain outstanding.
11. Undertakings and acknowledgements
- 11.1 Undertakings
- For so long as there remain Moneys Payable under the Transaction Documents, the Borrower undertakes to the Lender that it will:
- (a) carry on and conduct the Business in a proper and efficient manner;
  - (b) on the written direction of the Lender, insure its interest under the Agreement for its market value or the amount financed under this Loan Agreement, (whichever is greater) with an insurer approved by the Lender and ensure that the Lender is noted as loss payee on the relevant insurance policy;
  - (c) not take any action that would constitute or result in a change to the nature of the Business if that change either by itself or with other changes, would constitute a material adverse change to the nature or profitability of the Business;
  - (d) on request from the Lender, provide evidence in respect of itself and any Guarantor, supporting any information specified in the Application.
- 11.2 Further undertakings
- In respect of any loan where the total Funds are equal to or greater than \$1,000,000, the Borrower undertakes that it will provide to the Lender on an annual basis and at the Lender's request:
- (a) where the Borrower is an individual, copies of its latest tax return and two recent payslips; or
  - (b) where the Borrower is a trust or company, copies of its latest tax return and financial statements.
- 11.3 Acknowledgements
- The Borrower gives the information acknowledgements and consents set out in Schedule 1.
12. Trust
- 12.1 Trust
- This clause applies if the Borrower enters into this Loan Agreement as trustee of a trust.
- 12.2 Liability
- The Borrower entered into this Loan Agreement on its own behalf and as trustee of the Trust. The Borrower and its successors as trustee of the Trust will be liable under this Loan Agreement as trustee of the Trust to the intent that all the assets both future and present of the Trust will be available to satisfy the Borrower's liabilities. Nothing in this Loan Agreement releases the Borrower from any liability in its personal capacity.
- 12.3 Warranties
- The Borrower warrants that at the date of its execution of this Loan Agreement that:
- (a) it has power to enter into the Transaction Documents in its capacity as trustee of the Trust;
  - (b) it has taken every necessary action to authorise entry into the Transaction Documents;
  - (c) the Trust has been validly created and is in existence at the date of this Loan Agreement;
  - (d) it has been validly appointed as trustee of the Trust and is presently the sole trustee of the Trust;
  - (e) the Trust is solely constituted by the Trust Deed, a true copy of which was provided to the Lender or its agent before the date of this Loan Agreement;
  - (f) a date has not been declared under the Trust Deed as the date on which the Trust will be vested or come to an end;

## CBA Loan Agreement (continued)

- (g) no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the Trust or the Borrower's trusteeship of the Trust;
- (h) it has not done, or failed to do, any act whereby any of the assets of the Trust have been acquired by any other person, no assets of the Trust are presently registered in the name of any other person, and no person, other than the beneficiaries previously notified to the Lender has acquired any right of any kind whether vested or contingent in any asset of the Trust;
- (i) it is to the commercial benefit of the Trust that it enters into the Transaction Documents in its capacity, inter alia, as trustee of the Trust and charges the property of the Trust as provided in the Transaction Documents; and
- (j) it, as trustee of the Trust, has valid rights of indemnity and exoneration against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by the Borrower under the Transaction Documents.

### 12.4 Variation of the trust

The Borrower must not without the Lender's prior written consent permit any:

- (a) resettlement, appointment or distribution of capital of the Trust;
- (b) retirement or replacement of the trustee or any appointment of a new trustee of the Trust;
- (c) amendment of the Trust Deed establishing the Trust;
- (d) breach of the provision of the deed establishing the Trust; or
- (e) termination of the Trust or variation of the vesting date, and if any of the above occur, the Borrower must promptly inform the Lender.

## 13. Default

### 13.1 Events of Default

An Event of Default occurs if:

- (a) the Borrower fails to pay any Moneys Payable on the due date for payment of that sum;
- (b) the Borrower fails to ensure there is sufficient credit available in the Direct Debit Account to satisfy the Borrower's obligations under the Transaction Documents;
- (c) there is a breach of the Borrower's Covenants which is not capable of remedy;
- (d) a breach of the Borrower's Covenants which is capable of remedy, other than a failure to pay money, is not remedied within 5 Business Days after written notice is given to the Borrower by the Lender requiring the Borrower to remedy the default;

- (e) any representation, warranty or statement made or deemed to be made by the Borrower or a Guarantor in any Transaction Document proves to have been untrue in a material respect when made or deemed made (whether the lack of correctness is apparent at the time or becomes apparent subsequently);
- (f) the Borrower ceases or threatens to cease to carry on the Business without first obtaining the consent of the Lender;
- (g) the Insurance Proceeds are not received by the Lender or applied in accordance with clauses 4.6 and 8.3 (as the case may be);
- (h) any property the subject of the Charge is forfeited, terminated or cancelled or the Borrower fails to do any act, matter or thing necessary to prevent those events occurring;
- (i) the Lender determines that as a result of a change in the law, a regulation, or an official directive that has the force of law, it is or will become impossible, illegal or contrary to such a directive, for the Lender to advance, maintain or fund, any of the Moneys Payable or otherwise observe or perform any covenant or obligation of the Lender under this Loan Agreement;
- (j) the Borrower or any Guarantor is a company and:
  - (i) an application is filed, an order is made or a resolution is passed for the winding-up of it or a meeting is convened for the purpose of considering such a resolution;
  - (ii) an administrator or provisional liquidator is appointed to it;
  - (iii) the appointment to it of an administrator or provisional liquidator is threatened or proposed;
  - (iv) it enters into any agreement, reconstruction or composition with its creditors; or
  - (v) it proposes to enter into any arrangement, reconstruction or composition with its creditors;
- (k) the Borrower or any Guarantor is an individual and:
  - (i) a petition is presented or an order is made for the sequestration of its estate;
  - (ii) it executes an authority authorising the calling of a meeting of its creditors under Part X of the Bankruptcy Act 1966; or
  - (iii) it executes a Deed of Assignment or Deed of Arrangement or it enters into composition under that Part;
- (l) a Receiver is appointed over:
  - (i) the undertaking or any part of the undertaking of a Borrower or any Guarantor where either is a company; or
  - (ii) the business or any asset comprising part of a business of a borrower or any Guarantor where either is an individual;
- (m) an encumbrancer takes possession of any of the assets of the Borrower or any Guarantor;

## CBA Loan Agreement (continued)

- (n) any execution or other process of any court or authority or any distress is issued against or levied on:
- (i) any or all of the assets of the Borrower or any Guarantor; or
  - (ii) the Charged Property;
- (o) the Borrower or any Guarantor without the Lender's prior written consent creates, purports to create or attempts to create any security interest whether ranking in priority to or of equal ranking with the Charge over any assets the subject of the Charge;
- (p) the Borrower or any Guarantor without the Lender's prior written consent:
- (i) stops payment to any of its creditors;
  - (ii) is unable to or admits inability to pay its debts as they fall due; or
  - (iii) ceases or threatens to cease to carry on its business; or
- (q) in the opinion of the Lender a materially adverse change occurs to the financial position of the Borrower or any Guarantor which renders it less likely that the Borrower or any Guarantor is able to substantially comply with its obligations under any Transaction Document.
- 13.2 Declaration
- (a) If an Event of Default occurs, the Lender is entitled to declare, by notation of an officer of the Lender on the Lender's records to that effect, that the Borrower is in default and that all Moneys Payable are immediately payable.
  - (b) On the Lender making a declaration under clause 13.2(a) any amounts owing or payable (contingently or otherwise) to the Lender under the Transaction Documents become immediately payable without any demand or notice to the Borrower to that effect being necessary.
  - (c) The Lender's right to make the declaration referred to in clause 13.2 is exercisable despite any delay or previous waiver of that right.
- 13.3 Produce
- If no Event of Default has occurred the Lender will not insist on Harvest Proceeds (other than Harvest Proceeds relating to the final harvest from the Project) being applied in reduction of the Moneys Payable.
- 13.4 Release of Charge
- Despite any other provisions of this Loan Agreement, if the Borrower proposes to Dispose of all or part of the Timber Produce in accordance with the Agreement, the Lender must release and discharge the Charge over the Timber Produce (as the case may be) proposed to be Disposed of subject to the application of the proceeds of Disposal in accordance with this Loan Agreement.
14. Receivers: appointment and Powers
- 14.1 Appointment of Receiver
- If any Event of Default occurs then, during the period it subsists, the Lender may in respect of any Borrower that is a corporation:
- (a) appoint any person or persons to be a receiver or receiver and manager of the Charged Property;
  - (b) terminate the appointment of any Receiver; and
  - (c) in case of the removal, retirement or death of any Receiver, appoint another person or persons in the place of that Receiver.
- 14.2 Joint Receivers
- If more than one person is appointed as a Receiver, the Lender may at its option specify whether the appointment and the Powers of each appointee will be joint or joint and several. If no specification is made, the appointment and the Powers of each appointee will be joint and several.
- 14.3 Remuneration of Receiver
- The Lender may fix the rate of remuneration of each Receiver, which will not exceed the standard hourly rate from time to time charged by the firm of which that Receiver is a member for work of the level carried out by that Receiver.
- 14.4 Agent of Borrower
- Each Receiver will be the agent of the Borrower. The Borrower will be solely responsible for all acts and omissions by, and the remuneration of, each Receiver.
- 14.5 Powers of Receiver
- Without the need for any consent from the Borrower or any other person, each Receiver will have all of the following powers:
- (a) (Section 420) all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act;
  - (b) (Dispose) whether or not in possession, to dispose of the Charged Property in such manner and on such terms as the Receiver thinks fit;
  - (c) (Borrow or raise money) to borrow or raise from the Lender or any other person any money which may be required for any purposes and, if the Receiver thinks fit, to secure any money borrowed or raised by the grant of any Encumbrance over the Charged Property (whether in the name of the Borrower or otherwise) so that the Encumbrance ranks in priority to, *pari passu* with or after the Charge. The Lender will not be bound to inquire as to the necessity or propriety of any financial liability nor be responsible for the misapplication or non-application of any money so borrowed or raised;
  - (d) (Lease) whether or not the Receiver has taken possession, to lease or licence the Charged Property in the name of the Borrower or otherwise, for any period and on any terms or to vary or terminate a lease or licence;

## CBA Loan Agreement (continued)

- (e) (Collection) collect the Charged Debts;
  - (f) (Engage) to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver) and the Receiver may act on any advice given by any person so engaged;
  - (g) (Conduct works) to repair, renew, replace, renovate or clean the Charged Property, to erect any new buildings or make any improvements to any land forming part of the Charged Property and to demolish, alter, rebuild or extend any existing buildings on the Charged Property;
  - (h) (Invest proceeds against contingencies) if any of the Moneys Payable is contingent, to invest, deposit or hold the Charged Property in a form or mode of investment for the time being as the Receiver thinks fit, with like power to vary, transpose or re invest the investments or deposits from time to time until that part of the Moneys Payable ceases to be contingent;
  - (i) (Perform contracts) to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Borrower's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Charged Property or entered into in the exercise of any Power;
  - (j) (Take proceedings) to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Borrower or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Charged Property or otherwise;
  - (k) (Compromise) to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Charged Property, to grant to any person involved time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Lender;
  - (l) (Appeal) to appeal against or to enforce any judgment or order in respect of the Charged Property;
  - (m) (Bankrupt debtors and wind up bodies corporate) to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Charged Property or for the security or other benefit of the Lender;
  - (n) (Delegate) with the Lender's prior approval, to delegate to any person, for any time, any of the Powers including this power of delegation;
  - (o) (File) to file all certificates, registrations and other documents and to take any and all action on behalf of the Borrower which the Receiver believes is necessary to protect, preserve or improve any or all of the Charged Property and the rights of the Borrower and the Lender in respect of any agreement for sale and to obtain for the Lender all of the benefits of this Loan Agreement and any other Transaction Document;
  - (p) (Operate bank accounts) to open or operate any bank account in the name of the Borrower (whether alone or jointly with any other person) to the exclusion of the Borrower and to deposit or withdraw any money standing to the credit of that account and to sign and endorse or to authorise others to sign and endorse in the name of the Borrower cheques, promissory notes, bills of exchange and other negotiable instruments;
  - (q) (Do all other things) to do all things the law allows an owner of any interest in the Charged Property, or any Controller of the Charged Property, to do; and
  - (r) (Do all things as are expedient) to do all other acts and things without limitation as the Receiver thinks expedient, and any further powers as the Lender confers on a Receiver by notice in writing to that Receiver.
- 14.6 Indemnity
- The Lender may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Lender is obliged to pay any money under any indemnity, that money will become part of the Moneys Payable.
15. Lender's Powers
- 15.1 Exercise of Power
- If any Event of Default occurs then, during the period it subsists, the Lender may without notice and whether or not a Receiver has been appointed:
- (a) exercise all or any of the Powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those Powers had been expressly conferred on the Lender;
  - (b) exercise all other Powers; and
  - (c) appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the Powers (or any of them) to the agent or agents (in which case clauses 14.1, 14.3 and 14.6 will apply as if the agent or agents were each appointed as a Receiver).
- 15.2 Act jointly
- The Lender and each Receiver may exercise any of the Powers in conjunction with the exercise of similar powers by the holder of any other Encumbrance over the Charged Property or by any receiver or receiver and manager appointed by that other holder and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as the Lender or the relevant Receiver thinks fit.

## CBA Loan Agreement (continued)

### 15.3 Power of attorney

In consideration of the Lender entering into the Transaction Documents, the Borrower irrevocably appoints the Lender and each of its authorised officers and attorneys and each Receiver, severally, as an attorney of the Borrower with power:

- (a) at all times to ensure that this Loan Agreement is registered and filed in all registers in all jurisdictions in which it must be registered and filed to ensure enforceability, validity and priority against all persons and to be effective as a security and to sign and register all documents, forms and other instruments under the Corporations Act as the Australian Securities & Investments Commission; and
- (b) at any time an Event of Default has occurred and is subsisting:
  - (i) to do all acts which ought to be done by the Borrower under any Finance Document;
  - (ii) to do all acts to exercise or give effect to any Power;
  - (iii) to demand, sue for, recover and receive the Charged Property from any person, in the name of the Borrower or in the name of the Lender, the relevant Receiver or any other attorney appointed under this clause 15.3;
  - (iv) to take further action and to execute further instruments which are, or are in the opinion of the Lender, the relevant Receiver or any other attorney appointed under this clause 15.3, necessary or desirable to secure more satisfactorily the performance of the Borrower's Covenants or the payment of the Moneys Payable or to sell or otherwise deal with the Charged Property; and
  - (v) to appoint (and remove at will) at any time any person as a substitute for an attorney.
- (c) The Borrower ratifies and confirms now and for the future all actions lawfully undertaken by or on behalf of any attorney under this power of attorney.
- (d) The Borrower declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of the Charge.
- (e) The Borrower will do anything requested by the Lender, acting reasonably, to enable the Lender to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

### 15.4 Lender may make good any default

If the Borrower defaults in satisfying any of the Borrower's Covenants or any obligation under this Loan Agreement, including without limitation any obligation to pay insurance premiums as and when required, the Lender may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the opinion of the Lender to make good or to attempt to make good that default to the satisfaction of the Lender and may recover any such amounts paid or any other costs arising from the exercise of its rights under this clause 15.4 by means of direct debit from the

Direct Debit Account. The Borrower will take all steps which the Lender, acting reasonably, requests to facilitate the exercise by the Lender of its rights under this clause 15.4. The Lender will not be a mortgagee or chargee in possession simply as a result of the exercise of its rights under this clause 15.4.

### 15.5 Notice for exercise of Powers

- (a) The Powers may be exercised by the Lender and any Receiver at any time during the period any Event of Default subsists, without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
- (b) Subject to clause 15.5(c), if required by any law which cannot be excluded, one day is fixed as the period for which:
  - (i) default must continue in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the Moneys Payable before the Lender may give any notice or demand as required by any law affecting the Powers; and
  - (ii) default in the satisfaction of the whole or any part of the Borrowers Covenants or in the payment of any part of the Moneys Payable must continue after the giving of any notice or demand before any Power may be exercised.
- (c) If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any Power may be exercised by the Lender or any Receiver, that period of notice must be given or time must elapse before that Power may be exercised.

### 16. GST Indemnity

- (a) All payments to be made by the Borrower under this Loan Agreement have been calculated without regard to GST. If a payment constitutes the consideration for the whole or part of a Taxable Supply by the Lender, the amount of that payment must be increased so that the Lender will receive (net of payments by it in respect of GST) the amount which the Lender would have received in the absence of a GST.
- (b) If the Lender makes a Taxable Supply, the Borrower agrees (except to the extent that the Lender is entitled to be indemnified in respect of that GST by an increased payment under clause 18(a) above) to pay on demand to the Lender an additional amount so that the Lender will receive the amount (net of payments by it in respect of GST) which the Lender would have received in the absence of a GST.
- (c) If a payment or other consideration provided by the Lender to a person other than the Borrower under or in connection with this Loan Agreement or a transaction contemplated by this Loan Agreement may be increased or added to by reference to a GST, the Borrower agrees to pay on demand to the Lender the amount necessary to indemnify the Lender in respect of that increase or addition.

## CBA Loan Agreement (continued)

- (d) If the Lender becomes liable to pay a penalty or interest because of late payment of GST where that late payment is because of the failure of the Borrower to comply with this clause, then the Borrower agrees to pay on demand to the Lender an additional amount equal to the amount of that penalty or interest.
17. Assignment
- 17.1 Assignments by the Lender
- (a) The Lender may at any time assign or otherwise transfer all or any part of its rights under any Transaction Document (including the benefit of the Charge), and may disclose to a proposed assignee or transferee any information in the possession of the Lender relating to the Borrower and the Guarantor.
- (b) The Lender may assign part of or an interest in the benefit of the Charge whilst retaining the benefit of the other part or interest in the name of the Lender or in the name of a trustee on trust for the Lender to secure the Moneys Payable or part of it.
- 17.2 Assignments by the Borrower
- The Borrower cannot assign any of its rights under any Transaction Document without the Lender's prior written consent.
- 17.3 Successors and assigns
- This Loan Agreement is binding on and enures to the benefit of each party to it and that party's respective successors and permitted assigns.
18. Governing law
- This Loan Agreement is governed by and must be construed according to the law applying in Victoria.
19. Jurisdiction
- (a) Each party irrevocably submits to the non exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Loan Agreement.
- (b) The Borrower irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 19(a).
20. Miscellaneous
- 20.1 Severance
- If at any time a provision of any Transaction Document is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:
- (a) the legality, validity or enforceability in that jurisdiction of any other provision of that Transaction Document; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of that Transaction Document.
- 20.2 Service of notice
- Any notice required to be given to the Borrower or the Guarantor pursuant to a Transaction Document may be signed by the Lender, any officer of the Lender or its solicitors and will be deemed to have been duly given if given in writing to the Borrower or the Guarantor (as the case may be) by letter addressed to the Borrower or the Guarantor at its address as provided in the Application or such other address in Australia as notified in writing by the Borrower or Guarantor at any time to the Lender. Any notice given by post will be deemed to have been served on the next ordinary business day after the day when it was posted and in proving such service it will be sufficient to prove that the letter containing the notice was properly addressed and posted, and a statement signed by the Lender that it was so posted and when shall be conclusive evidence of that fact.
- 20.3 Lender may insure
- The parties to this Loan Agreement acknowledge that the Lender may effect and maintain on the Borrower's life, for the Lender's benefit, a policy of term life insurance (Policy) for an amount not less than the Principal Outstanding until repayment of all Moneys Payable. The Borrower agrees to do all things necessary to enable the Lender to do so and maintain the Policy in full force and effect and not do anything that would which would prevent money being recovered under it.
- 20.4 Secondary market
- The Borrower acknowledges that there may be no secondary market for the Charged Property. In the event that the Lender (or any assignee, agent, or transferee of the Lender) exercises its rights under this Loan Agreement, a sale price may be accepted by the Lender as bona fide and reasonable if certified as such by the Responsible Entity or some other person experienced in valuing assets of a like nature. If the Lender or a Receiver exercise the Lender's rights under this Loan Agreement, neither the Lender nor any Receiver is liable to account as mortgagee in possession of the Charged Property at any time.

## CBA Loan Agreement (continued)

### SCHEDULE 1 – INFORMATION ACKNOWLEDGEMENT AND CONSENT (BORROWER)

In this Schedule:

- “I”, “me” and “my”, includes individual borrowers, partners in a partnership and directors of corporate borrowers;
- “you”, “your” and “yours” means Commonwealth Bank of Australia ABN 48 123 123 124;
- the singular includes the plural; references to legislation include all consolidations, amendments, re-enactments or replacements of, any Act or regulations.

Continuing Authority – Borrowers and Directors of Corporate Borrowers

All consents, acknowledgements and authorities in this Acknowledgement and Consent remain in force to cover this and any other application by me (either by myself or with others – including persons who have not signed this form).

It continues for so long as you provide credit to me or my company under any facility.

Part 1 – Personal Information Generally

Personal Borrowers – Collection, Use and Disclosure of Personal Information

I acknowledge that:

- you collect personal information so that you may provide me with the products and services I request, as well as marketing information on products and services offered by the Commonwealth Bank Group and its affiliated products/ service providers; and external product/ service providers for whom the Bank acts as agent;
- if I have given you my e-mail or mobile phone details, marketing information on those products and services may be provided to me electronically;
- the law can require you to collect personal information - e.g. to identify persons who open or operate accounts;
- if I provide you with incomplete or inaccurate information, I may not be able to obtain from you the products or services I am seeking;
- the Privacy Act permits you to disclose my personal information to other members of the Commonwealth Bank Group, enabling the Group to have an integrated view of its customers;
- you may be permitted or obliged to disclose information by law, eg under court order or statutory notices;
- you will send information overseas if that is necessary to complete a transaction, or if you outsource functions using overseas agents or contractors;
- I can find out more about your personal information handling policies by going to your Privacy Policy Statement at [www.commbank.com.au](http://www.commbank.com.au).
- I authorise you to communicate my personal

information to my brokers, agents, advisers, as well as valuers and insurers and organisations to whom you outsource certain functions including to the Responsible Entity or any unrelated entity of the Responsible Entity in relation to my performance of obligations under the Loan Agreement.

- I acknowledge that your agents are bound by confidentiality arrangements and may only use my personal information for your purposes.

Part 2 – Credit Information Acknowledgements and Authorisations

If I am attending on behalf of a number of applicants or a number of directors of a corporate applicant, I certify that I have the authority of the other applicant/s named in the loan application to consent to you obtaining credit reports and checks on all of us.

I also confirm that I will inform each other applicant that their personal information may be disclosed to a credit reporting agency.

Credit Reporting Agencies (“Agencies”)

If I am a personal borrower or Director of a corporate borrower I authorise you and your agents to give to and receive personal and credit information (including commercial credit information) from Agencies which relates to my application for personal credit or my company's application for commercial credit and which may be used for:

- identifying me;
- assessing my application for personal credit or my company's application for commercial credit;
- collecting overdue payments;
- assessing whether to authorise a large credit transaction outside of my or my company's normal transactional activities;
- the provision or management of securities loans;
- assisting me or my company to avoid defaulting on my credit obligations.

I also authorise you to notify Agencies that you are a credit provider to me or my company as well as:

- of overdue payments in excess of 60 days and cheques of mine or my company's which you have dishonoured more than once;
- the fact that I or my company may have committed a serious credit infringement;
- that credit you provided me or my company has been discharged.

Other Credit Providers

If I am a personal borrower or a Director of a corporate borrower, I authorise you to give to and obtain information about me or my or my company's personal or commercial credit arrangements from credit providers who are:

- named in an application of mine (or my company's) to you for credit;
- participants in a securitisation scheme in which you are involved;
- agents of yours;
- named in a personal or commercial credit report concerning me or my company issued by an Agency.

## CBA Loan Agreement (continued)

I understand this information can include credit information of any kind and I acknowledge that the information may be given or used for the following:

- assessing applications for finance;
- averting default on credit obligations and assessing the situation if such default is made;
- notifying defaults;
- the provision of management of securitised loans.

I also authorise you to give and receive bankers' opinions relating to me or my company's business or profession.

### Disclosure to Guarantors

If I am a personal borrower or Director of a corporate borrower, I authorise you to provide to any guarantor any information or documents of any kind concerning the creditworthiness, credit history, credit capacity and credit standing of me or my company. These include as regards the facility to be guaranteed ("Facility"):

- a copy of the contract for the Facility and the final letter of offer;
- details of conditions set out in any earlier version of that letter which may have already been met;
- any related credit report from a credit reporting Agency;
- any financial accounts or statement of financial position given to you within the previous two years;
- the latest statement of account; and
- any notice of demand given by you within the last two years which has not been complied with to your satisfaction.

I also authorise you to provide to the Guarantor any other information regarding the Facility (as well as any facility to be refinanced by the Facility) that the Guarantor may reasonably require; and advice as to whether the Facility will be cancelled if the Guarantee is not provided.

### Disclosure to Insurers

I authorise you to give my personal or my company's information to trade insurers and mortgage insurers, who may use or disclose my personal information in accordance with the Privacy Act.

### Disclosure to Agents

I authorise the persons named in the Application as my disclosure agents (and all other persons named as applicants in my credit application) to give to and/or receive from you any record or personal information about me or my company in connection with the processing and accepting of any application to you for credit and/or the subsequent management of the credit provided.

### Part 3 - Verification of Details, Access and Continuing Authority

#### Verification of Details and Access to Personal information - All Parties

I acknowledge that you verify the identity of natural persons via the collection of personal information (including company searches). I authorise and consent to you obtaining personal information about me to verify my personal details. I also acknowledge that I may (subject to permitted exceptions) access my personal information by contacting Customer Relations, Commonwealth Bank Group, Reply Paid 41, Sydney NSW 2001 and that charges may apply for such access.

### Continuing Authority

I also acknowledge that all consents, acknowledgements and authorities in this Acknowledgement and Consent remain in force for so long as the facility I have or my company has guaranteed remains current.

### SCHEDULE 2 – INFORMATION ACKNOWLEDGEMENT AND CONSENT (GUARANTOR)

In this Schedule:

- "I", "me" and "my", includes individual guarantors and directors of corporate guarantors;
- "you", "your" and "yours" means Commonwealth Bank of Australia ABN 48 123 123 124;
- the singular includes the plural; references to legislation include all consolidations, amendments, re-enactments or replacements of, any Act or regulations.

#### Part 1 – Personal Information Generally

I acknowledge that:

- my personal information is used and disclosed only for purposes related to the proposed guarantee, is not shared with other members of the Commonwealth Bank Group, nor used for marketing purposes without my consent;
- the law can require you to collect personal information - e.g. to identify persons who open or operate accounts;
- you may be permitted or obliged to disclose information by law, eg under court order or statutory notices;
- you will send information overseas if that is necessary to complete a transaction, or if you outsource functions using overseas agents or contractors;
- I can find out more about your personal information handling policies by going to your Privacy Policy Statement at [www.commbank.com.au](http://www.commbank.com.au).

I authorise you to communicate my personal information to my brokers, agents, advisers, as well as valuers and insurers and organisations to whom you outsource certain functions. I acknowledge that your agents are bound by confidentiality arrangements and may only use my personal information for your purposes.

#### Part 2 – Credit Information Acknowledgements and Authorisations

##### Credit Reporting Agencies ("Agencies")

If I or my company is offering to act as guarantor, I authorise you and your agents to give to and receive personal and credit information (including commercial credit information) from Agencies which relates to my offer to act as Guarantor and which may be used for:

- identifying me;
- assessing my or my company's suitability to act as guarantor;
- collecting overdue payments;
- the provision or management of securitised loans;
- assisting me or my company to avoid defaulting on my obligations.

## CBA Loan Agreement (continued)

I also authorise you to notify Agencies of overdue payments in excess of 60 days.

Other Credit Providers

I authorise you to give to and obtain information about me or my company's personal or commercial credit arrangements from credit providers who are:

- participants in a securitisation scheme in which you are involved;
- agents of yours;
- named in a personal or commercial credit report concerning me or my company issued by an Agency.

I understand this information can include credit information of any kind and I acknowledge that the information may be given or used for the following:

- assessing whether to accept me or my company as a Guarantor;
- the management of credit guaranteed by me or my company;
- averting default on credit obligations and assessing the situation if such default is made;
- notifying defaults;
- the provision or management of securitised loans;
- the enforcement of my or my Company's Guarantee.

I also authorise you to give and receive bankers' opinions relating to me or my company's business or profession.

Disclosures to Insurers

I authorise you to give my personal or my company's information to trade insurers and mortgage insurers, who may use or disclose my personal information in accordance with the Privacy Act.

Disclosures to Applicants and Agents

I authorise the persons named in the Application as my disclosure agents as well as all persons named in the credit application as applicants and their legal or financial advisers to give to and/or receive from you any record or personal information about me or my company in connection with assessing my offer to act as guarantor and the processing and accepting of any application to you for credit and/or the subsequent management of the credit provider.

Part 3 – Verification of Details, Access and Continuing Authority

**Verification of Details and Access to Personal information**  
I acknowledge that you verify the identity of natural persons via the collection of personal information (including company searches). I authorise and consent to you obtaining personal information about me to verify my personal details. I also acknowledge that I may (subject to permitted exceptions) access my personal information by contacting Customer Relations, Commonwealth Bank Group, Reply Paid 41, Sydney NSW 2001 and that charges may apply for such access.

**Continuing Authority**

I also acknowledge that all consents, acknowledgements and authorities in this Acknowledgement and Consent remain in force for so long as the facility I have or my company has guaranteed remains current.

## SCHEDULE 3 – IMPORTANT INFORMATION FOR GUARANTORS

**WARNING:** If the Borrower is under 18 years of age, you may not have a right to recover from the Borrower amounts that you must pay us under this guarantee.

If you pay us under an indemnity clause in the guarantee, you may not have a right to recover that payment from the Borrower.

### IMPORTANT

#### BEFORE YOU SIGN

- READ THIS INFORMATION DOCUMENT, THE GUARANTEE TERMS IN SCHEDULE 9 or 10 (AS APPLICABLE) AND THE GUARANTEED AGREEMENT.
- If you are an individual, you should also read the information statement: "WHAT IT MEANS TO BE A GUARANTOR" included after the Guarantee Terms (Individual Guarantors) in Schedule 4.
- You should obtain independent legal advice and financial advice.
- Whilst the Lender is obliged to provide you with certain information, you should also make your own enquiries about the credit worthiness, financial position and honesty of the debtor (the debtor is referred to as the Borrower).

#### THINGS YOU MUST KNOW

- Understand that, by signing this guarantee, you may become personally responsible instead of, or as well as, the Borrower to pay amounts which the Borrower owes and our reasonable expenses in enforcing this guarantee.
- If the Borrower does not pay you must pay. This could mean you lose everything you own including your home.
- You may be able to withdraw from this guarantee or limit your liability. Ask your legal adviser about this before you sign this guarantee.
- We can change the Guaranteed Agreement without reference to you. This may increase the amount secured by the Guarantee. However it will not increase the Maximum Amount you are liable to pay us under the Guarantee. That Maximum Amount can only be increased if you agree to the increase in writing.

Further matters concerning the loan, the Borrower(s) and the Guarantee

#### **Further material to be provided**

We are required under the Code of Banking Practice ("Code") to provide you with certain information and documentation before asking you to sign the Guarantee. If you are a Director Guarantor, you can elect not to receive some of that material (see Schedule 4 – Election under Clause 28.16 of the Code of Banking Practice (Director Guarantors)).

#### **Time for signing the Guarantee**

If you are a Director Guarantor, you may also elect to waive the "next day" waiting period otherwise required under the Code before signing the Guarantee (see Schedule 4 - Election under Clause 28.16 of the Code of Banking Practice (Director Guarantors)).

## CBA Loan Agreement (continued)

If you have not received any of the material you should have received, or your election concerning the next day waiting period has been wrongly recorded, please contact us immediately.

Please be aware that we will not ask you to sign, nor will we accept, the Guarantee unless we have allowed you the time required under the Code of Banking Practice.

### **Maximum liability**

Once you sign and return the enclosed documents, your maximum liability to the Bank under the guarantee provided to the Borrower(s) will be the Maximum Amount as defined under the Guarantee.

In addition, you will be liable for any facilities advanced to you in your own or joint names by the Lender now or in the future.

### **Effect of signing**

By signing the Guarantee, you will be acknowledging that the Security mentioned in the Guarantee (if any) secures the debts of the Borrower to the Lender.

This is in addition to any other debts which you may have agreed to be secured by such Security by separate written acknowledgement (for example, your own borrowings, whether individually or jointly, or those of other borrowers who you may have separately guaranteed).

### **What happens if you do not sign the Guarantee?**

The Lender does not seek in any way to influence your decision whether or not to provide the Guarantee. However, under the Code of Banking Practice, the Lender is obliged to inform you what will happen if your Guarantee is not given.

The result will be that the Advance of the Funds will not be provided to the Borrower.

### **Please consider your position carefully**

#### **Read all the information and documents contained in this document or that we have sent you**

Before deciding whether to provide a Guarantee, you should satisfy yourself that you understand the full nature and effect of the transaction and of your liabilities to the Lender. Please refer to the section in the Guarantee document entitled "What It Means To Be A Guarantor" which is set out behind the Guarantee Terms (Individual Guarantor) in Schedule 4. You must read this carefully, as it contains important information and warnings regarding the obligations and liabilities of Guarantors.

### **Legal and financial advice**

The Lender strongly recommends that you obtain legal and financial advice as to the effect on you and your liabilities under the enclosed documents.

If you decide to seek legal advice, when seeing your solicitor, you should take all original documents you have been asked to sign. Please ask your solicitor to witness your execution of the documents.

### **Executing the documents**

If you decide to proceed, please read the "Instructions for Signing a Guarantee" which are below. Important:

- Prior to signing the document(s) you should satisfy yourself that you understand the full nature of your liabilities to the Lender and obtain appropriate advice, legal or otherwise, if you are at all uncertain of your position.

- Where documents are to be witnessed, the witness must be an independent adult who is not a borrower, a director of the debtor company, a guarantor, a mortgagor, or a relative of one of those persons.
- Use blue or black pen when signing documents, do not use felt tip pens, pencil, red pen or liquid paper at any time.
- Any amendments made to a document must be initialled by all parties to that document.
- Sign all documents where indicated.
- Return documents to the Lender immediately after signing by all appropriate parties, to enable their stamping/registration to be completed within the statutory time period.

### **INSTRUCTIONS FOR SIGNING A GUARANTEE**

As a first step you should read the information statement "What it Means to be a Guarantor" which is set out behind the Guarantee Terms (Individual Guarantor) in Schedule 4. It explains your rights and obligations in plain English. If you are not fluent in English, have it translated and be sure you understand what it tells you.

### **WARNING**

Prior to signing any documents it is strongly recommended that you obtain both legal advice and financial advice.

If you do provide a guarantee and the borrowers do not meet their obligations, the Lender can ask you to pay any amount that is owing, up to the maximum amount of your liability. If you provide security to support the guarantee (e.g. by a mortgage over your house), the Lender can sell that security. If the sale proceeds are insufficient to clear the debt and a shortfall remains, you will still be liable for the shortfall.

### **IF YOU STILL WISH TO GIVE THE GUARANTEE**

When and where you sign the documents depends on whether or not you wish to seek legal advice.

If you wish to seek legal advice, and we strongly recommend that you do, you sign the guarantee and any other documents in front of the solicitor who gives you the advice. Please ask your solicitor to sign the documents as witness to your signature.

If you do not wish to seek legal advice and you have decided to give the guarantee, you can sign the guarantee in front of an independent witness. (For example, if you get financial advice, you could ask your financial adviser to witness your signature.) The witness must be over the age of eighteen and must not be the debtor, a director of the debtor company, a co-guarantor, or a relative of one of those persons. The witness should sign the guarantee as witness and print their name underneath their signature.

The debtor must not be present when the guarantee is signed.

### **SCHEDULE 4 - GUARANTEE TERMS (INDIVIDUAL GUARANTOR)**

The meaning of some key words is explained in clause 21.

What you undertake in giving this guarantee

Guarantee

- 1.1 You guarantee that the BORROWER will pay us the GUARANTEED MONEY. Your guarantee continues until all these amounts have been paid.

## CBA Loan Agreement (continued)

1.2 Until you have paid us the MAXIMUM AMOUNT each time we ask, you must pay us any amount which the BORROWER does not pay us when it is due under the GUARANTEED AGREEMENT. In some circumstances we need not ask the BORROWER first to pay us.

### Indemnity

- 2.1 You indemnify us against, and must therefore pay us, when we ask, for loss we suffer because:
- the BORROWER does not pay us in accordance with a GUARANTEED AGREEMENT; and
  - a GUARANTEED AGREEMENT is unenforceable solely because of the BORROWER'S death, INSOLVENCY or incapacity, or any other act or omission by or circumstances affecting the BORROWER.
- 2.2 The indemnity in clause 2.1 terminates when you have paid us the MAXIMUM AMOUNT. Until that time the indemnity is a continuing obligation, separate and independent from your other obligations under this guarantee, but subject to the same limitations on your liability as are provided for elsewhere in this guarantee, for example in clauses 3 and 7.

### Extent of your liability

3. We cannot ask you to pay more than the MAXIMUM AMOUNT.

### Joint and separate liability

4. You undertake liability for all the obligations under this guarantee separately on your own and jointly with any one or more other PERSONS named in this guarantee as "Guarantor".

### Additional amounts you must pay

- 5.1 You must pay us from the date of our demand until the date of payment such of the following as the BORROWER does not pay us when it is due under the GUARANTEED AGREEMENT:
- interest (at the rate then payable by the BORROWER in respect of amounts OWING under the GUARANTEED AGREEMENT and calculated in the manner provided in that agreement) on any amount we demand from you under this guarantee;
  - interest on that interest (by way of compound interest) at the rate referred to and calculated in the manner provided in (a).
- 5.2 You must pay us, when we ask, our reasonable expenses of enforcing this guarantee.

### Your own costs and other expenses

6. You must pay for anything which you must do under this guarantee.

### You may payout

- 7.1 At any time you can pay us whichever amount is the lesser of:
- the GUARANTEED MONEY; and
  - the MAXIMUM AMOUNT,
- and your liability under this guarantee then ends.

7.2 Within seven days of your written request, we will give you a written statement of the amount required to pay out the GUARANTEED AGREEMENT.

### Limitation of guarantee

8. You may at any time further limit your liability under the Guarantee by written notice to us. We do not have to accept any such limitation if the proposed limit is below the liability of the BORROWER to us under the GUARANTEED AGREEMENT.

### Changes to rights

### Reinstatement of rights

- 9.1 Under law, a trustee in bankruptcy or liquidator may ask us to refund a payment we have received in relation to the GUARANTEED AGREEMENT or this guarantee. To the extent that we are obliged to, or we agree to, make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against you under this guarantee as if the payment had never been made.
- 9.2 For so long as a trustee in bankruptcy or a liquidator is entitled to ask us to refund money that the BORROWER has paid us under the GUARANTEED AGREEMENT, we may refuse to sign a discharge of any SECURITY you have given us to support this guarantee.

### Our rights are protected

- 10.1 Our rights and your liabilities under this guarantee are not affected by any act or failure to act by us or by anything else that might otherwise affect our rights or your liabilities under law relating to guarantees, including:
- the fact that we vary the GUARANTEED AGREEMENT;
  - the fact that we give the BORROWER a concession, for example, more time to pay;
  - the fact that we release, lose the benefit of or do not obtain any SECURITY or other guarantee;
  - the fact that we do not register any SECURITY which could be registered;
  - the fact that we release any PERSON who guarantees the BORROWER'S obligations under the GUARANTEED AGREEMENT;
  - the fact that the obligations of any PERSON who guarantees the BORROWER'S obligations under the GUARANTEED AGREEMENT may not be enforceable;
  - the fact that any PERSON who was intended to guarantee (either in this guarantee or under another guarantee) the BORROWER'S obligations under the GUARANTEED AGREEMENT does not do so or does not do so effectively; or
  - the death, mental or physical disability or INSOLVENCY of any PERSON including you or the BORROWER.
- 10.2 We are not obliged to take any other or further guarantee or SECURITY for the obligations of the BORROWER under the GUARANTEED AGREEMENT.

## CBA Loan Agreement (continued)

10.3 Our rights and remedies under this guarantee are independent of those we have under another guarantee or SECURITY and those that the law says we have, and we can still exercise them even if we obtain a court order or judgment against you.

Your rights are suspended

11. As long as an amount OWING under the GUARANTEED AGREEMENT remains unpaid, you may not, without our consent:
- (a) reduce your liability under this guarantee by claiming that you or the BORROWER or any other PERSON has a right of set-off or counterclaim against us;
  - (b) claim to be entitled to the benefit of another guarantee or other SECURITY given in connection with an amount OWING under the GUARANTEED AGREEMENT or an amount OWING under this guarantee. For example, you may not try to enforce any SECURITY we have taken to ensure repayment of amounts OWING under the GUARANTEED AGREEMENT;
  - (c) claim an amount from another guarantor of the BORROWER'S obligations under a right of contribution; or
  - (d) claim an amount in the INSOLVENCY of another guarantor of the BORROWER'S obligations under the GUARANTEED AGREEMENT, including a PERSON who has signed this guarantee with you.

Information and declaration

- 12.1 Whilst we provide you with information concerning the BORROWER and the GUARANTEED AGREEMENT, we strongly encourage you to also make your own enquiries of the BORROWER, in order to satisfy any queries you may have.
- 12.2 You declare that you do not enter into this guarantee as a trustee, unless you have told us otherwise. If you do enter into this guarantee as a trustee of a trust, this guarantee binds you personally and in your capacity as trustee of the trust.

General

When must you pay?

13. You must pay any amount we ask you to pay us under this guarantee on the date we specify.

How we may exercise our rights

- 14.1 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate including by imposing conditions.
- 14.2 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 14.3 We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except where the loss is caused by our proven negligence.
- 14.4 Our rights and remedies under this guarantee:
- (a) are in addition to any other rights and remedies provided by law independently of this guarantee, or by any other SECURITY; and

- (b) may be exercised by any of our AUTHORISED OFFICERS.

How we may use money we receive

- 15.1 We may use any money we receive under this guarantee towards meeting any part we choose of the amounts the BORROWER has agreed to pay us under the GUARANTEED AGREEMENT.
- 15.2 We may use any money we receive from the BORROWER, which the BORROWER does not direct us to apply to a particular debt, to any debt owed by the BORROWER whether or not the debt is owed under the GUARANTEED AGREEMENT.
- 15.3 If we ask you for an amount under clause 1.2:
- (a) any money you pay us reduces your liability to pay us that amount;
  - (b) we need not credit the amount to the BORROWER'S account until we receive sufficient money from any PERSON or PERSONS (including you) to discharge the BORROWER'S debt to us in full; and
  - (c) until we credit the money you pay us to the BORROWER'S account, interest accrues on that money at the same rate and with the same frequency as interest is charged on the BORROWER'S account. We may apply that interest to the BORROWER'S debts at any time.

Dealing with rights under this guarantee

16. We may assign or otherwise deal with our rights under this guarantee in any way we consider appropriate.

Consents

17. You must comply with all conditions in any consent which we give in connection with this guarantee.

Statements of Account

18. A written statement made up from our books and signed by one of our AUTHORISED OFFICERS about an amount OWING under this guarantee is sufficient evidence of the amount and of any other matter referred to in the statement in connection with the amount, unless it is contested in any proceedings between you and us.

Variation or waiver

19. A provision of this guarantee, or right created under it, may not be waived or varied except in writing signed by the PERSON to be bound.

Notices and other communications

- 20.1 Notices, including certificates, consents and demands given or made under this guarantee must be in writing.
- 20.2 They may be:
- (a) given personally (if they are for us, to one of our employees at the branch or office where you arrange this guarantee or any other branch or office we tell you);
  - (b) left at the address last notified;
  - (c) sent by prepaid post to the address last notified;

## CBA Loan Agreement (continued)

- (d) sent by facsimile transmission to the fax number last notified; or
- e) given in any other way permitted by law.

- 20.3 They take effect from the time they are received unless a later time is stated in them.
- 20.4 If they are sent by post, they are taken to be received on the date they would be received in the ordinary course of post.
- 20.5 If they are sent by a facsimile machine which produces a transmission report, they are taken to be received at the time shown in a transmission report which indicates that the whole facsimile transmission was sent.
21. Meaning of words

AUTHORISED OFFICER includes each of our officers within the meaning given to that word in the Corporations Act, for example each of our officers whose position title is or includes the word "manager" or the word "executive".

BORROWER means the PERSON named in the Application as "Borrower". If there are more than one, BORROWER means any combination of one or more of them and, for each combination, means each of them separately and every two or more of them jointly. BORROWER includes their executors, administrators and assigns.

CONSUMER CREDIT LAW means the Consumer Credit Code applicable in the State or Territory whose law governs this guarantee.

CREDIT CONTRACT means each contract between us and the BORROWER for the provision of credit to which no CONSUMER CREDIT LAW applies. For example this may include credit by way of term loan, overdraft, bill finance, instalment finance, lease finance, hire purchase, receivables financing (including factoring and invoice discounting) and any continuing or revolving credit arrangement.

GUARANTEED AGREEMENT means the loan agreement between the BORROWER and us to which this guarantee is a schedule.

GUARANTEED MONEY means all amounts OWING by the Borrower to us under or by reason of the GUARANTEED AGREEMENT.

Including or for example, when introducing an example, does not limit the meaning of the words to which the example relates to that example or to examples of a similar kind.

MAXIMUM AMOUNT means the total of the amount of the Funds, and our enforcement expenses under clause 5 of this guarantee.

a PERSON is in INSOLVENCY if:

- (a) in the case of a natural PERSON - the PERSON is an insolvent under administration within the meaning of the Corporations Act; or
- (b) in the case of a corporation - the corporation is an externally administered corporation within the meaning of the Corporations Act.

OWING in relation to an amount means an amount which is currently owing or will or may be owing in the future.

PERSON includes an individual, a firm, a body corporate, an unincorporated association and an authority.

SECURITY means a mortgage, charge or other security for the BORROWER'S obligations under the GUARANTEED AGREEMENT or for your obligations under this guarantee.

"we" and "us" means Commonwealth Bank of Australia and its successors and assigns.

"you" means the PERSON named in the Application as "Guarantor". If there are more than one, "you" means each of them separately and every two or more of them jointly. "You" includes your executors and administrators.

A reference in this document to:

- the singular includes the plural and vice versa;
- a document includes any variation or replacement of it;
- law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them);
- any thing includes the whole and each part of it;
- this guarantee includes the indemnity in clause 2.

INFORMATION STATEMENT FOR INDIVIDUAL GUARANTORS

WHAT IT MEANS TO BE A GUARANTOR

This is an important document. However, not all of the information contained below applies if you are a company or other incorporated body. In such case, you should obtain separate advice on your rights and obligations. Read it carefully – if necessary have it translated and be sure you understand what it tells you.

Commonwealth Bank of Australia is the credit provider, and in this statement is referred to as "the Bank".

In this statement, and in the guarantee, the person who is obtaining credit under the GUARANTEED AGREEMENT with the Bank is referred to as "the BORROWER".

This statement tells you about some of the rights and obligations of yourself and the Bank. It does not state the terms and conditions of your guarantee.

Prior to the execution of the guarantee, you must note the following:

- (a) you should seek independent legal and financial advice on the effect of this guarantee;
- (b) you may refuse to provide this guarantee;
- (c) there are financial risks in providing this guarantee;
- (d) you are permitted to limit your liability under the guarantee; and
- (e) you may request information from the Bank regarding the GUARANTEED AGREEMENT which is being provided to the Borrower.
- (f) We can change the GUARANTEED AGREEMENT with the BORROWER without reference to you. This may increase the amount secured by the guarantee. However it will not increase the MAXIMUM AMOUNT you are liable to pay us under the guarantee. That MAXIMUM AMOUNT can only be increased if you agree to the increase in writing.

## CBA Loan Agreement (continued)

The Bank will not ask you to sign the guarantee, nor will the Bank accept the guarantee, unless:

- (g) all of the material required to be provided by the Bank to you has been provided; and
- (h) following the provision of such material, the Bank has allowed you the period of one day to consider that material.

### GUARANTEES

1. What is a guarantee? Why am I being asked to provide the guarantee?

A promise by you that the BORROWER will keep to all the terms and conditions of the GUARANTEED AGREEMENT. If that person does not do so, you promise to pay the Bank all the money OWING on the contract (and any reasonable enforcement expenses) as soon as the money is asked for, up to the MAXIMUM AMOUNT. If you do not pay, then the Bank can take enforcement action against you which may result in the forced sale of any property owned by you such as your house.

You are being asked to provide the guarantee because the BORROWER is unable to give the Bank a good enough security for the GUARANTEED AGREEMENT.

2. How do I know how much the BORROWER is borrowing and how the credit charges are worked out?

These details are on the copy of the GUARANTEED AGREEMENT or proposed GUARANTEED AGREEMENT.

3. What documents and information should I be given?

Before you sign the guarantee you should get copies of:

- (a) the document you are reading now;
- (b) the GUARANTEED AGREEMENT or proposed GUARANTEED AGREEMENT;
- (c) any related CREDIT CONTRACT or security contract;
- (d) any related credit report from a credit reporting agency;
- (e) any financial accounts or statement of financial position given to the Bank by the BORROWER for the purposes of the GUARANTEED AGREEMENT within the last two years;
- (f) the latest statement of account provided to the BORROWER under the GUARANTEED AGREEMENT;
- (g) any notice of demand which the Bank has sent to the BORROWER under the GUARANTEED AGREEMENT within the last two years and with which the BORROWER has not complied to our satisfaction.

The Bank will also tell you:

- (i) whether any facility it has given the BORROWER will be cancelled, or if the GUARANTEED AGREEMENT will not be provided, if you do not provide the guarantee.

The Bank will also give you any other information we have (except our own internal opinions) about the GUARANTEED AGREEMENT (including any facility to be refinanced by the GUARANTEED AGREEMENT) that you reasonably request.

In addition to making inquiry of the Bank, you should also ask the BORROWER for information about the loan. Because you know the BORROWER and because, by giving the guarantee you are doing the BORROWER a favour, you should ask the BORROWER:

- about their business affairs generally;
- to tell you everything about the loan you have guaranteed; and
- whether the loan account is in order.

If the BORROWER refuses to tell you what you want to know, you should think seriously about whether or not to give the guarantee.

After you give a guarantee, you should ask the BORROWER for this kind of information at regular intervals until the guarantee is at an end.

4. Can I get a statement of the amount that the BORROWER owes?

Yes. You can ask the Bank at any time for a statement of the amount the BORROWER currently owes or any amounts credited or debited during a period you specify or any amounts which are overdue and when they became overdue or any amount payable and the date it became due.

The Bank must give you the requested information:

- within 14 days if all the information requested related to a period 1 year or less before your request is given; or
- otherwise within 30 days.

This statement must be given to you in writing if you ask for it in writing but otherwise may be given orally.

You may be charged a fee for the statement.

You are not entitled to more than one written statement every 3 months.

5. How can I find out the payout figure?

You can write to the Bank at any time and ask for a statement of the amount required to pay out the GUARANTEED AGREEMENT as at any date you specify. You can also ask for details of the items that make up the amount.

The Bank must give you the statement within 7 days after you give your request to the Bank. You may be charged a fee for the statement.

6. What other information can I get?

You can request the Bank to provide you with updated copies of the information referred to in Question 3.

The Bank must give you the requested copies:-

- within 14 days of your written request if the original came into existence 1 year or less before the request was given to the Bank; or
- otherwise within 30 days.

The Bank may charge you a fee.

## CBA Loan Agreement (continued)

7. Can I withdraw from my guarantee?
- You can, by written notice to the Bank withdraw from your guarantee at any time before the credit is first provided under the GUARANTEED AGREEMENT.
- Otherwise, your guarantee continues until the guaranteed moneys are repaid to the Bank in full.
8. Can I limit my guarantee?
- You may, by written notice to the Bank, limit the amount or nature of the liabilities guaranteed under the guarantee, except that the Bank does not have to accept such a limit if:-
- it is below the BORROWER'S liability under the GUARANTEED AGREEMENT at the time plus any interest or fees and charges which may subsequently be incurred in respect of that liability; or
  - the Bank is obliged to make further advances or would be unable to secure the present value of an asset which is security for the loan (for example, a house under construction).
9. Can my guarantee also apply to any future contracts?
- No. However, we can change the GUARANTEED AGREEMENT with the BORROWER without reference to you. This may increase the amount secured by the guarantee. However it will not increase the MAXIMUM AMOUNT you are liable to pay us under the guarantee. That MAXIMUM AMOUNT can only be increased if you agree to the increase in writing.
10. What are some of the more important things that are in the guarantee?
- The guaranteed debt increases by the accumulation of amounts of interest on the unpaid balances in the BORROWER'S account.
- Unpaid interest compounds, so that interest is charged on unpaid interest, as well as on unpaid principal.
- Even if you do not give the Bank a mortgage over your home or some other security to support the guarantee, the Bank may sue you on your undertakings in the guarantee. You may then be forced to sell any of your assets (including your home) to pay the judgment debt.
- If you join with other persons in giving the guarantee (these other persons are called co-guarantors), you are liable for all the obligations under the guarantee both separately on your own and jointly with any one or more of the co-guarantors. If you make a payment under the guarantee, you should get legal advice about your rights of contribution from the co-guarantors.
- If the Bank releases a co-guarantor or any mortgagor or makes any compromise or arrangement with the BORROWER, your liability and the liability of any co-guarantor under the guarantee for the whole of the debt is not affected by the release, compromise or arrangement.
- You have no right to any moneys from the estate of a deceased or bankrupt BORROWER until all the guaranteed moneys are paid to the Bank.
- Under the guarantee, the Bank can recover moneys from you even though the law (for example, the law of bankruptcy) does not allow it to recover them from the BORROWER.
- If it receives a payment from an insolvent BORROWER or co-guarantor, the Bank may have to refund the payment to a trustee in bankruptcy. In that case the Bank can reinstate your guarantee as if it had never received the payment.
11. If my guarantee says I have to give a mortgage, what does this mean?
- A mortgage means that you give the Bank certain rights over any property you mortgage. If you default under your guarantee, you can lose that property and you might still owe money to the Bank.
12. Should I get a copy of my mortgage?
- Yes. You will be given a copy of the mortgage as provided in Question 3.
13. Is there anything that I am not allowed to do with the property I have mortgaged?
- The law says you cannot assign or dispose of the property unless you have the Bank's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.
14. Can the Bank take or sell the mortgaged property?
- Yes, if you have not carried out all your obligations under your guarantee.
- If the Bank holds more than one security for the moneys the BORROWER owes, the Bank can choose to enforce those securities in any order it pleases. The Bank does not have to enforce some other security before it enforces your guarantee or your mortgage.
15. What if I do not have the money to pay the Bank?
- If the Bank holds a mortgage from you to support your guarantee, the Bank can sell your mortgaged property to pay the debt. If the Bank does not hold a mortgage from you, or if any security you have given the Bank is insufficient to pay the debt, the Bank can take you to court and ask the court for a judgment against you for the debt you owe it under the guarantee.
- This could mean that you lose everything you own, including your home.
16. When can the Bank enforce a judgment against me?
- When:-
- the Bank has judgment against the BORROWER and if the judgment amount has still not been met 30 days after the Bank has asked the BORROWER in writing to pay it; or
  - the court says so because recovery from the BORROWER is unlikely; or

## CBA Loan Agreement (continued)

- the Bank has been unable to locate the BORROWER after making reasonable efforts to do so; or
- the BORROWER is insolvent.

These restrictions do not apply if the BORROWER is a Small Business. "Small Business" means a business having less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; otherwise, less than 20 full time (or equivalent) people.

17. Can the Bank take action against me without first taking action against the BORROWER?

Yes, but the Bank will not be able to enforce any judgment against you except in the circumstances described in the answer to Question 16.

### GENERAL

18. What can I do if I am asked to pay out the GUARANTEED AGREEMENT and I cannot pay it all at once?

Talk to the Bank and see if some arrangement can be made about paying.

If you cannot come to a suitable arrangement, the Bank has dispute resolution procedures, information on which is set out at Question 23.

19. If I pay out money for a BORROWER, is there any way I can get it back?

You can sue the BORROWER, but remember, if the BORROWER cannot pay the Bank, he or she probably cannot pay you back for a while, if at all.

20. What happens if I go guarantor for someone who is under 18 when he or she signs a GUARANTEED AGREEMENT?

You are responsible for the full debt if the contract of guarantee has a clear and obvious warning. The warning has to tell you that the courts might not let you sue the BORROWER if you have to pay out the GUARANTEED AGREEMENT for him or her.

21. Do I have any other rights and obligations?

Yes. The law does give you other rights and obligations. You should also READ YOUR GUARANTEE carefully.

22. What happens if I have a dispute with the Bank?

The Bank has dispute resolution procedures available. Further information can be obtained by:-

- (a) visiting the Bank's web site, [www.commbank.com.au](http://www.commbank.com.au); or
- (b) visiting one of our branches; or
- (c) telephoning 132221 between 8am to 8pm Monday to Friday.

23. What if I am still not sure what to do?

If you are still not sure about the obligations you take on if you give the Bank a guarantee, you should discuss the matter with your solicitor.

If you think you need financial advice (either on account of the BORROWER'S debt obligations or your own, or both), you should speak with your own financial adviser.

You should not have the BORROWER with you when you speak with the solicitor or the financial adviser.

You may think you do not need any independent advice. You may consider you are experienced in business matters and know and understand the terms and meaning of bank guarantees and security documents.

Even if this is the case, you must be able to give the guarantee or mortgage freely and voluntarily, without pressure from any other person.

IF YOU HAVE ANY DOUBTS, OR YOU WANT MORE INFORMATION, CONTACT YOUR FINANCIAL ADVISER OR GET LEGAL ADVICE.

PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.

### SCHEDULE 5 – GUARANTEE TERMS (CORPORATE GUARANTOR)

For the purpose of securing to the Lender the payment of the Guaranteed Moneys, the Guarantor gives this Guarantee to the Lender on the following terms:

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Guarantee, unless the context otherwise requires:

- (a) "Authorised Officer of the Lender" includes each of the Lender's officers within the meaning given to that word in the Corporations Act, for example each officer of the Lender whose position title includes the word "manager" or the word "executive";
- (b) "Borrower" means:
  - (i) the Borrower and its successors or executors and administrators; and
  - (ii) if two or more Borrowers are parties to this Guarantee, means any one or more of them, or any of their successors or executors and administrators;
- (c) "Business Day" means a day on which trading banks are open for the transaction of general banking business;
- (d) "Guaranteed Agreement" means the loan agreement between the Borrower and the Lender to which this guarantee is a schedule;
- (e) "Guaranteed Moneys" has the meaning given to that expression in clause 2;
- (f) "Guarantor" means:
  - (i) the Guarantor and its successors or executors and administrators; and
  - (ii) if two or more Guarantors are parties to this Guarantee, means any one or more of them, or any of their successors or executors and administrators;
- (g) "Lender" means the Lender and its assigns;
- (h) "Maximum Amount" means the aggregate of:
  - (i) the amount of the Funds, plus
  - (ii) interest on each amount demanded from the Guarantor, at the rate or the highest of the rates charged or chargeable to the Borrower from time to time after the date of demand, from that date until payment, plus

## CBA Loan Agreement (continued)

- (iii) interest on that interest by way of compound interest, calculated after the date of demand at such time or times or from time to time as the Lender thinks fit, at the rate or rates referred to at (b) above, plus
- (iv) all charges, costs and expenses (if any) which the Lender incurs, sustains or pays in recovering or attempting to recover from the Guarantor the moneys at (i), (ii) and (iii) above plus interest on those charges, costs and expenses at the rate or rates referred to above.

### 1.2 Interpretation

In this Guarantee -

- (a) clause headings are for ease of reference only and do not affect interpretation or construction;
- (b) unless the context otherwise requires:
  - (i) the word "person" includes a corporation;
  - (ii) words importing the singular number include the plural and vice versa;
  - (iii) words importing any gender include every other gender;
  - (iv) when two or more Guarantors or Borrowers are parties to this Guarantee, their respective covenants and agreements, whether express or implied, bind them and every two or more of them jointly and each of them severally.

### 2. GUARANTEED MONEYS

The expression Guaranteed Moneys means all amounts owing by the Borrower to the Lender under or by reason of the Guaranteed Agreement including:

- (a) amounts in respect of an obligation or liability which:
  - (i) is present, prospective or contingent;
  - (ii) is liquidated or unliquidated;
  - (iii) sounds in damages only, and irrespective of:
  - (iv) whether the Borrower is liable or obligated solely, jointly or jointly and severally with another person;
  - (v) the circumstances in which the Lender comes to be owed each liability or obligation; or
  - (vi) the capacity in which the Borrower or the Lender comes to owe or to be owed that liability or obligation;
- (b) interest on all the moneys referred to in paragraph (a) of this clause, or on so much of those moneys as for the time being are due or remain unpaid, calculated and charged as follows:
  - (i) at the rate or rates agreed in writing (if any);
  - (ii) if no rate has been agreed in writing, then without prior or other notice to the Borrower or the Guarantor, at the prevalent rate charged or chargeable by the Lender for the time being or from time to time to its other customers on similar accounts;
  - (iii) such interest is taken to accrue from day to day and to be calculated from the time or respective times the moneys referred to in paragraph (a) of this clause were lent,

provided, paid or disbursed or became due;

- (c) interest on any interest referred to in paragraph (b) of this clause 2 by way of compound interest, calculated at such time or times and from time to time as the Lender thinks fit at the rate or respective rates agreed (if any) or, if not, then at the rate for the time being or from time to time charged as set out in paragraph (b) above, subject to the following:
  - (i) the fact that the Lender charges interest on unpaid interest or includes interest with principal in any balance carried forward or account stated or otherwise, does not mean that the unpaid interest has been capitalised or added to the principal; but
  - (ii) the Lender may, without notice to the Borrower or Guarantor and by express entry to that effect in its books, at any time and at such intervals as the Lender thinks fit, capitalise and add to the principal all or any interest on which interest has become payable; and
  - (iii) any accumulations by way of compound interest or addition to principal may be continued and made notwithstanding that, as between the Lender and the Borrower, the relationship of banker and customer has ceased, and notwithstanding the death, bankruptcy or winding-up of the Borrower or any other matter or thing, until all moneys secured by this Guarantee have been paid and satisfied, and it is agreed that all such moneys, liabilities and amounts are intended to be secured by this Guarantee.

### 3. THE NATURE OF THE GUARANTOR'S UNDERTAKING

3.1 The Guarantor guarantees that the Borrower will pay the Guaranteed Moneys to the Lender.

3.2 Except where the Guaranteed Moneys are payable without prior demand under clause 7, the Guarantor will pay the Guaranteed Moneys to the Lender on demand, or so much of the Guaranteed Moneys as the Lender specifies in its demand. However, the Lender will not make demand on the Guarantor -

- (a) in the case of moneys which are payable by the Borrower on demand, before making demand on the Borrower; and
- (b) in all other cases, before the Borrower has failed to pay, when due to be paid, the moneys specified in the demand.

3.3 Subject to sub-clause 3.2, the Lender may make demand on the Guarantor at any time and from time to time. The Lender's demand may include the interest accruing on the amount demanded from the date of the demand until payment, at the rate or rates referred to in paragraphs (b) and (c) of clause 2.

3.4 Subject to clause 4, this Guarantee is a continuing guarantee and will not be considered as wholly or partially discharged by:

- (a) the payment at any time by the Borrower of any of the Guaranteed Moneys;

## CBA Loan Agreement (continued)

- (b) the payment at any time by the Guarantor of any of the Guaranteed Moneys, except where the aggregate of all amounts paid by the Guarantor equals or exceeds the Maximum Amount;
- (c) any settlement of account between the Lender and the Borrower or between the Guarantor and the Borrower;
- (d) the death or notice of the death of any person who is a Guarantor;
- (e) if the Guarantor is a corporation, by the winding up or de-registration of the Guarantor, or by the receipt of notice of any order, decree or resolution for the winding up of the Guarantor; or
- (f) if the Borrower is a corporation, by the winding up or de-registration of the Borrower, or by the receipt of notice of any order, decree or resolution for the winding up of the Borrower; or
- (g) any other matter or thing,

and will be enforceable notwithstanding that any negotiable or other instrument, security or contract may be still in circulation or outstanding.

- 3.5 You indemnify us against, and must therefore pay us, when we ask, for loss we suffer because:
- (a) the Borrower does not pay us in accordance with a Guaranteed Agreement; and
  - (b) a Guaranteed Agreement is unenforceable solely because of the Borrower's death, insolvency or incapacity, or any other act or omission by or circumstances affecting the Borrower.

- 3.6 The indemnity in clause 3.5 terminates when you have paid us the Maximum Amount. Until that time the indemnity is a continuing obligation, separate and independent from your other obligations under this Guarantee.

#### 4. DISCONTINUANCE OF FURTHER LIABILITY BY GUARANTOR

If the Guarantor gives written notice to the Lender, at the branch of the Lender where the account of the Borrower is kept, of the desire of the Guarantor to discontinue any further liability under this Guarantee, then the liability of that Guarantor under this Guarantee will cease in relation to any liability which is incurred after the Lender's receipt of that notice except for any future liability arising out of any advance, letter of credit, bill, promissory note, cheque, draft, order or other engagement or transaction at that time current or outstanding.

Despite the discontinuance by one or more Guarantors:

- (a) this Guarantee remains a continuing guarantee binding any other Guarantor; and
- (b) the Lender, on receipt of any notice of discontinuance, and without notice to the Borrower, may immediately discontinue the provision of any further advances or accommodation to the Borrower.

#### 5. COSTS, CHARGES AND EXPENSES

- 5.1 The Lender may, from time to time, without the need for any further authority than this Guarantee, debit and charge any account of the Borrower with:
- (a) all costs, charges and expenses, legal or otherwise (including solicitor and client as well as party and party costs and other moneys paid or payable by the Lender), which the Lender pays, incurs, sustains or is put to in connection with:
    - (i) any account of the Borrower;
    - (ii) this Guarantee;
    - (iii) the preparation or completion or release of this Guarantee; or
    - (iv) the exercise or attempted exercise of any right, power, authority, discretion or remedy conferred on the Lender under or by virtue of this Guarantee or by statute, plus
  - (b) interest on those moneys at the rate or, if more than one, the highest of the rates referred to in clause 2(b).

- 5.2 All the moneys referred to in clause 5.1 are covered by this Guarantee and form part of the Guaranteed Moneys.

#### 6. OTHER SECURITIES

Every security (other than a security referred to in clause 20) already executed, or which at any time in the future may be executed by the Guarantor in favour of the Lender, will be and remain a continuing security for the payment by the Guarantor of the Guaranteed Moneys.

#### 7. ACCELERATION AND COMBINATION OF ACCOUNTS

##### 7.1 Acceleration

At the option of the Lender and despite any delay or previous waiver of the right to exercise the option, the Guaranteed Moneys will become immediately payable without any demand or notice if:

- (a) without the consent in writing of the Lender, the Guarantor or the Borrower charges or assigns, or purports to charge or assign, any moneys owing or payable or to become owing or payable by the Lender to the Guarantor or the Borrower;
- (b) any execution or other process of any court or authority, or any distress, is issued against or levied on any of the moneys referred to in paragraph (a);
- (c) any floating charge over any moneys owing or payable or to become owing or payable by the Lender to the Guarantor or the Borrower becomes a fixed charge.

##### 7.2 Set-off

If any of the events listed in clause 7.1 occurs, without any demand or notice the Lender may:

- (a) withhold payment of any moneys (including interest) standing to the credit of the Borrower or of the Guarantor, on any account; and
- (b) prepay, if necessary, and apply those moneys in or towards payment of the Guaranteed Moneys.

The amount in an account of the Guarantor that the Lender withholds and applies under this clause 7.2

## CBA Loan Agreement (continued)

will not exceed the Maximum Amount.

### 8. LIABILITIES MERGED

If the liability of the Guarantor under this Guarantee becomes merged in any judgment or order:

- (a) The Guarantor must pay interest on the amount for the time being owing under the judgment or order.
- (b) The interest referred to in paragraph (a) will be:
  - (i) at the rate charged or chargeable by the Lender in respect of the Guaranteed Moneys immediately prior to the entry of the judgment or the making of the order; or
  - (ii) at the option of the Lender, at such other rate as for the time being or from time to time is charged or chargeable by the Lender in respect of the Guaranteed Moneys.

### 9. LENDER'S RIGHT TO VARY ADVANCES AND ACCOMMODATION

9.1 During the continuance of this Guarantee and subject to clause 9.2, the Lender may from time to time vary the limit or amount of advances and accommodation to the Borrower or to any other person.

9.2 Any exercise by the Lender of its rights under clause 9.1 does not increase the Maximum Amount.

### 10. GUARANTEE NOT AFFECTED BY CHANGES IN BORROWER

If:

- (a) the Borrower is a partnership, firm, committee, trustee or unincorporated body; or
- (b) any of the Guaranteed Moneys are advanced or are owing or payable on a joint account,

this Guarantee remains effective and continues to bind the Guarantor, notwithstanding:

- (c) any change by death, retirement, accession, addition, amalgamation, incorporation or otherwise in the partnership, firm, committee, trustee, body or persons now or in the future constituting the Borrower; or
- (d) any change in the name or style of the Borrower, as if the person or persons or unincorporated body constituting the partnership, firm, committee, trustee, body or Borrowers on joint account at any date on which the Guaranteed Moneys become payable by the Guarantor, or at any earlier time, was or were the same as at the date of this Guarantee.

### 11. GUARANTOR AS PRINCIPAL

As a separate and independent obligation, the Guarantor agrees that any of the Guaranteed Moneys which are not recoverable from the Guarantor on the basis of a guarantee, because of:

- (a) any legal limitation, disability or incapacity on or of the Borrower or the Guarantor; or

- (b) any other fact, or circumstance,

in any case whether known to the Lender or not, are nevertheless recoverable from the Guarantor as the sole or principal Borrower, and will be paid by the Guarantor as if any covenant or agreement by the Borrower to pay the Guaranteed Moneys or any part of them had been a covenant or agreement of the Guarantor.

### 12. INDEPENDENCE OF GUARANTEE

This Guarantee is in addition to, and independent of, and will not affect or be affected by:

- (a) any other or further guarantee or security now or in the future held or taken by the Lender;
- (b) any arrangement or transaction between the Lender and the Borrower or any other person;
- (c) any loss, release, discharge, abandonment or transfer, either in whole or in part, and either with or without consideration, of any other guarantee or security now or in the future held by the Lender from the Borrower or from any other person;
- (d) any act, forbearance or omission by the Lender; or
- (e) any other act, matter or thing.

### 13. NO OBLIGATION TO HOLD OR RESORT TO OTHER SECURITY

The Lender has no obligation to:

- (a) hold or take any other or further guarantee or security for the payment of the Guaranteed Moneys; or to
- (b) resort to any other guarantee or security it may hold for payment of the Guaranteed Moneys in priority to this or any other guarantee or security.

### 14. GRANT OF TIME OR INDULGENCE

The Lender may, at any time and from time to time:

- (a) grant to the Borrower or to any other person any time or other indulgence or consideration;
- (b) compound with or release the Borrower or any other person;
- (c) assent to any assignment to trustees for the benefit of creditors or to any scheme or deed of arrangement, either with or without sequestration of the estate, or if the Borrower is a corporation, the winding up of the Borrower, without discharging or affecting the liability of the Guarantor under this Guarantee.

### 15. POSTPONEMENT OF GUARANTOR'S RIGHTS

15.1 Until the Lender has received all of the Guaranteed Moneys in full, the Guarantor is not entitled on any grounds to:

- (a) claim the benefit of any security now or in the future held by the Lender for the payment of the Guaranteed Moneys;
- (b) either directly or indirectly claim or receive the benefit of any dividend or payment -
  - (i) out of the estate of the Borrower;

## CBA Loan Agreement (continued)

- (ii) if the Borrower is a corporation, in the winding up of the Borrower;
  - (iii) out of the estate or in the winding up of any person (in this clause called "any other person") who may be jointly indebted with the Borrower to the Lender or who may be liable under any security, negotiable or otherwise, now or in the future held by the Lender as security for any of the Guaranteed Moneys; or
  - (c) if the Borrower or any other person -
    - (i) becomes bankrupt;
    - (ii) assigns their estate for the benefit of creditors, or makes a deed of arrangement or a composition in satisfaction of their debts or a scheme of arrangement of their affairs;
    - (iii) dies; or
    - (iv) if the Borrower or any other person is a corporation, is in the course of being wound up, prove or claim in the estate or (if the Borrower or any other person is a corporation) in the winding up of the Borrower or any other person, in competition with the Lender so as to diminish any dividend or payment which, but for such proof, the Lender would be entitled to receive out of that estate or in that winding up.
- 15.2 The receipt of any dividend or other payment which the Lender may receive out of the estate or in the winding up referred to in clause 15.1, will not prejudice or affect the right of the Lender to recover the Guaranteed Moneys from the Guarantor.
16. PROTECTION AND RESTORATION OF LENDER'S RIGHTS
- 16.1 The Lender's right to recover from the Guarantor under this Guarantee is not prejudiced or affected by -
- (a) any assurance, security or payment which may be avoided under any law for the time being in force relating to bankruptcy, or to the winding up or external administration of companies; or
  - (b) any release, settlement or discharge which may have been given or made on the faith of any such assurance, security or payment.
- 16.2 If any such assurance, security or payment is avoided, the Lender, the Guarantor and the Borrower will be restored to the rights which each respectively would have had if:
- (a) the assurance, security or payment had not been given or made; and
  - (b) the release, settlement or discharge had not been given or made on the faith of that assurance, security or payment.
- 16.3 The Lender may in its discretion refuse to release the Guarantor from liability under this Guarantee for so long as any such security, assurance or payment remains liable to be avoided.
17. REMAINING GUARANTORS
- 17.1 If and to the extent that it is beyond the power of any Guarantor to guarantee payment of all or any part of the Guaranteed Moneys, then
- (a) the liability of any remaining Guarantor under this Guarantee will not be discharged, varied or affected in any way; and
  - (b) this Guarantee will continue in full force and effect so far as it relates to any remaining Guarantor.
- 17.2 The Lender may:
- (a) release or discharge any Guarantor from the obligations of this Guarantee;
  - (b) accept any composition from or make any other arrangements with that Guarantor,
- without prejudicing or affecting the Lender's rights and remedies against any remaining Guarantor.
18. STATEMENT OF ACCOUNT
- Unless it is contested in proceedings between the Lender and the Guarantor, a written statement of the amount of the Guaranteed Moneys due or owing at any date which:
- (a) states that it is made up from the books of the Lender, and
  - (b) is signed by an Authorised Officer of the Lender,
- is sufficient evidence of that amount and of all other matters set out in the statement.
19. NOTICES
- 19.1 Method of notice
- Any notice or demand given to or made on the Guarantor or the Borrower by the Lender will be taken to be duly given or made if it is in writing signed by an Authorised Officer of the Lender and
- (a) delivered or sent to the relevant party at the address or facsimile number stated in the Application or at any other address or facsimile number in Australia notified to the Lender in writing from time to time; or
  - (b) delivered or sent to the usual place of abode or business or registered office of the relevant party last known to the person signing the notice or demand; or
  - (c) in the case of a Guarantor resident or incorporated in Australia, advertised in the Commonwealth of Australia Gazette; or
  - (d) in the case of an individual, delivered personally.
- 19.2 Time of notice
- Any such notice or demand will be taken to have been given or made:
- (a) in the case of personal delivery or delivery to an address, place of abode, place of business or registered office referred to in clause 19.1, at the time of such delivery;

## CBA Loan Agreement (continued)

- (b) in the case of posting in a prepaid envelope or wrapper addressed to the relevant party at an address, place of abode, place of business or registered office referred to in clause 19.1, on the third day after posting (or the seventh day after posting in the case of international mail);
- (c) in the case of facsimile transmission to a facsimile number referred to in clause 19.1, on production by the despatching facsimile machine of a transmission control report showing the correct number of pages was sent to the facsimile number of the recipient and the result of the transmission as "OK" (or an equivalent expression), unless the recipient notifies the sender within 24 hours that the transmission was not received in its entirety in a legible form; and
- (d) if a demand or notice is taken to have been given or made after 5.00 pm in the place to which the demand or notice is addressed, or on a day which is not a business day in that place, it will be deemed to have been given or made at 9.00 am on the next succeeding business day in that place.
- 19.3 Validity of notice
- Any such method of service will in all respects be valid and effectual notwithstanding, at the date of the service:
- (a) that the Guarantor and the Borrower or either of them is -
- (i) mentally incapacitated, dead, bankrupt or insolvent;
  - (ii) absent from the place of domicile or usual residence of the Guarantor or the Borrower; or
  - (iii) if the Guarantor or the Borrower is a corporation, is in the course of liquidation or wound up; or
- (b) any other fact, matter or circumstance.
20. REGULATED CONTRACTS
- 20.1 Despite any other provision of this Guarantee, nothing in this Guarantee will be construed as requiring or purporting to require, or securing or purporting to secure, the payment of any money or the performance of any obligation under or in respect of:
- (a) any regulated contract entered into with the Lender either before, after or at the same time as this Guarantee; or
  - (b) any regulated mortgage or other instrument securing the payment of money or the performance of any obligation under or in respect of that regulated contract.
- 20.2 In this clause the terms "regulated contract" and "regulated mortgage or other instrument" mean, respectively, a contract and mortgage or other instrument to which the uniform consumer credit legislation in force at any time (for example, the Consumer Credit Code 1994), applies.
21. GUARANTOR AS TRUSTEE
- Where the Guarantor enters into this Guarantee as trustee of a trust, this Guarantee binds the Guarantor personally and in the Guarantor's capacity as trustee of the trust.
22. ASSIGNMENT BY LENDER
- 22.1 The Lender may assign its rights under this Guarantee free from any equities, set-off or cross claim which, but for this provision, the Guarantor would be entitled to set up against the Lender.
- 22.2 The Lender is authorised to disclose to any assignee or potential assignee (including any employee, agent or independent contractor engaged by the assignee or potential assignee) all such information in relation to the Guarantor or the Borrower as the Lender reasonably considers to be appropriate in the circumstances.
23. AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION – CLASS ORDERS
- 23.1 For so long as any part of the Guaranteed Moneys remains outstanding, whether actually or contingently, to the Lender from the Borrower:
- (a) The Guarantor must not, without the prior written consent of the Lender, enter into any deed in connection with the granting by the Australian Securities & Investments Commission of an order pursuant to the provisions of the Corporations Act giving relief to a corporation's directors from the Act's requirements as to accounts and reports. (In this clause 23, such a deed is called a Deed of Cross-Guarantee.)
  - (b) The Guarantor must notify the Lender immediately upon becoming aware of any proposal to request or require the Guarantor to enter into a Deed of Cross-Guarantee.
  - (c) Where -
    - (i) the Lender has given its consent under paragraph (a) above, or
    - (ii) the Guarantor entered into a Deed of Cross-Guarantee before executing this Guarantee, and that Deed of Cross-Guarantee has not been revoked or released in respect of the Guarantor,
 the Guarantor must not consent to the amendment, termination, revocation, suspension or repudiation of, or waive the Guarantor's rights or entitlements arising from the Deed of Cross-Guarantee, without the prior written consent of the Lender.
  - (d) The Guarantor must notify the Lender immediately upon becoming aware of any proposal that the Guarantor consent to any of the acts referred to in paragraph (c) above in respect of any Deed of Cross-Guarantee.
- 23.2 The Lender may, in its absolute discretion, withhold its consent under clause 23.1(a). If the Lender gives its consent, it may impose such terms and conditions on giving that consent as it thinks fit.

## CBA Loan Agreement (continued)

23.3 If the Guarantor:

- (a) fails to notify the Lender as required by Clause 23.1;
- (b) enters into a Deed of Cross-Guarantee, or gives any consent or waiver referred to in paragraph (c) of clause 23.1, without the Lender's prior written consent; or
- (c) fails to comply with a term or condition of the Lender's consent,  
the Lender may:
  - (d) enforce this Guarantee and any security given by the Guarantor for the payment or repayment to the Lender of the Guaranteed Moneys;
  - (e) by written notice to the Borrower, cancel any obligation of the Lender to provide further accommodation (including accommodation by way of fresh drawings, the replacement or renewal of existing drawings, or the acceptance, endorsement or discounting of bills of exchange or other engagements) to the Borrower; and
  - (f) by written notice to the Borrower, declare all or any of the Guaranteed Moneys (other than moneys already payable on demand, for example moneys provided by way of overdraft) immediately due and payable. The Guaranteed Moneys referred to in the Lender's notice will then be immediately due and payable.

### SCHEDULE 6 – GUARANTOR TRUSTEE UNDERTAKINGS

Each Guarantor that is trustee of a trust hereby represents, warrants and undertakes in respect of the trust, details of which are set out in the Application, that:

- (a) The trust deed/s or other trust document/s set out in the Application constitute all documents relevant to the constitution of the trust and give the trustee the necessary power/s and authority to enter into the Transaction Documents and the transactions contemplated by them and, where the trustee is a company, the trustee company's constitution does not restrict the trustee company's or its directors' powers or authority in respect of the Transaction Documents or the transactions contemplated by them.
- (b) There is either no conflict of interest and duty affecting the trustee or its directors which prevent the trustee from entering into the Transaction Documents or the transactions contemplated by them, or the terms of the documents referred to in (c) above enable the trustee to enter into the Transaction Documents and the transactions contemplated by them notwithstanding any conflict of interest and duty that may affect the trustee or any of its directors when entering into the Transaction Documents and the transactions contemplated by them.
- (c) The Guarantor enters into each Guarantee Document on its own behalf and as trustee of the trust. The Guarantor and its successors as trustee of the trust will be liable under the Guarantee Documents as trustee of the trust to the intent that all the assets both future and present of the trust will be available to satisfy the

Guarantor's liabilities. Nothing in this document releases the Guarantor from any liability in its personal capacity.

- (d) The Guarantor warrants that at the date of its execution of this document that:
  - (i) it has power to enter into the Transaction Documents in its capacity as trustee of the trust;
  - (ii) it has taken every necessary action to authorise entry into the Transaction Documents;
  - (iii) the trust has been validly created and is in existence at the date of this document;
  - (iv) it has been validly appointed as trustee of the trust and is presently the sole trustee of the trust;
- (e) The trust is solely constituted by the trust deed, a true copy of which was provided to the Lender or its agent before the date of this document.
- (f) A date has not been declared under the trust deed as the date on which the trust will be vested or come to an end.
- (g) no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the trust or the Guarantor's trusteeship of the trust;
- (h) it has not done, or failed to do, any act whereby any of the assets of the trust have been acquired by any other person, no assets of the trust are presently registered in the name of any other person, and no person, other than the beneficiaries previously notified to the Lender has acquired any right of any kind whether vested or contingent in any asset of the trust;
- (i) it is to the commercial benefit of the trust that it enters into the Transaction Documents in its capacity, inter alia, as trustee of the trust and charges the property of the trust as provided in the Transaction Documents; and
- (j) it, as trustee of the trust, has valid rights of indemnity and exoneration against the assets of the trust, which rights are available for satisfaction of all liabilities and other obligations incurred by the Guarantor under the Transaction Documents.

The Guarantor must not without the Lender's prior written consent permit any:

- (a) resettlement, appointment or distribution of capital of the trust;
- (b) retirement or replacement of the trustee or any appointment of a new trustee of the trust,
- (c) amendment of the trust deed establishing the trust;
- (d) breach of the provision of the deed establishing the trust; or
- (e) termination of the trust or variation of the vesting date, and if any of the above occur, the Guarantor must promptly inform the Lender.



## 13. ANTI-MONEY LAUNDERING QUESTIONS AND ANSWERS

### What are the new anti-money laundering laws?

The Government has introduced new laws in the Anti-money Laundering and Counter Terrorism Financing (AML/CTF) Act 2006. The new laws require businesses that provide certain financial services to identify their customers before providing a service and report suspicious transactions.

### What is money laundering?

Money laundering is the process criminals use to disguise the source of illegally obtained money so that it appears to have come from legitimate sources.

### What is terrorist financing?

Terrorist financing is the act of providing financial support to terrorist or terrorist organisations to enable them to carry out terrorist acts.

### Why has the new legislation been introduced?

Australia has implemented new laws to improve its existing anti-money laundering and counter terrorism financing system and bring it in line with international standards. The new laws will make it harder for criminals to use the proceeds of crime and terrorists to receive money to carry out terrorist acts.

### What does the new legislation mean for me?

When applying for new product/s, individuals will need to provide verification information such as a certified copy of a passport or driver's licence. For non-individuals such as companies and trusts, more information will be required, for example a certified copy of an ASIC certificate of registration or trust deed. Please refer below for the required identification and verification material for AML/CTF purposes.

### Can a tax file number be used to verify my identity?

No, a tax file number cannot be used or disclosed to establish or confirm your identity.

### Will my personal information be safe?

All financial services providers covered by the new legislation are required to keep client information in a safe and secure environment, as required by the AML/CTF Act and the Privacy Act 1988 (Privacy Act). The Privacy Act covers the collection, use disclosure, quality and security of personal information. You can view our privacy statement at [www.fealtd.com](http://www.fealtd.com).

### AML/CTF identification and verification documentation

If you are investing directly or through a financial planner or adviser then you will need to provide us with the following identification and verification material for AML/CTF purposes.

#### Individual

Please provide a certified copy of:

- an Australian driver's licence that contains a photograph of the licence/permit holder; or
- an Australian passport; or
- a foreign passport or similar travel document containing a photograph and the signature of the person.

#### Company

Please provide the following:

- the full name of the company as registered by ASIC;
- the ACN issued to the company;
- the full address of the registered office of the company;
- the full address of the principal place of business of the company;
- whether the company is registered as a proprietary or a public company;
- a certified copy of the certificate of registration issued by ASIC; for a proprietary company (other than a licensed company referred to below), the full name and address of each beneficial owner; and

- if the company is licensed and subject to regulatory oversight by a Commonwealth, State or Territory regulator in relation to its activities as a company, a search of the license or other records of the relevant or if the company is listed, a search of the relevant domestic financial market.

### Trust or superannuation fund

Please provide:

- The full business name of the trustee in respect of the trust, the type of trust, the name of the trustees and the country in which the trust was established;
- The name and address of each beneficiary of class of beneficiary in respect to the trust;
- for each trustee which is an individual, please also provide the documentation required for individuals (above); or
- for each trustee which is a company, please also provide the documentation required for companies (above).

### Partnership

Please provide:

- documentation required for individuals (above) for each one of the partners.
- a certified copy or certified extract of the partnership agreement; or
- an extract of minutes of a partnership meeting;
- the full name and residential address of each partner in the partnership; and
- documentation evidencing the full names of the partnership (where relevant) and the country in which the partnership was established.

### Who can certify your documents?

To have documents certified, please take the original documents and photocopies to any one of the following persons for him/her to certify that they are true and correct copies of the originals:

- a justice of the peace or bail justice;
- a barrister or solicitor of the Supreme Court;
- a judge or a magistrate;
- a chief executive officer of the Commonwealth court;
- a registered/deputy registrar of a court;
- a public notary;
- a police officer;
- a permanent employee of Australia Post with two or more years of continuous service who is employed in an office supplying postal services to the public;
- an Australian diplomatic or consular officer;
- an officer with two or more continuous years of service with one or more financial institutions;
- a finance company officer with two or more continuous years of service with one or more finance companies;
- an officer or authorised representative that holds an Australian Financial Services Licence and has two or more continuous years of service with one or more licences;
- a member of:
  - The Institute of Chartered Accountants in Australia;
  - CPA Australia; and
  - The National Institute of Accountants; with two or more years continuous membership.

The authorised person will need to write in English, Certification must include the name, address, type of authority and telephone number of certifying authority.

**FAXED COPIES OF CERTIFIED DOCUMENTS DO NOT COMPLY WITH OUR IDENTIFICATION REQUIREMENTS AND ARE NOT ACCEPTABLE.**

The logo features the text 'FEA PLANTATIONS' in a serif font, with a stylized tree icon between 'FEA' and 'PLANTATIONS'. Below this, 'Project 2009' is written in a larger, white, sans-serif font.

# FEA PLANTATIONS Project 2009

ARSN: 136 438 616

The text 'Finance Application' is written in a white, sans-serif font on a dark blue background.

## Finance Application



**FEA**

GROUP OF COMPANIES

### Lodgement of Application Forms

Applications should be mailed to:  
FEA Plantations Project 2009  
Forest Enterprises Australia Limited  
PO Box 733  
Launceston TAS 7250

## Important Information

Forest Enterprises Australia Limited (FEA) has finance available for establishment fees to approved applicants in the FEA Plantations Project 2009 ARSN: 136 438 616 (Project).

Applicants for finance should read the Loan Agreement and the guarantee (if applicable) carefully before signing this FEA Loan Application. We further recommend that you seek independent legal and financial advice prior to making an application for finance.

The security for the loan is provided by an assignment of the investor's rights and interests that they have in the Project for the term of the loan. Directors of company applicants are required to provide personal guarantees and indemnities.

All loans are subject to our normal credit approval process.

For further information, please contact either your financial adviser or contact FEA on freecall 1800 600 009.

FEA is a reporting entity pursuant to the Anti-Money Laundering and Counter-terrorism Financing Act 2006 (ALM/CTF Act) as it carries on the business of providing loans. Accordingly, FEA has obligations under the AML/CTF Act to conduct customer identification and verification.

Borrowers who receive finance from FEA are our customers under the AML/CTF Act. Those borrowers are investors in the Project. FEA Plantations Limited (FEA Plantations) also has obligations under legislation to conduct identification and verification on its growers. As FEA and FEA Plantations are part of a "designated business group" as that term is defined in the legislation, FEA is permitted to rely on the customer identification and verification and verification conducted by FEA Plantations.

## Checklist for Applicants

Please refer to the following checklist when completing the finance application.

**For initial assessment, completed finance applications and supporting documentation may be faxed or emailed and must be received by 5.00pm Friday 26th June 2009. Please only fax or email relevant application/signature pages. All original documentation (including this Finance Application in its entirety) must be received by 5.00pm Monday 29th June 2009.**

Item	Attached (✓)
<b>Finance Application</b> <ul style="list-style-type: none"> <li>Completed form, executed on page 58 by each Borrower and Guarantor (if applicable).</li> </ul>	<input type="checkbox"/>
<b>Proof of Income –</b> <ul style="list-style-type: none"> <li>If the Borrower or Guarantor is an individual, copy of last 2 years tax returns or last tax return and a recent payslip or 2 most recent payslips.</li> <li>If the Borrower is a company or a trust, the financial statements of the company or trust for the last 2 years.</li> </ul>	<input type="checkbox"/>
<b>Direct Debit Authority</b> <ul style="list-style-type: none"> <li>Completed form, executed on page 65 by each Borrower and Guarantor (if applicable) .</li> </ul>	<input type="checkbox"/>
<b>Application Form</b> <ul style="list-style-type: none"> <li>Completed Application Form from the FEA Plantations Project 2009 PDS.</li> </ul>	<input type="checkbox"/>
<b>Deposit</b> <ul style="list-style-type: none"> <li>Payment of 20% deposit (minimum) of the total application amount.</li> </ul>	<input type="checkbox"/>
<b>Freehold Property</b> <ul style="list-style-type: none"> <li>If the loan is above \$100,000 confirmation of ownership must be provided (rates notice or title search)</li> </ul>	<input type="checkbox"/>

**PLEASE RETURN ENTIRE FINANCE APPLICATION WITH ORIGINAL SIGNATURES**



PLEASE RETURN ENTIRE FINANCE APPLICATION WITH ORIGINAL SIGNATURES

1. PERSONAL DETAILS

Forest Enterprises Australia Limited (ABN 47 009 553 548)

FEA Loan Application FEA Plantations Project 2009

PERSONAL DETAILS - APPLICANT 1

Form for Applicant 1 personal details including Title, First Name, Second Name, Surname, Date of Birth, Other names known by, Drivers Licence No., Current Residential Address, Suburb, State, Postcode, Years at address?, Postal Address, Telephone BH, Mobile, Facsimile, Email, Employer, Occupation, Employment Status, Number of Years Employment, Previous Employer, Marital Status, Number of Dependent Children.

PERSONAL DETAILS - APPLICANT 2

Form for Applicant 2 personal details including Title, First Name, Second Name, Surname, Date of Birth, Other names known by, Drivers Licence No., Current Residential Address, Suburb, State, Postcode, Years at address?, Postal Address, Telephone BH, Mobile, Facsimile, Email, Employer, Occupation, Employment Status, Number of Years Employment, Previous Employer, Marital Status, Number of Dependent Children.

FOREST ENTERPRISES AUSTRALIA LIMITED



## 4. STATEMENT OF POSITION

### STATEMENT OF INCOME

Gross Monthly Salary/Wage Income (\$) – Applicant 1  
  
 Monthly Net Rental Income (\$)  
  
 Other Income (\$)

Gross Monthly Salary/Wage Income (\$) – Applicant 2  
  
 Monthly Investment/Dividend Income (\$)  
  
 Other Income Details

### STATEMENT OF ASSETS OF APPLICANT(S)

Residential Property	<input type="text"/>	Estimated Value (\$)	<input type="text"/>
Investment Property	<input type="text"/>		<input type="text"/>
Cash/Deposits	<input type="text"/>		<input type="text"/>
Hard Property (vehicles, boats, shares etc.)	<input type="text"/>		<input type="text"/>
Other Assets (household contents, jewellery, artwork etc.)	<input type="text"/>		<input type="text"/>
Other Assets (not already included above – please specify)	<input type="text"/>		<input type="text"/>
		Total Assets	<input type="text"/>

### STATEMENT OF LIABILITIES OF APPLICANT(S)

#### Loans

Residential Property	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>		
Investment Property/Shares	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>		
Personal Loans	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>		
Credit Cards	<input type="text"/>	Credit Limit	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
All Other Liabilities (please specify)	<input type="text"/>				Balance Owing (\$)	<input type="text"/>	
				Total Liabilities/Commitments	<input type="text"/>		

- Applicant   
  Joint   
  Company   
  Trust   
 (Please tick relevant box)
- I/We have enclosed our tax return/s   
  I/We have enclosed our payslip/s   
 (Please tick relevant box)

### SUPPORTING DOCUMENTATION REQUIRED

#### Proof of income required

- PAYG - Copy of last two tax returns or last tax return and a recent payslip or two most recent payslips confirming income.
- Self employed – last two tax returns or letter from Accountant re estimated income.
- Other third party – confirmation of income declared (e.g. verified letter from employer).
- Company/Trust - copy of financial statements from previous 2 years.
- Proof of identity requirements as per AML/CTF identification information and documents as per the PDS
- If a loan is above \$100,000 confirmation of ownership of any major asset by providing a rates notice, a title search, a listed shares brokers statement, a Margin Loan Statement or in each case as appropriate having regard to the nature of the asset.

Processing of your application will be delayed if you do not supply this information with your application.

## 5. ACKNOWLEDGEMENTS

### Borrower Statements

- If Forest Enterprises Australia Limited accepts this loan application, it will make the loan available on the terms and conditions in the attached loan agreement, which you have read and understood.
- The application for loan finance is subject to Forest Enterprises Australia Limited's normal credit approval process. Forest Enterprises Australia Limited may request further information in assessing the application.
- In the case of an Individual Applicant (or Joint Applicant), you declare that you are 18 years of age or older.

### Acknowledgment and Consent under the Privacy Act

- In the case of individual applicants, you have read and understood – "If I am a Borrower" in Acknowledgment and Consent under the Privacy Act, set out on pages 74 -75 and agree that Forest Enterprises Australia Limited may obtain, use and disclose credit information on the terms set out in that document until the loan agreement to which it relates is at an end.

### Statement about Purpose of Loan

- You declare that the credit that may be provided to you by the credit provider is to be applied wholly or predominantly for business or investment purposes, namely participation in the FEA Plantations Project 2009.

**Important** – You should not sign these declarations unless the loan is wholly or predominantly for business or investment purposes. By signing this declaration you may lose your protection under the Consumer Credit Code.

## 6. EXECUTION

Signature of Applicant 1

Date

 /  / 

Print Name

Signature of Applicant 2

Date

 /  / 

Print Name

### CORPORATE APPLICANTS

Executed for and on behalf of the Borrower in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/Other Director

Signature of Director or sole Director and sole Secretary

Name of Secretary/Other Director (in full)

Name of Director or sole Director and sole Secretary (in full)

7. GUARANTOR

Forest Enterprises Australia Limited  
(ABN 47 009 553 548)

FEA Loan Application: Guarantor  
FEA Plantations Project 2009

PERSONAL DETAILS - GUARANTOR 1

Title     First Name

Second Name

Surname

Date of Birth       Other names known by

Drivers Licence No. (please supply certified hard copy)

Current Residential Address (not PO Box)

Suburb

State    Postcode        Years at address?

Postal Address (if different from above)

Suburb

State    Postcode

Telephone BH

Mobile

Facsimile

Email

Employer

Occupation

Employment Status (full or part time, casual, self)

Number of Years Employment

Previous Employer (only if less than 2 years prior to current employment)

Marital Status

Number of Dependent Children

PERSONAL DETAILS - GUARANTOR 2

Title     First Name

Second Name

Surname

Date of Birth       Other names known by

Drivers Licence No. (please supply certified hard copy)

Current Residential Address (not PO Box)

Suburb

State    Postcode        Years at address?

Postal Address (if different from above)

Suburb

State    Postcode

Telephone BH

Mobile

Facsimile

Email

Employer

Occupation

Employment Status (full or part time, casual, self)

Number of Years Employment

Previous Employer (only if less than 2 years prior to current employment)

Marital Status

Number of Dependent Children

FOREST ENTERPRISES AUSTRALIA LIMITED





# FEA Loan Application: Guarantor (continued)

## FEA Plantations Project 2009

### STATEMENT OF INCOME OF GUARANTOR 2

Gross Monthly Salary/Wage Income (\$)

Monthly Net Rental Income (\$)

Other Income (\$)

Gross Monthly Salary/Wage Income from Business (\$)

Monthly Investment/Dividend Income (\$)

Other Income Details

### STATEMENT OF ASSETS OF GUARANTOR 2

Residential Property	<input type="text"/>	Estimated Value (\$)	<input type="text"/>
Investment Property	<input type="text"/>		<input type="text"/>
Cash/Deposits	<input type="text"/>		<input type="text"/>
Hard Property (vehicles, boats, shares etc.)	<input type="text"/>		<input type="text"/>
Other Assets (household contents, jewellery, artwork etc.)	<input type="text"/>		<input type="text"/>
Other Assets (not already included above – please specify)	<input type="text"/>		<input type="text"/>
		Total Assets	<input type="text"/>

### STATEMENT OF LIABILITIES OF GUARANTOR 2

#### Loans

Residential Property	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
Investment Property/Shares	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
Personal Loans	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>	Balance Owing (\$)	<input type="text"/>
Credit Cards	<input type="text"/>	Credit Limit	<input type="text"/>	Payments Minimum Monthly (\$)	<input type="text"/>
				Balance Owing (\$)	<input type="text"/>
All Other Liabilities (please specify)	<input type="text"/>			Balance Owing (\$)	<input type="text"/>
				Total Liabilities/Commitments	<input type="text"/>

Individual   
  Joint   
  Company   
 (Please tick relevant box)

I/We have enclosed our tax return/s   
  I/We have enclosed our payslip/s   
 (Please tick relevant box)

### SUPPORTING DOCUMENTATION REQUIRED

#### Proof of income required

- PAYG - Copy of last two tax returns or last tax return and a recent payslip or two most recent payslips confirming income.
- Self employed – last two tax returns or letter from Accountant re estimated income.
- Other third party – confirmation of income declared (e.g. verified letter from employer).
- Company/Trust - copy of financial statements from previous 2 years.
- Proof of identity requirements as per AML/CTF identification information and documents as per the PDS
- If a loan is above \$100,000 confirmation of ownership of any major asset by providing a rates notice, a title search, a listed shares brokers statement, a Margin Loan Statement or in each case as appropriate having regard to the nature of the asset.

Processing of your application will be delayed if you do not supply this information with your application.

# FEA Loan Application: Guarantor (continued)

## FEA Plantations Project 2009

### Statements by Guarantors of Company Finance Applicants

- You are 18 years of age or older and have read and understood – Deed of Guarantee and Indemnity, set out on pages 71 - 73 and agree to be bound by those terms as the “Guarantor” in favour of Forest Enterprises Australia Limited, in respect of the finance provided to the loan applicant.
- Each Director /Guarantor of the Company Applicant has read and understood – “If I am a Guarantor” in Acknowledgment and Consent under the Privacy Act, set out on pages 74 -75 and agrees that Forest Enterprises Australia Limited may obtain, use and disclose credit information on the terms set out in that document until the loan agreement to which it relates is at an end.

Executed as a deed poll.

### INDIVIDUAL GUARANTORS

Signed, sealed and delivered

Signature of Guarantor 1

Date

 /  / 

Print Name

Signature of Witness

Date

 /  / 

Print Name

Signature of Guarantor 2

Date

 /  / 

Print Name

Signature of Witness

Date

 /  / 

Print Name

### CORPORATE GUARANTORS

Executed for and on behalf of the Guarantor in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/Other Director

Name of Secretary/Other Director (in full)

Signature of Director or sole Director and sole Secretary

Name of Director or sole Director and sole Secretary (in full)

## 8. AUTHORISED SIGNATORIES (CORPORATE BORROWERS ONLY)

I/We refer to the loan agreement (Loan Agreement) between us  
Borrower

and Forest Enterprises Australia Limited ACN 009 553 548.

Terms used in this notice and defined in the Loan Agreement have the meaning given to them in the Loan Agreement.

Any 2 persons/1 person (delete as appropriate) referred to below (the "Authorised Signatories") are authorised to sign for and on behalf of the Borrower all notices and to endorse, accept, sign and execute for and on behalf of the Borrower all other documents arising under or relating to the Loan Agreement:

### Name of Authorised Signatory

Name (please print)

Signature

Name (please print)

Signature

Name (please print)

Signature

The signatures appearing next to the names of the Authorised Signatories above are true specimens of the signatures of those persons.

Executed for and on behalf of the Borrower in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary in full

## 9. DIRECT DEBIT AUTHORITY

### FEA PLANTATIONS PROJECT 2009

ARSN 136 438 616  
 Forest Enterprises Australia Limited  
 ABN 47 009 553 548

#### Applications should be sent to:

FEA Plantations Project 2009  
 Forest Enterprises Australia Limited  
 PO Box 733  
 Launceston TAS 7250

Office use only	
Inv No	_____
Amount \$	_____
Start	_____
Finish	_____

Date  /  /

#### Applicant Details

Surname/Company name  Given names or ACN/ABN

Address

Suburb/Town  State  Postcode

#### Authority for payments via Direct Debit from Bank account

I/We, the person/s named below request and authorise Forest Enterprises Australia Limited (APCA User ID No 068063) to arrange for funds to be debited from my/our Bank account at the Financial Institution identified below and as prescribed through the Bulk Electronic Clearing System (BECS). By signing this direct debit authority, you acknowledge having read and understood the terms and conditions governing the debit agreement as set out in this authority and in the Service Agreement on the following page.

Financial Institution Name

Address of Branch

Account Name

BSB No (eg 067-999)  -  Account Number

Signature of Account Holder  Signature of Account Holder

#### Authority for payments via Direct Debit from Credit Card

I/We, the person/s named below request and authorise Forest Enterprises Australia Limited to arrange for funds to be debited from my/our Credit Card account identified below. By signing this direct debit authority, you acknowledge having read and understood the terms and conditions governing the debit agreement as set out in this authority and in the Service Agreement on the following page.

Visa  MasterCard Please debit.

Cardholder's Name

Card Number  -  -  Expiry Date  /

Cardholder's Signature

## Direct Debit Authority – Service Agreement

### Debiting your Account

- By signing a Direct Debit Authority, you authorise us to arrange for funds to be debited from your account. You should refer to the direct debit request and this agreement for the terms of the arrangement between us and you.
- We will only arrange for funds to be debited from your account as authorised in the direct debit request.
- The authority covers all amounts we may debit you in connection with the loan repayments.

### Our Commitment to You

- We will advise you in writing concerning all details of the drawing arrangements (amount, frequency, commencement, term) at least 14 days prior to the first drawing.
- Where the due date falls on a non-business day, we will draw the amount on the next business day.
- We will not change the amount or frequency of drawings without your prior approval.
- We will keep all information pertaining to your nominated account private and confidential, other than in dealing with your financial institution in the event of an alleged incorrect or wrongful debit.
- We reserve the right to cancel the drawing arrangements if 3 or more drawings are returned unpaid by your nominated financial institution and to arrange with you an alternative payment method.

### Your Rights

- You may terminate this agreement at any time by giving us written notice. Such notice should be received by us at least 5 business days prior to the due date of the next drawing. Any notice will be deemed to have been received two business days after it is posted.
- You may stop or defer a drawing under this agreement by giving us written notice. Such notice should be received by us at least 5 business days prior to the due date of the next drawing.
- You may request a change to the drawing amount and/or frequency of the agreed drawings by giving us written notice. Such notice should be received by us at least 5 business days prior to the due date of the next drawing.
- Any requests for termination, deferment or alteration to the direct debit arrangements should be directed to us at PO Box733, Launceston TAS 7250.
- Where you consider that a drawing has been initiated incorrectly, you should call our Business Services on 1800 600 009. We will respond to your claim within 3 business days:
  - If we conclude that your account has been incorrectly debited we will respond to your claim by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted.
  - If we conclude as a result of our investigations that your account has not been incorrectly debited, we will respond to your claim by providing you with reasons and any evidence for this finding.

### Your Responsibilities

It is your responsibility to:

- Ensure your account details are checked against a recent statement from your financial institution. If in doubt, you should check with your financial institution before completing this drawing authority.
- Ensure that sufficient funds are available in the nominated account to meet a drawing on its due date.
- Ensure that the authorisation given to us to draw on the nominated account is identical to the account signing instruction held by the financial institution, where your account is held.
- Advise us if the nominated account is closed or transferred.
- Arrange with us a suitable alternative payment method if these drawing arrangements are cancelled or altered, either by yourselves or by your nominated financial institution.
- Pay us any fee or charge we may incur as a result of a drawing not being accepted by your financial institution.

### Confidentiality

- We will keep any information (including your account details) in your direct debit request confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.
- We will only disclose information that we have about you to the extent specifically required by law or for the purposes of this agreement (including disclosing information in connection with any query or claim).

### Definitions

- **Account** means the bank account or credit card facility held at your financial institution from which we are authorised to arrange for funds to be debited.
- **Business Day** refers to days on which banks are open for business in Launceston, excluding Saturday, Sunday and public holidays.
- **Us** or **we** means Forest Enterprises Australia Limited ABN 47 009 553 548.
- **You** means the applicant who signed the direct debit authority.
- **Your financial institution** is the financial institution where you hold the account or credit card facility that you have authorised us to arrange to debit.

## 10. LOAN AGREEMENT (TERMS AND CONDITIONS)

### 1. Parties

The Loan Agreement is made by way of deed between Forest Enterprises Australia Limited (ACN 009 553 548) ("the Lender") and the Borrower ("the Borrower") specified in the FEA Loan Application.

### 2. Loan

The Lender loans to the Borrower the amount set against the words "Total Loan Amount" on the FEA Loan Application, together with any further amounts as are requested by the Borrower and agreed to between the parties (collectively, the "Loan Monies").

### 3. Purpose

The sole purpose of the loan is to pay for the monies and fees owed to FEA Plantations Limited (FEA Plantations) shown in the Application Form attached to the Product Disclosure Statement for the FEA Plantations Project 2009 ("Project") signed by the Borrower. The Borrower irrevocably authorises and directs the Lender to pay the Loan Monies (less the Loan Establishment Fee referred to in item 3 of the FEA Loan Application ("Loan Establishment Fee")) to FEA Plantations for that purpose.

### 4. Defined Terms

Any undefined term used in this agreement which is also used in the Product Disclosure Statement shall have the same meaning reasonably attributed to them as a result of their use in the Product Disclosure Statement.

### 5. Loan Account

The Lender may set up a loan account in the name of the Borrower ("Loan Account") for administrative purposes to which it may debit any amounts owing by the Borrower to the Lender including, without limitation, unpaid fees and charges payable. The Borrower must pay the debit balance of the Loan Account on demand.

### 6. Fees and Charges

- (a) The Borrower must pay any fees payable under any direct debit agreement between the Lender and the Borrower. The Lender may debit a loan account with all unpaid fees and charges that the Borrower must pay the Lender under this agreement.
- (b) The Borrower must pay, and directs the Lender to deduct from the Loan Monies, the Loan Establishment Fee specified in the FEA Loan Application.
- (c) The Borrower must pay a fee of \$35 in respect of any repayment which is dishonoured. This fee will be charged by the Lender to the Borrower's Loan Account and will form part of the total amount owed by the Borrower to the Lender.

### 7. Interest

- (a) The Borrower must pay to the Lender interest on the Loan Monies at the rate of interest shown in the option selected in the FEA Loan Application.
- (b) If a principal and interest loan is selected in the FEA Loan Application, then interest accrues from the date the Lender first debits an amount to the Loan Account or the date the Lender approves the loan, whichever is the later date. Interest is calculated daily on the basis of a year of 365 days.

The Lender will debit interest to the Loan Account monthly and may also debit interest on the day the Borrower pays the balance of the loan.

- (c) If a 12 month interest free loan is selected in the FEA Loan Application, then no interest will accrue for the period starting on the date the Lender first debits an amount to the Loan Account until the date which is one day prior to the anniversary of that date.

### 8. Default Interest

Interest at the default rate of 15% per annum is payable by the Borrower on any money which is due and payable by it and not paid. The Lender will calculate default interest from the due date of payment of the amount until the amount is paid. The Lender will calculate default interest daily on the basis of a year of 365 days. The Lender will debit default interest to the Loan Account monthly and the Lender may also debit interest on the day the Borrower pays the balance of the loan. The default interest debited to the Loan Account will itself bear interest at the default interest rate from the date of the debit up to and including the date of payment.

### 9. Application of Payments

All payments by the Borrower to the Lender will be applied firstly to pay unpaid fees and charges on the loan, secondly, in payment of any interest then due, thirdly, in payment of the principal sum and then in payment of any other monies payable to or recoverable by the Lender under the terms of this deed.

### 10. Repayment

- (a) If the Borrower has selected a principal and interest loan in the FEA Loan Application, then the Borrower agrees to repay the loan by instalments of principal and interest, payable monthly in arrears as set by the Lender, until all monies owing under this deed are paid. Repayments will commence the next occurring 31 July, after the date the Lender first debits an amount to the Loan Account or the date the Lender approves the loan, whichever is the latter date, i.e. finance approved on or before 30 June, 2009 will have a first monthly repayment date of 31 July 2009, finance approved in the 2009/10 financial year will have a first repayment date of 31 July 2010, etc. The Lender may re-set their payments at any time to ensure that the loan will be repaid on or about the end of the loan term set for the loan. When it re-sets the repayments, the Lender will give the Borrower written notice at least 30 days before the change takes effect. The Borrower may prepay the outstanding balance of the loan in whole or in part at any time. If the Borrower makes a prepayment, the Lender reserves the right to charge a reasonable fee for the early repayment.
- (b) If the Borrower has selected an interest free loan in the FEA Loan Application, then the Borrower agrees to repay the loan by instalments of principal, payable monthly in arrears as set by the Lender, until all monies owing under this deed are paid. Repayments will commence the next occurring 31 July, after the date the Lender first debits an amount to the Loan Account or the

date the Lender approves the loan, whichever is the latter date, i.e. finance approved on or before 30 June, 2009 will have a first monthly repayment date of 31 July 2009, finance approved in the 2009/10 financial year will have a first repayment date of 31 July 2010, etc. The Lender may re-set their payments at any time to ensure that the loan will be repaid on or about the end of the loan term set for the loan. When it re-sets the repayments, the Lender will give the Borrower written notice at least 30 days before the change takes effect. The Borrower may prepay the outstanding balance of the loan in whole or in part at any time. If the Borrower makes a prepayment, the Lender reserves the right to charge a reasonable fee for the early repayment.

- (c) The Borrower must make all payments under this deed in immediately available funds, without any set-off, counterclaim or condition whatsoever, and without any deduction or withholding for any tax or for any other reason, unless the Borrower is required to make a deduction or withholding by any applicable law. In that event the Borrower must increase its payment to the Lender to an amount which will result in the Lender receiving (after deduction or withholding of any tax in respect of the increased payment) the full amount which it would have received if no deduction or withholding had been required.

## 11. Security

The Borrower hereby transfers, sets over and assigns in law and equity, all rights and interests that it has in connection with or arising from the investment in the Project including any rights to carbon credits which may subsequently come into existence ("Secured Property") as security for repayment of the loan, and any other monies payable by the Borrower under this deed, subject to an equitable right of redemption in the Borrower if it completely discharges its obligations under this deed. If this provision fails to operate as a valid assignment at law, it shall operate in equity. If it fails to operate at law or in equity it shall constitute a covenant to transfer and assign the Secured Property when called upon by the Lender by notice in writing. In that event, pending such notice, the Borrower mortgages and charges the Secured Property as security for the performance of the Borrower's obligations hereunder. The security shall be a continuing security and the Borrower cannot without the consent of the Lender deal with the Secured Property. The Borrower must, at the Borrower's cost, do whatever the Lender requires to more satisfactorily secure the Secured Property to the Lender.

## 12. Trust

- 12.1 This clause applies if the Borrower is a trustee.
- 12.2 The Borrower has entered into this deed on its own behalf and as trustee of the trust, details of which are set out in the FEA Loan Application ("Trust"). For the purposes of enforcement of this deed, the Lender has recourse to the assets of the Borrower whether the assets are owned by it beneficially or held by it in its capacity as trustee of the Trust. Nothing releases the Borrower from any liability in its personal capacity. The Borrower warrants that at the date of its execution of this deed:

- (a) all the powers and discretion/s conferred by the deed establishing the Trust are capable of being validly exercised by the Borrower as trustee and have not been varied or revoked and the Trust is a valid and subsisting trust;
- (b) the Borrower is the sole trustee of the Trust and has full and unfettered power under the terms of the deed establishing the Trust to obtain financial accommodation on behalf of the Trust and to enter into this deed. The execution of this deed is being accepted as part of the due and proper administration of the Trust and for the benefit of the beneficiaries of the Trust;
- (c) no restriction on the Borrower's right of indemnity out of or lien over the Trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the Trust's assets. The Borrower has no liability which may be set off against that right of indemnity; and
- (d) the Lender has the benefit of the Borrower's rights of indemnity against, and lien over, the assets of the Trust and recourse to the assets of the Trust to satisfy the liabilities of the Borrower under this deed.

12.3 The Borrower must not without the Lender's prior written consent permit any:

- (a) resettlement, appointment, vesting or distribution of capital of the Trust;
- (b) retirement or replacement of the trustee or any appointment of a new trustee of the Trust;
- (c) amendment of the deed establishing the Trust;
- (d) breach of the provisions of the deed establishing the Trust; or
- (e) termination of the Trust or variation of the vesting date, and if any of the above occur, the Borrower must promptly inform the Lender.

## 13. Corporation

If the Borrower is a corporation, then each and every person signing this deed warrants that the corporation (and if the corporation is borrowing as a trustee, the Trust), has full legal power to and has complied with all the necessary formalities to enable it to validly execute this deed and is personally liable, jointly and severally, as if an individual Borrower. If for any reason this clause fails to bind such a person as a Borrower personally, then this clause shall instead operate as a guarantee of performance of the obligations hereunder on the terms of the Deed of Guarantee and Indemnity to which this agreement is attached in the FEA Loan Application provided by the Lender.

## 14. Insurance

The Borrower must ensure that the trees planted on their woodlots are kept insured by a reputable insurer against fire and other risks, for the amount of the Establishment Fees (for each Woodlot Option). The insurance arranged by FEA Plantations Limited will adequately perform this obligation. If the Borrower elects to make his/her own insurance arrangements, the Borrower must:

- (a) have the Lender's interest noted on the policy of insurance as mortgagee; and
- (b) provide the Lender with a copy of the insurance policy and the renewal certificate for each year of the policy within 30 days of the policy being taken out or renewed, as appropriate until the loan has been fully repaid.

**15. Default**

The following events represent default (each an "Event of Default"):

- (a) if the Borrower defaults in payment of an amount due for thirty (30) days;
- (b) the Borrower fails to perform or observe any undertaking expressed or implied under this deed;
- (c) any warranty, representation or statement by the Borrower or its guarantor/s is or becomes false, misleading or incorrect whether made under this deed or any document contemplated by this deed, the FEA Loan Application or conveyed in any other way by the Borrower to the Lender;
- (d) the Borrower or its guarantor/s enters liquidation, provisional liquidation, bankruptcy or dissolution or a petition, application or order is effected or resolution passed in relation to such liquidation, provisional liquidation, bankruptcy or dissolution;
- (e) the Borrower makes an assignment for the benefit of or enters into an arrangement or composition with its creditors;
- (f) a receiver or other controller is appointed to all or any part of the Borrower's property;
- (g) all or any part of any provision of this deed is or becomes illegal, void, voidable, unenforceable, able to be terminated, rescinded or avoided by a person or otherwise of limited force or effect;
- (h) any other change occurs in the financial position of the Borrower or their guarantor/s which in the opinion of the Lender may have a material adverse effect on that party's ability to fulfil its obligations under this deed; and
- (i) any event specified in clause 12.3 occurs without the Lender's prior written consent.  
If an Event of Default occurs, the Lender may, but is not required to, serve on the Borrower a notice to remedy the default within a further period of seven (7) days.

If an Event of Default occurs, the outstanding Loan Monies plus all interest and costs due but unpaid (including the debit balance of the Loan Account) will at the Lender's election become immediately due and payable. Thereupon all of the Borrower's interests assigned or charged by clause 11 may forthwith be appropriated to the Lender to its own use absolutely or sold by it for a reasonable price and the proceeds applied in reduction of the Borrower's obligations under this deed.

**16. Power of Attorney**

The Borrower, for valuable consideration, irrevocably appoints the Lender and its authorised officers severally its attorney to do anything the Borrower can do in connection with this deed. The Lender may register this power at any time, including a time after the occurrence of an Event of Default.

**17. Project Participation**

The Borrower acknowledges that:

- a) its decision to participate in the Project, to apply for a loan and to borrow the Loan Monies has not been made by the Borrower in reliance on any statement, representation or conduct by the Lender or FEA Plantations including any statement, representation or conduct concerning the performance and potential benefits of the Project and the Borrower has made its own

enquiries and exercised its own judgement in coming to its decision; and

- (b) the Borrower has taken independent legal and financial advice in connection with the Project prior to entering into this deed.

**18. Tax, Costs and Expenses**

- (a) The amounts payable under or in connection with this deed have been calculated without regard to GST (as defined in the A New Tax System (Goods and Services Tax) Act 1999). If GST is or becomes payable in respect of any supply made by the Lender under or in connection with this deed, the payment for that supply must be increased by the amount necessary so that the Lender actually receives what it would have been entitled to receive if there had not been GST in respect of that supply.
- (b) The Borrower must on demand pay any tax (including but not limited to, any GST or like tax), including any fines and penalties, in respect of the execution, delivery, performance, release, discharge, amendment, enforcement or attempted enforcement or otherwise in respect of this deed and any document contemplated by this deed.
- (c) The Borrower must on demand pay all costs and expenses of the Lender, including all legal and administrative costs and expenses on a full indemnity basis, in relation to:
  - (i) the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this deed and any document contemplated by this deed;
  - (ii) the enforcement, protection or waiver, or attempted or contemplated enforcement or protection, of any rights under this deed;
  - (iii) an Event of Default; (iv) obtaining or receiving payment of monies due under this deed;
  - (iv) a consent or approval of the Lender given under this deed.

**19. Undertakings**

The Borrower undertakes to:

- (a) immediately provide the Lender with such information regarding the financial position of the Borrower and its guarantor/s as and when the Lender may reasonably request;
- (b) give notice to the Lender as soon as it becomes aware of an Event of Default;
- (c) fully and punctually perform its obligations under this deed; and
- (d) if the Borrower is the trustee of a trust, to:
  - (i) cause any successor of the Borrower as trustee of the trust to execute such documents as the Lender reasonably requires to ensure that this deed is binding on each successor;
  - (ii) exercise its right of indemnity from the trust fund and the beneficiaries of the trust in respect of any obligations incurred by it under this deed; and
  - (iii) observe its obligations as trustee.

The Borrower's undertakings in this clause continue in full force and effect from the date of this deed until all monies payable under this deed have been paid.

## 20. Representations and Warranties

- 20.1 The Borrower represents and warrants that:
- (a) all information provided to the Lender in support of the Borrower's application for this loan are complete, correct and not misleading (whether by its inclusion or by the omission of other information) and, in relation to financial information, represent a true and fair view of the Borrower's (and its guarantor's/s') financial position;
  - (b) the execution, delivery and performance by it and its guarantor/s of this deed do not and will not violate, breach or result in a contravention of any law, judgment, ruling, order, encumbrance, agreement or document which is binding upon the Borrower or its guarantor/s or any of their assets;
  - (c) the Borrower and its guarantor/s have full power and authority to enter into and perform its obligations under this deed;
  - (d) the deed is a legal, valid and binding obligation of the Borrower and its guarantor/s and subject to any necessary stamping and registration, are enforceable in accordance with their terms;
  - (e) it is not entering into this deed as a trustee of a trust unless it notifies the Lender to the contrary prior to this deed being executed;
  - (f) the Borrower is not insolvent;
  - (g) where the Borrower is an individual, the Borrower is a permanent resident of Australia;
  - (h) no Event of Default has occurred and is subsisting;
  - (i) the Secured Property is not subject to any mortgage, pledge, lien, charge or other preferential right given or created as or by way of security, other than as provided in this deed; and
  - (j) where it is a corporation, it has full legal power to and has complied with all the necessary formalities to enable it to validly execute this deed and perform its obligations under this deed.
- 20.2 The Borrower agrees that the representations and warranties in, or given under, this deed:
- (a) survive the execution of this deed; and
  - (b) will be relied upon by the Lender in entering this deed.

## 21. Indemnity

The Borrower indemnifies the Lender against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Lender pays, suffers, incurs or is liable for, in respect of the following:

- (a) the loan not being made for any reason other than by reason of default by the Lender;
- (b) the occurrence of any Event of Default or any event, thing or circumstance which with the giving of notice or passage of time or both would become an Event of Default ("Potential Event of Default"); and
- (c) the Lender exercising or attempting to exercise its rights under this deed or otherwise upon or arising out of the occurrence of an Event of Default or Potential Event of Default, including legal costs and expenses in connection with the above on a full indemnity basis. Any amount payable to the Lender under this indemnity is payable on demand.

## 22. Assignment

The Borrower must not assign or transfer any of its obligations or rights under this deed without the Lender's prior written consent, which shall not be unreasonably delayed or withheld. The Lender may at any time, assign any of its rights or transfer by novation any of its obligations or rights under this deed.

## 23. General

- 23.1 Any notice or communication including but not limited to, any demand, request, approval or consent to or by a party to this deed:
- (a) must be in legible writing and in English addressed as referred to at the commencement of this deed or as specified to the sender by any party by notice;
  - (b) where the sender is a company, must be signed by an officer of, or under the common seal of, the sender;
  - (c) is regarded as being given to the sender and received by the addressee:
    - (i) if by post, 3 business days from and including the date of postage to the address;
    - (ii) if by delivery in person, when delivered by the addressee; or
    - (iii) if by facsimile, whether or not legibly received, upon successful transmission report from the sender's facsimile machine.
- If receipt is on a day which is not a business day or is after 4pm (addressee's time), it is regarded as received at 9am on the following business day. For the purposes of this clause 22, business day refers to days on which banks are open for business in Launceston excluding Saturday, Sunday and public holidays.
- 23.2 If the Borrower must make a payment or do any other thing on or by a day that is not a business day, it must make the payment or do the other thing by the next business day.
- 23.3 If any one or more documents or information sought in conjunction with the FEA Loan Application is not received within 3 months of the date of the application or within 3 months of additional documentation/information being requested by the Lender, then the Lender is under no obligation to provide the loan.
- 23.4 If there is more than one Borrower, each one is bound jointly and severally, together with their legal personal representatives or successors.
- 23.5 The laws of Tasmania govern this deed. The Borrower irrevocably submits to the non-exclusive jurisdiction of the courts of Tasmania.
- 23.6 Part or all of any provision of this deed that is illegal or unenforceable may be severed from this deed and the remaining provisions of this deed continue in force.
- 23.7 Waiver of any right arising from a breach of this deed or upon default under this deed must be in writing and signed by the party granting the waiver. A failure or delay in exercise, or partial exercise, of such a right does not result in a waiver of that right.
- 23.8 A variation of any term of this deed must be in writing and signed by the parties.
- 23.9 The Lender's rights under this deed are in addition to any other right, power, authority, discretion or remedy of the Lender.
- 23.10 This deed is enforceable by the Lender even if the Lender does not execute it.

# 11. DEED OF GUARANTEE AND INDEMNITY

## (Company Finance Applicants Only)

This Deed of Guarantee and Indemnity is made on the date of the FEA Loan Application between:

The Guarantor/s named in the FEA Loan Application (**Guarantor**), and

Forest Enterprises Australia Limited ACN 009 553 548 of 233B Charles Street, Launceston, Tasmania (**Lender**).

### This Deed Witnesses

That in consideration of, among other things, the Lender agreeing, at the request of the Guarantor, to provide financial accommodation under the Loan Agreement to the Debtor, the parties agree:

#### 1. Definitions and Interpretation

(a) In this deed:

**Debtor** means the Borrower named in the FEA Loan Application.

**Guaranteed Moneys** means all money that the Debtor (whether alone or with any other person) is or may at anytime be liable (actually, prospectively or contingently) to pay to the Lender (whether alone or with any other person) on any account or in any way whatever under or in relation to the Loan Agreement (including by way of principal, interest, fees, costs, charges, duties, expenses, indemnity, guarantee obligations or damages). It also includes money which the Debtor would be liable to pay but for its Insolvency.

**Insolvency** includes receivership, compromise, arrangement, amalgamation, administration, reconstruction, liquidation, provisional liquidation, dissolution, assignment for the benefit of creditors, bankruptcy, death or permanent incapacity.

**Loan Agreement** means the loan agreement entered into between the Lender and the Debtor dated on or about the date of the FEA Loan Application.

**Transaction Document** means this deed and the Loan Agreement, and any other document or agreement entered into or given under either of them.

(b) In this deed, a word or phrase (other than those defined in clause 1(a) defined in the Loan Agreement has the same meaning in this deed.

#### 2. Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Lender the payment on time of the Guaranteed Moneys.

#### 3. Indemnity

If any of the Guaranteed Moneys are not recovered from the Debtor or are not recovered from the Guarantor on the footing of a guarantee, the Guarantor unconditionally and irrevocably indemnifies the Lender against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment suffered, paid or incurred by the Lender in relation to the non-payment or non-recovery of the Guaranteed Moneys.

#### 4. Payments

All payments which the Guarantor is required to make under this deed must be made without any set off, counter claim, condition or deduction and are payable by the Guarantor immediately on demand by the Lender.

#### 5. Certificate

A certificate signed by any Secretary or Director of the Lender stating the amount payable under this deed is prima facie evidence of that amount.

#### 6. Continuing Obligation

The guarantee and indemnity contained in this deed is a continuing obligation of the Guarantor, despite any settlement of account or the occurrence of any other thing and remains in full force and effect until all Guaranteed Moneys and all other moneys owing to the Lender under this deed, contingently or otherwise, have been paid in full. The guarantee and indemnity is irrevocable and continues until the Lender unconditionally releases it in writing.

#### 7. Independent Obligation

The guarantee and indemnity contained in this deed is a separate and independent obligation of the Guarantor and neither limits the generality of the other.

#### 8. Avoidance Of Payments

If any payment or other transaction relating to or affecting the Guaranteed Moneys is void, voidable or unenforceable in whole or in part or is claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part:

- (a) the liability of the Guarantor under this deed is the same as if that payment or transaction (or the void, voidable or unenforceable part of it) and any release, settlement or discharge made in reliance on any such payment or transaction has not been made; and
- (b) the Guarantor must immediately take all action and sign all documents required by the Lender to restore to the Lender the benefit of the liability of the Guarantor under this deed in place immediately before the payment or transaction, even if the Lender knew or ought to have known that the payment or transaction was void, voidable or unenforceable.

#### 9. Unconditional Obligations

- (a) The obligations of the Guarantor under the Transaction Documents are principal obligations and are not released, discharged or otherwise affected by anything which but for this provision might have had effect, including, but not limited to:
  - (i) the grant to any person of any time, waiver, covenant not to sue or other indulgence;
  - (ii) the whole or partial release or discharge of, or the granting of, any security;
  - (iii) the Insolvency of any person or the Lender becoming a party to or bound by any Insolvency;
  - (iv) any document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;

- (v) the Lender or its receiver or attorney exercising or enforcing, delaying or refraining from exercising or enforcing, or being not entitled or unable to enforce any right of the Lender;
  - (vi) the Lender obtaining a judgement against any person for the payment of the Guaranteed Moneys;
  - (vii) any transaction, agreement or arrangement, or variation, novation or assignment of a transaction, agreement or arrangement (including a Transaction Document) that may take place with the Lender or any other person;
  - (viii) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Guarantor) by the Lender or any other person;
  - (ix) the Guaranteed Moneys not being recoverable or the liability of any person to the Lender ceasing (including as a result of a release or discharge by the Lender or by law);
  - (x) the Lender increasing the amount of, opening further accounts in connection with or otherwise varying the terms of, financial accommodation provided to the Debtor or any other person;
  - (xi) the failure of any person to execute any Transaction Document;
  - (xii) any change in circumstance (including, without limitation, any change in the members or constitution of any person); and
  - (xiii) any other act, omission, matter or thing whatsoever whether negligent or not.
- (b) Clause 9(a) applies irrespective of the consent or knowledge, or lack of consent or knowledge, of the Lender, the Guarantor or any other person of any event described in clause 9(a) and despite any legal rule to the contrary.

#### **10. No Competition**

- (a) Until this deed is discharged, the Guarantor is not entitled, and must not attempt or purport, to:
  - (i) be subrogated to the Lender;
  - (ii) claim or receive the benefit of any document or agreement of which the Lender has the benefit, any moneys held by the Lender or any other rights of the Lender;
  - (iii) either directly or indirectly prove in, claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the Insolvency of the Debtor (other than in accordance with clause 10(b)); or
  - (iv) make a claim or exercise or enforce any right, power or remedy (including by way of contribution) against the Debtor.
- (b) If required by the Lender, the Guarantor must prove in any liquidation of the Debtor for all moneys owed to the Guarantor and all moneys recovered by the Guarantor must be received and held in trust by the Guarantor for the Lender to the extent of any unsatisfied liability of the Guarantor under this deed.

#### **11. Independent Legal and Financial Advice**

The Guarantor acknowledges that before executing this deed the Guarantor:

- (a) has taken such independent legal and financial advice as he/she thinks fit, as to the purport, effect and consequences of, and obligations created by, the Transaction Documents from a solicitor, barrister or a financial adviser, independent of the Lender and the Debtor; and
- (b) prior to signing this deed, was aware of and fully understood the purport, effect and consequences of, and accepted the financial risks of, and the obligations created by, the Transaction Documents.

#### **12. Acknowledgment**

The Guarantor acknowledges that it has not entered into this deed or any Transaction Document in reliance on any representation, warranty, promise or statement of the Lender or of any person on behalf of the Lender.

#### **13. Default Interest**

- (a) The Guarantor must immediately on demand pay to the Lender interest on any amount which is due and payable by it under this deed and not paid. Interest payable under this clause:
  - (i) is calculated on a daily basis from and including the due date to the date of actual payment, before and, as an additional obligation, after any judgement, decree or order into which the liability to pay any amount under this deed becomes merged; and
  - (ii) may be capitalised by the Lender at monthly intervals.
- (b) The rate of interest payable under this clause is the higher of:
  - (i) the default rate specified in the Loan Agreement; and
  - (ii) the rate fixed or payable under a judgement, decree or order in respect of the same monies.

#### **14. Costs And Expenses**

The Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this deed and the enforcement or protection or attempted or contemplated enforcement or protection of any rights or powers of the Lender under this deed, including, but not limited to, any legal costs and expenses and any professional consultant's fees in respect of any of the above on a full indemnity basis.

#### **15. Suspense Account**

- (a) The Lender may credit money received in or towards satisfaction of the Guaranteed Moneys (including dividends received in any Insolvency) to a suspense account. The Lender may keep the money in that account for as long as, and at whatever interest rate, the Lender thinks fit. The Lender may apply the money (including interest) to reduce the Guaranteed Moneys whenever the Lender thinks fit.

- (b) If the Guaranteed Moneys have been fully and finally paid or discharged and the Lender is satisfied that such payment or discharge is not liable to be set aside, avoided or reversed, then the balance standing to the credit of the suspense account and any accrued interest must be paid to or for the account of the Guarantor or the Debtor and the Lender will not have any further liability in relation to it.

**16. Trustee Provision**

Where the Guarantor is trustee of a trust, this deed binds the Guarantor in its personal capacity and in its capacity as trustee of the trust.

**17. General**

Clause 23 (General) of the Loan Agreement applies to this deed, as if references to the Borrower were references to the Guarantor and with all other necessary changes in point of detail, as if set out in full in this deed.

**18. Loan Agreement**

The Guarantor acknowledges having read and understood the Loan Agreement.

## 12. ACKNOWLEDGMENT AND CONSENT UNDER THE PRIVACY ACT

This is an application for credit from Forest Enterprises Australia Limited. The Privacy Act 1988 (Cth) regulates the manner in which private sector organisations exchange and use personal and credit information about individuals. Since we need to exchange and use personal and credit information about applicants and their guarantors in relation to the application for credit, completion of this form ensures compliance with the Act. All individual borrowers and guarantors will need to sign and date the consents and acknowledge that this consent remains in force until the loan/s to which they relate are repaid.

### IF I AM A BORROWER

#### Notice and Acknowledgment that Credit Information may be Given to a Credit Reporting Agency

I understand that the Privacy Act allows you to give a credit reporting agency certain personal information about me which I authorise you to do. The information which may be given to an agency is covered by the Act and includes:

- such permitted particulars about me which allow me to be identified;
- the fact that I have applied for credit and the amount;
- the fact that you are a credit provider to me;
- payments which become overdue at least sixty (60) days and for which collection action has commenced;
- advice that payments are no longer overdue;
- the fact that you have drawn a cheque for \$100 or more which has been dishonoured more than once;
- in specified circumstances, that in your opinion I have committed a serious credit infringement; and
- that the credit you provided to me has been repaid/discharged.

#### Authority to Obtain Certain Information

I authorise you and any agent of yours that is deemed to be a credit provider pursuant to the Act:

- to obtain from a credit reporting agency a credit report containing information about my personal credit worthiness to assess my application for credit;
- to obtain a report containing information about my commercial activities or commercial credit worthiness from any business which provides information about the commercial credit worthiness of persons for the purpose of assessing my application for credit;
- to obtain from a credit reporting agency a credit report containing information about my personal credit worthiness for the purpose of the collection of overdue payments in respect of credit which you have provided to me; and
- when you are performing tasks reasonably necessary to the provision and management of securitised loans, to obtain from a credit reporting agency a credit report containing personal credit information about me for the securitisation purposes permitted by the Act.

#### Authority to Exchange Information with Other Credit Providers

In accordance with the Privacy Act, I authorise you to give to and obtain from:

- credit providers named in the credit application;
- participants in a securitisation scheme in which you are involved that are regarded as credit providers due to the effect of s11B (4A) and (4B) of the Act;
- the credit provider in any such securitisation scheme;
- any agent of yours that is deemed to be a credit provider pursuant to s11B (5) of the Act;
- any credit provider that may be named in a personal or commercial credit report issued by a credit reporting agency or a commercial reporting agency respectively; and
- information about my personal or commercial credit arrangements.

I understand this information can include any information about my credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Act.

#### Purposes for which the Authority to Exchange Information with other Credit Providers is Provided

I understand the information may be given and used for purposes that include the following:

- to assess an application by me for credit;
- to assist me avoid defaulting on my credit obligations;
- to notify other credit providers of a default by me;
- to assess my credit worthiness;
- to assess my position if I fall into arrears; and
- where the information is given to participants in a securitisation scheme, for the purpose of assessing the risk in purchasing any credit facility given to or applied for and/or the risk in undertaking credit enhancement of any such facility.

#### Notice and Authority to Give Information to Guarantors

I authorise you to give any guarantor or proposed guarantor, credit information or any record that has any bearing on my credit worthiness, credit standing, credit history or credit capacity in connection with such credit facilities, including a copy or summary of the guaranteed loan agreement, a copy of any formal demand made by you under the terms of the agreement and, if the guarantor asks, a copy of the latest account statement for the guaranteed loan.

#### Authority to Obtain and Verify Personal Details

I authorise and consent to you obtaining personal information about me to verify my personal details in this application. Without limitation, you may collect personal information from my employers, financial advisers and/or accountants. I acknowledge that upon the supply of my personal information as provided herein and upon you collecting personal information about me from other sources as authorised herein by me, I acknowledge:

1. That I can contact Forest Enterprises Australia Limited at 233B Charles Street Launceston in Tasmania;
2. I am able to gain access to that information;
3. That the purposes for which personal and credit information is collected is contained in this acknowledgment and consent;
4. That the organisations to which that information will be disclosed are disclosed in this acknowledgment and consent, but for these purposes are extended to your debt collectors, subsidiary companies, agents and lawyers;
5. The Corporations Act 2001, ASIC and other regulatory bodies from time to time require the said particular information to be collected which is in accordance with the National Privacy Principles pursuant to the Privacy Act 1988 (Cth); and
6. That if I fail to provide all or part of the information as requested, that you may refuse to extend credit to me and/or allocate the Woodlots applied for.

I acknowledge that the above consents, instructions and authorities endure until the loan agreement to which they relate is at an end.

## IF I AM A GUARANTOR

### Notice and Acknowledgment that Credit Information may be Given to a Credit Reporting Agency

I understand that the Privacy Act allows you to give a credit reporting agency certain personal information about me which I authorise you to do. The information which may be given to an agency is covered by the Act and includes:

- Such permitted particulars about me which allows me to be identified;
- The fact that I have offered to act as a guarantor in respect of the loan enquired for by the Borrower;
- The fact that I have failed to pay an amount due by me as guarantor where, amongst other things:
  - I have received notice of default by the Borrower and have not paid for 60 days after that notice; and
  - You have, in addition to that notice, commenced action to recover the amount due from me.
- Cheques drawn by me for \$100 or more which have been dishonoured more than once; and
- In specified circumstances, that in your opinion I have committed a serious credit infringement.

This information may be given before, during or after the assessment is made of whether to accept the application of the Borrower or me as guarantor for the Borrower.

### Authority to Obtain Certain Information

I authorise you and any agent of yours that is deemed to be a credit provider pursuant to the Act:

- To obtain from a credit reporting agency a credit report about me containing personal credit information to assess whether to accept me as guarantor for credit applied for or provided to the Borrower;
- Where you are performing tasks reasonably necessary to the provision and management of securitised loans, I authorise you to obtain from a credit reporting agency a credit report about me containing personal credit information for the securitisation purposes permitted by the Act;
- To obtain information about my commercial activities or credit worthiness from a provider that provides information about the commercial credit worthiness of persons for the purposes of assessment to accept or otherwise, me as guarantor for credit applied for by the Borrower.

### Authority to Exchange Information with other Credit Providers

In accordance with the Privacy Act, I authorise you to give to and obtain from any of my credit providers and/or parties to a securitisation scheme that are providers due to the effect of s11B (4A) and (4B) of the Act, any record relevant to my credit worthiness, credit history, credit standing or credit capacity for the purposes of:

- Assessing the application of the Borrower and whether to accept me or otherwise as guarantor for credit applied for or provided to the Borrower;
- For any purpose relevant to the subsequent management of the credit guaranteed by me;
- For the purposes of the assessment of the risk in purchasing any credit facility given to or provided for by the Borrower from you and/or the risk in undertaking credit enhancement of such a credit facility;
- Notifying a failure by me to observe my obligations as guarantor;
- Allowing another credit provider to ascertain the status of my obligations to the Lender where I am in default with one or more other credit providers; and
- Generally assessing my credit worthiness.

I understand the information exchanged can include any information about my personal and/or commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other.

### Authority to Obtain Guarantor Information

I acknowledge that upon the supply of my personal information as provided herein and upon you collecting personal information about me from other sources as authorised herein by me, I acknowledge:

1. That I can contact Forest Enterprises Australia Limited at 233B Charles Street Launceston in Tasmania;
2. I am able to gain access to that information;
3. That the purposes for which the information is collected is contained in this acknowledgment and consent;
4. That the organisations to which that information will be disclosed are disclosed in this acknowledgment and consent, but for these purposes are extended to your debt collectors, subsidiary companies, agents and lawyers;
5. The Corporations Act 2001, ASIC and other regulatory bodies from time to time require the said particular information to be collected which is in accordance with the National Privacy Principles pursuant to the Privacy Act 1988 (Cth); and
6. That if I fail to provide all or part of the information as requested, that you may refuse to accept the guarantee by me or extend credit to the Borrower and/or allocate the Woodlots applied for by the Borrower.

I acknowledge that the above consents, instructions and authorities endure until the loan agreement to which they relate is at an end.



**FEA Plantations Limited**

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