

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

LIST E

SCI 2009 10699

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(ACN 066 601 250) and WESTPAC BANKING CORPORATION
(ACN 007 457 141)**

Plaintiff

and

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) & ORS (according to the attached Schedule)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 3 March 2010
Filed on behalf of: the Second, Third and Fourth Defendants

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This is the exhibit marked '**MAK-31**' now produced and shown to MARK ANTHONY KORDA at the time of swearing this affidavit on 3 March 2010.


Before me: 
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Level 21, 333 Collins Street
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An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit 'MAK-31'

**Copy of Feartherweight fixed and floating
charge (ASIC No 1410090) in favour of the
BOSI Security Services Limited**

Featherweight Fixed and Floating Charge

Timbercorp Limited
ACN 051 185 067

BWA Custodians Ltd
ABN 63 009 413 852

Level 39
101 Collins Street
Melbourne Vic 3000
Telephone: (03) 9679 3000
Fax: (03) 9679 3111

Ref: MPC JJO 09 1404 4810

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FEATHERWEIGHT FIXED AND FLOATING CHARGE

DATE 15 December 2006

PARTIES

Timbercorp Limited ACN 055 185 067 (Chargor)

BWA Custodians Ltd ABN 63 009 413 852 (Chargee)

OPERATIVE PROVISIONS

I. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Approved Security Interest means a Security Interest which:

- (a) does not apply to all or substantially all of the assets of the Chargor; and
- (b) relates to rights of the Chargor:
 - (i) to receive income from property of the Chargor which is not a Relevant Asset;
 - (ii) in relation to bank accounts and the balances of such accounts held by the Chargor in connection with property of the Chargor or its related bodies corporate which is not a Relevant Asset; or
 - (iii) in relation to bank accounts and the balances of such accounts held by the Chargor in connection with Financial Indebtedness of the Chargor which is permitted by (but not provided under) the Transaction Documents.

Attorney means an attorney appointed under a Transaction Document and any attorney's substitute or delegate.

Beneficiary means:

- (a) the Chargee;
- (b) the Facility Agent; and
- (c) each Financier.

Books has the same meaning as in the Corporations Act.

Charge means the charge created by clause 2.

Charged Property means all the Chargor's interest in all its property anywhere (real and personal, and present and future) including its uncalled capital and its called but unpaid capital (including any amount characterised as a premium when the relevant shares were issued) for the time being.

Collateral Security means a Security Interest or Guarantee (other than the Charge) including the documents referred to in clause 2.7 from any person that secures or otherwise provides for payment of any Secured Money.

Contamination means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment. For the purpose of this definition a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance or Environmental Aspect, structure or other matter.

Environment means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or manmade or modified features or structures,

and includes ecosystems and all elements of the biosphere.

Environmental Aspect means in respect of any land:

- (a) each interaction of any activity on that land, or of that land itself, with the Environment;
- (b) each of the following aspects of that land:
 - (i) heritage items on the land or heritage values or significance of the land or anything on it;
 - (ii) Contamination of or from the land or from activities on the land;
 - (iii) Pollution of or from the land or from activities on it;
 - (iv) the flora and fauna on or in the vicinity of the land including threatened species, populations or ecological communities or their habitats on or in the vicinity of the land;
 - (v) critical habitat on or in the vicinity of the land;

- (vi) the propensity of the land to be affected by natural disasters such as bushfires, flooding or geotechnical instability or earthquakes; and
- (vii) the physical, chemical or geotechnical characteristics of the land or any structures on it; and
- (c) the zoning or permissible uses of the land.

Environmental Law includes:

- (a) Commonwealth, State or local government legislation including regulations, by-laws and instruments;
- (b) common law to the extent that it relates to the use of land, or the carrying out of activities on land;
- (c) requirements, consents and concurrences (including conditions) of any Authorisation; and
- (d) guidelines, specifications or prescriptions of any Government Agency with which a person is legally required to comply,

which regulates or has as its objective the protection or enhancement of any Environmental Aspect.

Environmental Notice means any written or unwritten requirement (such as a direction, order, demand or licence) from any Government Agency to take any action or refrain from taking any action, in respect of any property of the Borrower or its use in connection with any Environmental Aspect.

Fixed Charge Property means all the Chargor's interest (legal or equitable) both present and future in:

- (a) goodwill;
- (b) all Intellectual Property;
- (c) shares or stock in the capital of each Qualifying Subsidiary; and
- (d) all units in the Timbercorp Orchard Trust and the Timbercorp Agribusiness Trust.

Fixtures means all fixtures and fittings and fixed plant, machinery and equipment on any real property (freehold or leasehold) owned by the Chargor.

Floating Charge Property means all Charged Property that is not Fixed Charge Property.

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, such as moral rights.

New Obligor means a person who accedes to and becomes a party to the Security Trust Deed as a "New Obligor" or an "Obligor" in accordance with clause 13.1 of the Security Trust Deed.

Obligors means:

- (a) the Chargor;
- (b) each person specified in schedule 1 of the Security Trust Deed; and
- (c) each New Obligor.

Order means a valid request, direction, notice, demand, requirement, condition (including a condition of an Authorisation) or order from a Government Agency that requires anything to be done or not done.

Pollution means the release, emission or discharge into the Environment of a substance which directly or indirectly causes or has the potential to cause damage or harm to any aspect of the Environment, and includes:

- (a) pollution of air;
- (b) pollution of water;
- (c) noise; and
- (d) pollution of land.

Receiver means a receiver or a receiver and manager, appointed under a Security.

Secured Money means all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by any Obligor to any Beneficiary on any account at any time, under or in connection with the Transaction Documents or any transaction contemplated by the Transaction Documents whether:

- (a) present or future, actual or contingent;
- (b) incurred alone, jointly, severally or jointly and severally;
- (c) the Obligor is liable on its own account or the account of, or as surety for, another person and without regard to the capacity in which the Obligor is liable;
- (d) due to the Beneficiary alone or with another person;

- (e) the Beneficiary is entitled for its own account or the account of another person;
- (f) arising from a banker and customer relationship or any other relationship;
- (g) originally contemplated by the Obligor or any Beneficiary or not; and
- (h) the Beneficiary is the original person in whose favour any of the above amounts were owing or an assignee and, if the Beneficiary is an assignee:
 - (i) whether or not the Obligor consented to or knew of the assignment;
 - (ii) no matter when the assignment occurred; and
 - (iii) whether or not the entitlements of that original person were assigned with the Charge.

Security Trust Deed means the security trust deed dated on or about the date of this document between the Chargor, the Chargee and others.

Syndicated Loan Agreement means the syndicated loan agreement between the Chargor (as borrower), BOS International (Australia) Limited (as facility agent) and the Chargee (as security trustee) and others, dated on or about the date of this document.

Timbercorp Agribusiness Trust means the trust constituted under the constitution dated 25 February 2005 and known as the Timbercorp Agribusiness Trust which is registered as a managed investment scheme under chapter 5C of the Corporations Act with ARSN 116 024 830 under which Orchard Investments Management Limited ACN 105 684 231 is the responsible entity.

Timbercorp Orchard Trust means the trust constituted by a constitution dated 15 September 2003 and known as the Timbercorp Orchard Trust which is registered as a managed investment scheme under chapter 5C of the Corporations Act with ARSN 106 557 297 under which Orchard Investments Management Limited ACN 105 684 231 is the responsible entity.

1.2 Rules for interpreting this document

Clauses 1.2 (Rules for interpreting this document) and 1.3 (Non Business Days) of the Syndicated Loan Agreement apply to this document as if set out in full in this document, with any necessary changes.

1.3 Syndicated Loan Agreement

Unless defined in clause 1.1, terms defined in the Syndicated Loan Agreement have the same meaning in this document.

1.4 Capacity of Chargee

- (a) The Chargee has entered into this document in its capacity as trustee of the Security Trust and in no other capacity. Its liability under this document is limited in the

manner set out in clause 1.7 of the Security Trust Deed. This document is held by the Security Trustee on the terms of the Security Trust.

- (b) If the Security Trustee is replaced as trustee of the Security Trust under the Security Trust Deed:

- (i) this document is to take effect from the date on which the Security Trustee was so replaced as if the replacement trustee had executed this document, and any reference in this document to the Security Trustee will be from that date a reference to the replacement trustee to the exclusion of the party that has been replaced; and
- (ii) the parties must enter into an accession deed or other documentation, and take such other steps, as are necessary to give effect to this.

2. CHARGE

2.1 Charging provision

The Chargor charges all the Charged Property in favour of the Chargee to secure the punctual payment of the Secured Money.

2.2 Priority

The Charge is a first ranking charge.

2.3 Fixed and floating charge

The Charge operates:

- (a) as a fixed charge over all Fixed Charge Property; and
- (b) subject to clause 2.5, as a floating charge over all Floating Charge Property.

2.4 Licence to deal with Floating Charge Property

- (a) Except if the charge has become a fixed charge under clause 2.5 in respect of any Floating Charge Property, the Chargee licenses the Chargor to dispose of or otherwise deal with the Floating Charge Property in the ordinary course of its ordinary business.
- (b) Except if the charge has become a fixed charge under clause 2.5 in respect of any Floating Charge Property and so long as no Event of Default has occurred and is subsisting notice of which has been given by the Chargee to the Chargor, the Chargor may at any time create an Approved Security Interest over any estate or interest in:
 - (i) the Floating Charge Property; or
 - (ii) any rights or benefits in connection with the Floating Charge Property.

- (c) The Chargee acknowledges that the Security Interest created by this document ranks behind any other Security Interest created by the Chargor in accordance with clause 2.4(b) in respect of the Floating Charge Property (and the benefit of this clause is held by the Chargor on trust for itself and for each holder of such Security Interest). At the request and cost of the Chargor, the Chargee must enter into an agreement with a person holding a competing Security Interest over any Floating Charge Property on terms which give first priority to that other Security Interest and which are otherwise reasonably satisfactory to the Chargee.

2.5 Crystallisation

The Charge will cease to operate as a floating charge and will operate as a fixed charge, and the licence under clause 2.4 will be withdrawn, automatically and immediately:

- (a) in relation to all Floating Charge Property, if:
- (i) the Chargor ceases or threatens to cease to carry on its business;
 - (ii) an Insolvency Event occurs in respect of the Chargor; or
 - (iii) this document is enforced;
- (b) in relation to part of the Floating Charge Property, if:
- (i) the Chargor creates or takes any step towards creating any Security Interest over that part of the Floating Charge Property in breach of clause 3;
 - (ii) the Chargor disposes of or deals with or takes any step towards disposing of or dealing with that part of the Floating Charge Property in breach of clause 3;
 - (iii) any step is taken to levy or enforce any distress or other execution on or against that part of the Floating Charge Property or to enforce any Security Interest relating to that part of the Floating Charge Property; or
 - (iv) after an Event of Default, the Chargee gives notice to the Chargor that the Charge is to crystallise in relation to that part of the Floating Charge Property;
- (c) in relation to any proceeds of any debt or other money included in Floating Charge Property that may be or become payable for any reason to the Chargor if the Chargee gives notice to the Chargor that the Charge is to crystallise in relation to those proceeds (except that the Chargee may only give a notice under this clause 2.5(c) in respect of any such proceeds or other money owed to the Chargor by another Group Member if any of the matters referred to in clause 2.5(a) or clause 2.5(b) have occurred); or
- (d) in relation to any money included in Floating Charge Property that may now or in the future be or become due to or held for the Chargor, or any other part of the Floating Charge Property that any Government Agency may in any way rank for

payment of Taxes ahead of a floating charge, when the Chargor fails to pay any Taxes.

2.6 Floating nature of charge restored

If the Charge has become a fixed charge under clause 2.5 in relation to Floating Charge Property, the Chargee may restore the licence under clause 2.4 by notice to the Chargor so that the Charge will again operate as a floating charge and not as a fixed charge in relation to that Floating Charge Property. The Chargee is not obliged to do so.

2.7 Collateral Security

The Charge is collateral to and secures the same money as is secured by each other Security.

2.8 Priorities

For the purposes of fixing priorities between the Charge and any subsequent charge registered under the Corporations Act and for no other purposes, the Charge secures a prospective liability (being the liability to pay the Secured Money and to indemnify the Chargee, any Receiver and any Attorney as provided in this document) up to a maximum amount of \$500,000,000. The Charge may also secure prospective liabilities in excess of this specified maximum amount.

3. RESTRICTIONS ON DEALING WITH CHARGED PROPERTY

The Chargor must not:

- (a) create, attempt to create or permit to exist any Security Interest other than a Permitted Security Interest in relation to:
- (i) the Fixed Charged Property;
 - (ii) If the Charge has become a fixed charge under clause 2.5 in relation to any Floating Charge Property, that Floating Charge Property,
- (whether ranking ahead of, equally with or after, the Charge); or
- (b) except in accordance with clause 2.4, dispose of, declare a trust over or otherwise create or permit the creation or existence of any interest in, or part with possession of, any Charged Property,

without the Chargee's consent.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and warranties regarding Charge Property

The Chargor represents and warrants that:

- (a) (title) it has good right and title to, and full power to charge, the Charge Property in the manner provided in this document;
- (b) (no Security Interests) the Fixed Charged Property is free from all Security Interests other than Permitted Security Interests;
- (c) (Environmental Laws) the Chargor and every occupier of the Chargor's property has complied with all Environmental Laws which are material to the conduct of the Borrower and each other Borrower Group Member's business;
- (d) (Authorisations) every Authorisation relating to an Environmental Aspect has been issued, is current and has been complied with in all material respects; and
- (e) (Contamination) it is not aware of any Contamination in respect of its property.

4.2 Repetition of representations and warranties

The representations and warranties in this clause are taken to be repeated on each Drawdown Date and (other than the representation and warranty in clause 4.1(e)) on each Interest Payment Date, on the basis of the facts and circumstances as at that date.

4.3 Reliance on representations and warranties

The Chargor acknowledges that the Chargee has executed this document and agreed to take part in the transactions that this document contemplates in reliance on the representations and warranties that are made or repeated in this clause.

4.4 No representations by the Chargee

The Chargor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Chargee in deciding to enter into this document or to exercise any right under it.

5. CHARGOR'S UNDERTAKINGS

5.1 General undertakings

The Chargor must:

- (a) (obligation to pay) punctually pay the Secured Money when it becomes payable in accordance with the terms of any written agreement between the Chargor and the Chargee or, in the absence of any agreement or after default under any agreement, on demand by the Chargee; and

- (b) (registration and stamping) unless otherwise agreed with the Chargee, immediately at its own cost,

- (i) ensure that this document is registered (and not just provisionally) under section 263 of the Corporations Act;
- (ii) register this document in any other places which the Chargee notifies to the Chargor if the Chargee is reasonably satisfied that registration is necessary or desirable to perfect the Charge or to protect the rights of the Chargee under this document; and
- (iii) ensure that this document is stamped for the proper amount in each state and territory of Australia in which this document is required to be stamped.

5.2 Undertakings regarding Charge Property

The Chargor must:

- (a) (outgoings)
 - (i) punctually pay all outgoings (including rent and Taxes) payable or deductible by it, other than any amount which it is contesting in good faith where failure to pay that amount will not have a Material Adverse Effect on it or prejudice Charged Property;
 - (ii) pay the contested amount after the final determination or settlement of the relevant contest; and
 - (iii) on request by the Chargee, immediately hand to the Chargee evidence of every payment covered by this undertaking;
- (b) (maintenance)
 - (i) maintain Charged Property in a good state of repair and in good working order and condition; and
 - (ii) immediately remedy every defect in the repair and condition of Charged Property (fair wear and tear excepted) if required to do so by the Chargee;
- (c) (not alter Charged Property) ensure that:
 - (i) no material alteration is made to the Fixed Charged Property; and
 - (ii) no material variation, waiver, release, rescission, repudiation or termination is made to or in connection with any document or agreement included in or relating to the Fixed Charged Property.

without the Chargee's consent;

(d) (acquisition of real property):

- (i) if it becomes bound to complete the acquisition of any real property (freehold or leasehold) which will be a Relevant Asset when acquired, immediately notify the Chargee; and
- (ii) if it receives or holds any deed or document of title relating to the real property immediately hand them to the Chargee upon the Charge becoming fixed under clause 2.5;

(e) (licences and permits) obtain and renew at the proper times all licences, permits, authorities and documents necessary or desirable in relation to its business;

(f) (calls on capital) not, without the Chargee's consent:

- (i) call up or receive in advance of calls any of the uncalled capital (including any amount characterised as a premium when the relevant shares were issued) charged by this document; and
- (ii) apply the uncalled capital to any purpose except towards payment of the Secured Money;

(g) (carrying on business):

- (i) carry on its business in a proper and efficient manner; and
- (ii) not make any substantial change to the general nature or scope of its business from that carried on at the date of this document (other than an extension of the business to include related activities) without the Chargee's consent;

(h) (property or business outside jurisdiction) immediately notify the Chargee if:

- (i) more than 10% of Fixed Charged Property is located in any jurisdiction other than a jurisdiction in which that percentage of the Charged Property is located at the date of this document; or
- (ii) the Chargor starts to carry on business or establishes a place of business in any jurisdiction except the jurisdictions in which it:
 - (A) is registered;
 - (B) is carrying on business; or
 - (C) has a place of business,at the date of this document;

(i) (preserve and protect security) promptly do everything necessary or reasonably required by the Chargee to:

- (i) preserve and protect the value of Charged Property; or
- (ii) protect and enforce its title and the Chargee's title as chargee to Charged Property;
- (j) (book and other debts) collect and realise all book and other debts and other receipts due to it in the ordinary course of its business;
- (k) (exercise rights) at the Chargee's request, take any action reasonably required against any person to protect and enforce its rights relating to the Charged Property;
- (l) (comply with obligations) do everything the Chargor is required to do under or in connection with Charged Property;
- (m) (Environmental Laws) comply with and ensure that every occupier complies with all Environmental Laws and monitor all activities to ensure compliance;
- (n) (notice) immediately notify the Chargee if:
 - (i) any person makes a material complaint or institutes proceedings in connection with any Environmental Law;
 - (ii) it becomes aware of any Contamination in respect of its property whether actual, possible or suspected;
 - (iii) it receives or becomes aware of any Environmental Notice;
 - (iv) any circumstance arises or event occurs which would be likely to result in amendment or revocation of any material Authorisation relating to an Environmental Aspect; or
 - (v) it receives or becomes aware of any material proposed amendment or revocation of any material Authorisation relating to an Environmental Aspect; and
- (o) (Authorisations) obtain, maintain and comply with any Authorisation relating to an Environmental Aspect and comply with any condition to which such Authorisation is subject.

5.3 Application of insurance money

- (a) Subject to clause 5.3(c), if no Event of Default or Potential Event of Default has occurred and is subsisting, any money received or recovered under a claim in respect of the Fixed Charge Property or a Relevant Asset, must be held in a separate account for the Chargee and applied, at the option of the Chargor:
 - (i) towards satisfaction of the Secured Money; or

- (ii) to the extent necessary, to repair, replace or reinstate the Fixed Charge Property or the Relevant Asset (as applicable) or otherwise for the purpose for which the relevant insurance policy was maintained.
- (b) Subject to clause 5.3(c), if an Event of Default or Potential Event of Default occurs and is subsisting moneys referred to in clause 5.3(a) must be kept in a separate account for the Chargee and will be applied as follows:
 - (i) any such moneys up to the amount of \$2,000,000 in any 12 month period will be applied at the option of the Chargor for any of the purposes referred to in clause 5.3(a)(i) or clause 5.3(a)(ii); and
 - (ii) any such moneys over the amount of \$2,000,000 in any 12 month period will be applied at the option of the Chargee for any of the purposes referred to in clause 5.3(a)(i) or clause 5.3(a)(ii) but in exercising its option (and without limiting the rights of the Chargee in any way) the Chargee will consider any rights of the Growers in respect of the relevant Fixed Charge Property or the Relevant Asset.
- (c) If required under the terms of a reinstatement policy, the Chargor must apply all proceeds payable under the reinstatement policy to the reinstatement of its Fixed Charge Property or the Relevant Asset.
- (d) The Chargor must ensure that:
 - (i) any money received or recovered under a claim for workers compensation or public risk and products liability is paid to the person entitled to be compensated under the relevant policy; and
 - (ii) any money received or recovered under a reinstatement policy is paid, if required under the terms of the policy, to the person entitled to payment under the contract for reinstatement of the Secured Property.

6. CHARGEES' POWERS

6.1 Chargee may exercise powers without notice

Subject to clause 6.2, to the full extent permitted by law, the Chargee is not required to give any notice or allow any time to elapse before:

- (a) enforcing a Transaction Document;
- (b) appointing a Receiver; or
- (c) exercising any power, right, discretion or remedy given to the Chargee by any law, and the Chargor waives any statutory requirements for notice or lapse of time.

6.2 Notice required by law

If any law requires that a period of notice must be given or a lapse of time must occur or be permitted before any power or right under this document may be exercised, then:

- (a) when a period of notice or lapse of time is mandatory, that period of notice must be given or that lapse of time must occur or be permitted by the Chargee; or
- (b) when any law provides that a period of notice or lapse of time may be stipulated or fixed by this document, one day is stipulated and fixed as that period of notice or lapse of time including where applicable, as the period of notice or lapse of time during which:
 - (i) default must continue before a notice is given or requirement otherwise made for payment of the Secured Money or the observance of obligations under this document; and
 - (ii) a notice or requirement for payment of the Secured Money or the observance of obligations under this document must remain not complied with before any powers or rights may be exercised.

6.3 Chargee's right to make good a default

- (a) If the Chargor breaches this document, the Chargee may do everything it considers to be necessary or desirable to attempt to remedy the breach to the Chargee's satisfaction. The Chargee is not obliged to do so.
- (b) Paragraph (a) does not limit any other right the Chargee has under this document or at law.

6.4 Powers on enforcement

If this document has become enforceable, the Chargee or any of its Authorised Representatives, without notice to the Chargor, may:

- (a) exercise any of the powers that might be exercised by a Receiver even if a Receiver has not been appointed; and
- (b) complete any transfer or instrument of any nature executed by or on behalf of the Chargor in blank and deposited with the Chargee as Collateral Security, in favour of the Chargee or any appointee of the Chargee or any other person.

6.5 Inspection

The Chargee or any of its Authorised Representatives may enter without notice at any reasonable time on any land or building occupied by the Chargor or forming part of the Charged Property or in which any goods that form part of the Charged Property are located to:

- (a) inspect their state and condition; and

- (b) inspect and take copies of or extracts from any Books that in any way relate to Charged Property or the Chargor's business.

6.6 Calls

- (a) If this document has become enforceable, the Chargor authorises the Chargee, each of the Chargee's Authorised Representatives and any Receiver to:
 - (i) make calls on the members of the Chargor in relation to the Chargor's uncalled capital (including any amount characterised as a premium when the relevant shares were issued);
 - (ii) sue (in the name of the Chargor or otherwise) to recover money due in relation to calls; and
 - (iii) give valid receipts for that money.

If this document has become enforceable, the Chargor's directors may not do so.

- (b) This authority is not terminated by any change in the Chargor's directors and is assignable.

7. POWER OF ATTORNEY

7.1 Appointment of Attorneys

The Chargor irrevocably appoints the Chargee and each Authorised Representative of the Chargee, and as an independent appointment appoints any Receiver, severally its attorney to:

- (a) (all acts necessary) do anything necessary or desirable in the opinion of the Chargee or the Attorney to:
 - (i) give full effect to this document;
 - (ii) better secure the Charged Property to the Chargee in a manner consistent with this document; or
 - (iii) assist in the execution or exercise of any power,
 including execute any transfer (including any transfer in blank) or other document;
- (b) (recover Charged Property) demand, sue for, recover and give discharge for Charged Property;
- (c) (commence actions) commence, carry on, enforce, settle, arrange and compromise any proceedings to obtain or enforce the payment or delivery of Charged Property;
- (d) (bankruptcy and winding up) take any necessary proceedings to procure the bankruptcy or the winding up of any debtor of the Chargor in connection with the

Charged Property, and attend and vote at meetings of creditors, receive dividends in any bankruptcy or winding up or appoint a proxy for any of these things;

- (e) (compound debts) compound, settle or compromise any debt of the Chargor in connection with the Charged Property;
- (f) (execute deeds) execute any deed of assignment, composition or release in connection with the Charged Property;
- (g) (exercise rights) exercise all or any powers, rights, discretions and remedies available under or in connection with the Charged Property (including rights available under the Corporations Act or any other statute); and
- (h) (general) do anything else that the Chargor must or may do, or that the Chargee may do, under this document or by law,

at the Chargor's cost.

Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.

7.2 General

- (a) An Attorney may do anything contemplated by this clause even if the Attorney is affected by an actual or potential conflict of interest or duty, or might benefit from doing it.
- (b) An Attorney may do anything contemplated by this clause in its name, in the name of the Chargor or in the name of both of them.
- (c) The Chargor must ratify anything done by an Attorney under this clause.
- (d) The Chargor gives the power of attorney in this clause:
 - (i) to secure performance by the Chargor of its obligations to the Chargee under this document and any property interest of the Chargee under this document; and
 - (ii) for valuable consideration, receipt of which is acknowledged by the Chargor.

8. ENFORCEMENT

8.1 Circumstances when this document may be enforced

The Secured Money will immediately become payable at the Chargee's option (despite any delay or previous waiver of the right to exercise that option) without the need for any demand or notice, and this document will immediately become enforceable (whether or not the Secured Money has become payable in this manner) if any of the following events occurs:

- (a) (Insolvency Event) if an Insolvency Event occurs in respect of any Obligor; and
- (b) (Event of Default) if any Event of Default occurs which has not been waived by the Chargee.

8.2 Enforcement despite earlier payment

This document may be enforced:

- (a) even if the Chargee accepts a payment of interest or other amount after any default; and
- (b) without the need for any notice to, or of any consent or agreement of, the Chargor or any other person.

9. APPOINTMENT OF RECEIVER

9.1 Appointment

If this document has become enforceable (whether or not the Chargee has entered into possession of all or any of the Charged Property) the Chargee or any Authorised Representative of the Chargee may at any time:

- (a) appoint any person or any 2 or more persons jointly and severally to be a receiver or receiver and manager (or an additional receiver or receiver and manager) of Charged Property;
- (b) remove the Receiver and in case of the removal, retirement or death of any Receiver appoint another as a replacement; and
- (c) fix the remuneration of the Receiver.

Subject to clause 9.2 and the next sentence, every Receiver appointed under this subclause will be the Chargor's agent and the Chargor alone will be responsible for his acts and defaults and remuneration. The Chargee may by notice to the Chargor and the Receiver require the Receiver to act as the Chargee's agent.

9.2 Receiver other than as Chargor's agent

The power to appoint a Receiver under this clause may be exercised even though:

- (a) at the time when this document becomes enforceable or when an appointment is made, an order may have been made or a resolution may have been passed to wind up the Chargor; or
- (b) a Receiver appointed in the circumstances specified in the preceding paragraph may not, or may not in some respects, act as the Chargor's agent.

9.3 Powers of Receiver

The Receiver will have full power to do all or any of the following:

- (a) (take possession) take possession of, collect and get in Charged Property and for that purpose to take proceedings (in the name of the Chargor or otherwise);
- (b) (give up possession) give up possession of Charged Property;
- (c) (exercise Chargee's rights):
 - (i) exercise all or any of the Chargee's powers, rights, discretions and remedies under this document; and
 - (ii) comply with the directions given by the Chargee;
- (d) (carry on business):
 - (i) carry on or agree to carrying on the business of the Chargor in and with Charged Property and to stop doing so; and
 - (ii) effect all repairs, purchases and insurances, and generally to do everything that the Chargor might do in the ordinary conduct of its business to:
 - (A) protect or improve Charged Property; or
 - (B) obtain income or returns from Charged Property and to conduct the Chargor's business,
 without being responsible for any loss;
- (e) (borrow from Chargee):
 - (i) borrow from the Chargee any money that may be required for any of the purposes mentioned in paragraph (d); and
 - (ii) (in the name of the Chargor or otherwise) secure any money borrowed by mortgage or charge over Charged Property so that the mortgage or charge may rank in priority to, equally with or after the Charge,
 without the Chargee being bound to enquire whether the borrowing is necessary or proper or responsible for the misapplication or non-application of any money borrowed;
- (f) (hire out, lease or license) hire out, lease or license Charged Property (including in the name of the Chargor) for any term at the rent or licence fee and on terms that seem desirable to the Receiver (with or without a purchase option and whether or not the Receiver has taken possession);

- (g) (exercise rights) exercise all or any powers, rights, discretions and remedies available under or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
- (h) (registration) do everything necessary to obtain registration of the Charged Property in the Chargee's name or in the name of the Chargee's nominee;
- (i) (settle disputes):
 - (i) settle, arrange and compromise any accounts, claims, questions or disputes that may arise in connection with the Chargor's business or the Charged Property or in any way relating to this document; and
 - (ii) execute releases or other discharges in relation to the settlement, arrangement, or compromise;
- (j) (sell) sell or agree to sell (whether or not the Receiver has taken possession), exchange or otherwise dispose of (absolutely or conditionally) Charged Property (or agree to do so):
 - (i) by public auction, private sale or tender for cash or on credit;
 - (ii) in one lot or in parcels;
 - (iii) with or without special conditions, (such as conditions as to title or time or method of payment of purchase money) including by allowing the purchase money to remain:
 - (A) outstanding on the security of a mortgage over the property sold or over any other property; or
 - (B) owing without any security; and
- (iv) on other terms the Receiver considers desirable, without being responsible for any loss;
- (k) (transfer on sale) execute transfers and assignments of Charged Property (including in the name of the Chargor), and do everything to complete any sale under paragraph (j) that the Receiver thinks necessary;
- (l) (insure) insure Charged Property that is of an insurable nature against risks of destruction, loss or damage for the amounts and on the terms that the Receiver thinks appropriate;
- (m) (sever fixtures) sever fixtures belonging to the Chargor and sell them apart from any other part of the Charged Property;
- (n) (employees and agents) engage employees, agents, advisers and contractors for any of the purposes of this clause on terms that the Receiver thinks appropriate;

- (o) (give receipts) give receipts for all money and other property that may come into the hands of the Receiver in exercise of any power given by this document;
- (p) (enforce contracts) carry out and enforce or otherwise obtain the benefit of all contracts:
 - (i) entered into or held by the Chargor in connection with the Charged Property; or
 - (ii) entered into in exercise of the powers given by this document;
- (q) (make debtors bankrupt) make debtors bankrupt and wind up companies and do everything in connection with any bankruptcy or winding up that the Receiver thinks desirable to recover or protect Charged Property;
- (r) (perform undertakings) do everything necessary to perform any undertaking of the Chargor in this document;
- (s) (receive money) receive all money or other property payable or deliverable to the Chargor from Charged Property;
- (t) (desirable or incidental matters):
 - (i) do or cause to be done everything that the Receiver thinks desirable in the interests of the Chargee; and
 - (ii) do anything incidental to the exercise of any other power;
- (u) (take legal proceedings) take proceedings (including in the name of the Chargor) in connection with any of the above; and
- (v) (delegate) with the Chargee's consent delegate any of the powers given to the Receiver by this clause to any person.

10. PROTECTION OF CHARGE AND APPOINTEES

10.1 Protection of Charge and Receiver

- (a) The Chargee is not obliged to:
 - (i) notify any debtor or member of the Chargor or any other person of this document; or
 - (ii) enforce payment of any money payable to the Chargor, or take any step or proceeding for any similar purpose,
 but may do so.
- (b) None of the Chargee, any of its Authorised Representatives or any Receiver is liable for any omission or delay in exercising any power, right, discretion or remedy under this document or for any involuntary loss or irregularity that may occur in

relation to the exercise or non-exercise of any of them except to the extent of its own fraud, gross negligence or wilful misconduct.

10.2 Conflict of interests

The Chargee, an Authorised Representative of the Chargee or other person appointed by the Chargee under this document, an administrator of the Chargor appointed by the Chargee, an Attorney and a Receiver may exercise or agree to exercising a power given by this document or by law even though that person may have a conflict of interests in exercising the power.

10.3 Liability for loss

- (a) The Chargee is not liable for any loss that the Chargor suffers as a direct or indirect result of:
- (i) the exercise or attempted exercise of, or failure to exercise, any of its rights contained in this document; and
 - (ii) any release or dealing with any other Guarantee or Security Interest (including any prejudice to or loss of the Chargor's rights of subrogation),
- except to the extent of its own fraud, gross negligence or wilful misconduct.
- (b) If the Chargee or a Receiver enters into possession of Charged Property, none of the Chargee, any of its Authorised Representatives or any Receiver is liable:
- (i) to account as mortgagee in possession or for anything except actual receipts; or
 - (ii) for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable,
- except to the extent of its own fraud, gross negligence or wilful misconduct.

11. PROTECTION OF THIRD PARTIES

11.1 Dealings under this document

A purchaser or other party to a disposal or dealing in attempted exercise of a power contained in this document is not:

- (a) bound to enquire whether there has been a default, whether a Receiver has been properly appointed or about the propriety or regularity of a sale, disposal or dealing; or
- (b) affected by notice that a sale, disposal or dealing is unnecessary or improper.

Despite any irregularity or impropriety in a sale, disposal or dealing, it is to be treated, for the protection of the purchaser or other party to the disposal or dealing, as being authorised by this document and valid.

11.2 Receipts

A receipt that the Chargee, one of its Authorised Representatives or a Receiver gives for any money payable to or receivable by the Chargee or the Receiver because of this document will:

- (a) relieve the person paying or handing over money or other property from all liability:
 - (i) for the application (or any loss or misapplication) of the money or other property;
 - (ii) to enquire whether the Secured Money has become payable; and
 - (iii) (where appropriate) as to the propriety or regularity of the appointment of the Receiver; and
- (b) discharge the person paying that money from its liability to pay that money.

12. APPLICATION OF MONEY

12.1 Order

- (a) Money that the Chargee or a Receiver receives under or because of this document is to be applied in the following order:
 - (i) (expenses) first in payment of all expenses that the Chargee or a Receiver incurs in or incidental to the exercise or attempted exercise of a power or otherwise in relation to any Transaction Document;
 - (ii) (outgoings) then in payment of any other outgoings that the Receiver or the Chargee thinks it appropriate to pay;
 - (iii) (Receiver) then in payment to the Receiver of any remuneration (whether by way of commission or otherwise);
 - (iv) (Indemnities) then in payment to the Chargee or a Receiver of any amount necessary to give effect to any indemnity contained in this document; and
 - (v) (Secured Money) then in payment to the Chargee of the Secured Money.
- (b) Any surplus will belong to the Chargor or other persons entitled to it. The Chargee or Receiver may pay the surplus to the credit of a bank account in the name of the Chargor or other person entitled to it and will then be under no further liability in relation to it. The surplus will not accrue interest.

12.2 Only actual receipts credited

In applying any money towards the Secured Money, the Chargor's account will be credited only with the amount of the money that the Chargee actually receives for that purpose. The credit will date from the time of receipt.

12.3 Compensation

If any compensation becomes payable for Charged Property, the Chargee may:

- (a) apply the sum received on account of any compensation, at the Chargee's option, in or towards repayment of the Secured Money;
- (b) make, enforce, settle or compromise any claims relating to compensation; and
- (c) execute any necessary assurances and releases in the name of the Chargor and the Chargee.

If any compensation comes into the hands of the Chargor before a final irrevocable discharge of this document, the Chargor must immediately pay it to the Chargee.

12.4 Amounts contingently due

- (a) If any part of the Secured Money is contingently owing to the Chargee when money is being applied under clause 12.1 the Chargee or Receiver may:
 - (i) retain an amount equal to the amount contingently owing, or any part of it; and
 - (ii) put that amount in an interest-bearing account, payable at call.
- (b) If the amount which is contingently owing:
 - (i) becomes payable; or
 - (ii) ceases to be contingently owing,

the Chargee or Receiver must apply the amount retained (and any interest earned on it) in accordance with clause 12.1.

13. CONTINUING SECURITY AND THIRD PARTY PROVISIONS

13.1 Nature of obligations and enforcement

The Chargor's obligations in this document:

- (a) are principal obligations, and not ancillary or collateral to any other right or obligation; and
- (b) may be enforced against the Chargor without the Chargee first being required to:
 - (i) exhaust any remedy it may have against an Obligor; or
 - (ii) enforce any security it may hold relating to the Secured Money.

13.2 Preservation of Chargor's obligations

The Chargor's obligations in this document are absolute, unconditional and irrevocable. The liability of the Chargor under this document extends to and is not affected by any circumstances, act or omission which, but for this subclause, might otherwise affect it at law or in equity including:

- (a) the grant of any time, waiver or other indulgence or concession;
- (b) the discharge or release of an Obligor or any other person;
- (c) any transaction or arrangement that may take place between a Beneficiary and an Obligor or any other person;
- (d) the occurrence of an Insolvency Event in relation to an Obligor or any other person;
- (e) a Beneficiary or any other person dealing or not dealing in any way with any other Guarantee, Security Interest, document or agreement;
- (f) a Beneficiary or any other person:
 - (i) exercising or not exercising any other Guarantee or Security Interest or any right or remedy conferred on it by law or in equity or by any document or agreement; or
 - (ii) not recovering any money owing by an Obligor;
- (g) any variation (including a variation which increases, or extends the duration of, the Secured Money), replacement, extinguishment, unenforceability, failure, loss, abandonment or transfer of any document or agreement relating to the Secured Money (including this document and any other Guarantee or Security Interest held by a Beneficiary from any person at any time);
- (h) the obligations of the Chargor or any other person under this document or any other document or agreement relating to the Secured Money or this document (including any other Guarantee or Security Interest) being or becoming illegal, void, voidable, unenforceable or disclaimed by a liquidator or trustee for creditors or in bankruptcy;
- (i) a Beneficiary not giving the Chargor notice of any default by an Obligor or any other person;
- (j) a Beneficiary not disclosing any information to the Chargor;
- (k) any representation made or information given by a Beneficiary to the Chargor;
- (l) any change in the legal capacity, rights or obligations of, or other circumstance related to, an Obligor or any other person;
- (m) any legal limitation, disability, incapacity or other circumstance related to an Obligor or any other person;

- (n) any invalidity or irregularity in the execution of any Transaction Document or any deficiency in the powers of an Obligor;
- (o) any assignment by a Beneficiary, with or without the knowledge of an Obligor;
- (p) any obligation of an Obligor being discharged by operation of law;
- (q) any person who was intended to be bound as a guarantor or surety in relation to the Secured Money not becoming bound or ceasing to be bound;
- (r) any laches, acquiescence, delay, act, omission or mistake on the part of, or suffered by, a Beneficiary or any other person, in relation to this document or any other Guarantee, Security Interest, document or agreement;
- (s) the receipt by a Beneficiary or any other person of any dividend or money after an Insolvency Event in relation to an Obligor or any other person;
- (t) any judgment or right which a Beneficiary may have or exercise against an Obligor or any other person;
- (u) the opening or operation of a new account by an Obligor with a Beneficiary or any other person;
- (v) the amendment of the constitution, trust deed or other constituent document of an Obligor;
- (w) if an Obligor is a member of a partnership, firm, joint venture or association, any change in the structure, membership, name or business of that partnership, firm, joint venture or association;
- (x) if an Obligor is a trustee of a trust, any breach or variation of the terms of that trust; or
- (y) if the Chargor is a director or shareholder of an Obligor, any change in that directorship or shareholding.

13.3 Continuity

The Charge:

- (a) is a continuing security, and remains in full force until a final irrevocable discharge of the Charge is given to the Chargor despite any transaction or other thing (including a settlement of account or intervening payment); and
- (b) will apply to the present and future balance of the Secured Money.

13.4 Limitations on Chargor's rights

Until the Secured Money has been irrevocably paid and discharged in full, the Chargor may not:

- (a) share in any Guarantee, Security Interest or money received or receivable by a Beneficiary in relation to the Secured Money or stand in the place of a Beneficiary in relation to any Guarantee, Security Interest or right to receive money;
- (b) in reduction of its liability under this document, raise a defence, set off or counterclaim against a Beneficiary or claim a set off or make a counterclaim against the Chargee; or
- (c) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any document or agreement to which a Beneficiary is a party.

13.5 No marshalling

No Beneficiary is under any obligation to marshal or appropriate in favour of the Chargor or to exercise, apply, perfect or recover any Security Interest that the Beneficiary holds at any time or any funds or property that the Beneficiary may be entitled to receive or have a claim on.

13.6 Effect of Insolvency Event

- (a) If an Insolvency Event has occurred in relation to an Obligor, any amount paid by that Obligor (as the case may be) (relevant payment) will only be applied against any Secured Money if:
 - (i) the Chargee forms the opinion in good faith (which will be conclusively binding on the Chargor) that it will not be required to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors; or
 - (ii) a final judgment is given by a court of competent jurisdiction in favour of the Chargee or the relevant Beneficiary that it is not required to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors.
- (b) If an amount is applied against any Secured Money and the Chargee or the relevant Beneficiary forms the opinion in good faith that it is obliged to pay the relevant payment to any person under any law relating to bankruptcy, winding up or the protection of creditors:
 - (i) each Beneficiary's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made; and
 - (ii) the Chargor must immediately do anything (including the signing of documents) required by the Chargee to restore to the relevant Beneficiaries

any Guarantee or Security Interest to which it was entitled immediately before that application or the payment or transaction giving rise to it.

- (c) Any discharge or release between the Chargee and the Chargor is subject to reinstatement of the Chargee's rights under this subclause.

14. INDEMNITIES

14.1 Indemnity for exercise of rights or proceedings

To the extent permitted by law, the Chargor must indemnify each of the Beneficiary, each Authorised Representative of the Chargee and each Receiver, Attorney, agent, administrator of the Chargor or other person appointed under this document or the Corporations Act by or on behalf of the Chargee as chargee under this document against, and must pay each of them on demand the amount of all losses, liabilities, expenses and Taxes (other than Excluded Taxes) that they each incur:

- (a) (directly or indirectly) in the exercise or attempted exercise of any of the powers, rights, discretions or remedies (express or implied) vested in them under this document or the Corporations Act; and
- (b) in connection with all proceedings, expenses, claims and demands in relation to anything done or omitted in any way relating to Charged Property,

including legal expenses on a full indemnity basis and expenses incurred in engaging consultants.

14.2 Recovery from Charged Property

A person who is entitled to be indemnified for a loss, liability, expense or Tax under clause 14.1 may recover the amount to be indemnified direct from the Charged Property.

15. DISCHARGE

The Chargee must at the request and cost of the Chargor reconvey, surrender or release any remaining Charged Property (as appropriate) to the Chargor and the Charged Property will then be discharged from the Charge:

- (a) when the Chargee is satisfied that:
- (i) all the Secured Money has been irrevocably paid and discharged in full or satisfied in accordance with this document; and
- (ii) no amount remains contingently payable or may become payable on the security of the Charge (including under an indemnity); and
- (b) on payment or retention of all expenses incurred by or payable to the Chargee, its Authorised Representatives or any Receiver or Attorney.

Any discharge is subject to clause 13.6.

16. NOTICES

Clause 18 of the Syndicated Loan Agreement applies to this document as if set out in full except that references to the Borrower are to be read as references to the Chargor.

17. AMENDMENT AND ASSIGNMENT

17.1 Amendment

This document can only be amended, supplemented, replaced or novated by another document signed by the parties.

17.2 Assignment

Clause 12.2 of the Security Trust Deed applies to this document as if set out in full.

18. GENERAL

18.1 Governing law

- (a) This document is governed by the law in force in Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear appeals from any of those courts, for any proceedings in connection with any Transaction Document, and waives any right it might have to claim that those courts are an inconvenient forum.

18.2 Giving effect to this document

The Chargor must do anything, and must ensure that its employees and agents do anything, that the Chargee may reasonably require to:

- (a) give full effect to this document;
- (b) better secure the Charged Property to the Chargee in a manner consistent with this document; or
- (c) assist in the execution or exercise of any power,
- including execute any transfer (including any transfer in blank) or other document.

18.3 Waiver of rights

A right may only be waived in writing, signed by the Chargee, and:

- (a) no other conduct of the Chargee (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

18.4 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A Beneficiary may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

18.5 Consents

Where this document contemplates that the Chargee may agree or consent to something (however it is described), the Chargee may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

18.6 No merger

Nothing in this document merges with any other Security Interest, or any Guarantee, judgment or other right or remedy, that the Chargee may hold at any time.

18.7 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Chargee, or the exercise by the Chargee of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

18.8 Inconsistency with other documents

If this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

18.9 Counterparts

This document may be executed in counterparts.

18.10 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as a deed.

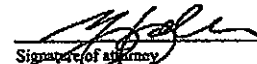
SIGNED, SEALED and DELIVERED for
and on behalf of BWA CUSTODIANS
LTD ABN 63 009 413 852 under power of
attorney in the presence of:



Signature of witness



Name



Signature of attorney



Name

Date of power of attorney

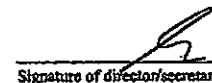
SIGNED, SEALED and DELIVERED for
TIMBERCORP LIMITED ACN 055 185
067, in accordance with section 127(1) of
the Corporations Act:



Signature of director



Full name



Signature of director/secretary



Full name

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21