

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

S CI 2011

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469) AND TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
(ACN 092 311 469) IN ITS CAPACITY AS RESPONSIBLE
ENTITY OF THE MANAGED INVESTMENT
SCHEME LISTED IN SCHEDULE 1 AND ORS
ACCORDING TO THE SCHEDULE**

First Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 17 February 2011
Filed on behalf of: the Plaintiffs

Prepared by:

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

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(Bridget Slocum - bslocum@ab.com.au)

This is the exhibit marked "MAK-8" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 17 February 2011.

MEAGAN LOUISE GROSE

Arnold Bloch Leibler

Level 21, 333 Collins Street

Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Before me: 

Exhibit "MAK-8"

**Premium Funding Agreement between Timbercorp
Limited and Macquarie Bank Limited**

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

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(Bridget Slocum)



MACQUARIE PREMIUM FUNDING AGREEMENT

The Macquarie Premium Funding Agreement consists of:

APPLICATION DATE: 29/09/2008

- Premium Funding Details below
- Borrower's Offer and Declaration to MBL (page 2), and
- Premium Funding Conditions (pages 3 - 5).

Words used in this document, where capitalised, have the meaning given in the Premium Funding Details below or in clause 1 of the Premium Funding Conditions.

PREMIUM FUNDING DETAILS

MBL Macquarie Bank Limited ABN 46 008 583 542, the Lender
20 Bond Street, Sydney NSW 2000

Broker

Name

Agririsk Services Pty Ltd

Borrower

Legal entity type (tick one):

☐ Individual

☐ Company

☐ Partnership

Legal name

Timbercorp Limited

Trading name

Address

461 Bourke Street

MELBOURNE VIC

Postcode

3000

ABN

Phone

Fax

Premium Loan

Premium total:

\$ 3,297,460.60

Total Interest Charges:

\$ 134,080.16

Less deposit:

\$ 0.00

Total Amount Repayable:

\$ 3,431,590.76

Premium Loan:

\$ 3,297,460.60

Flat Interest Rate:

4.0662 %

Instalments

Initial Instalment:

\$ 286,011.73

First Instalment Date:

01/10/2008

Subsequent Instalments:

\$ 285,961.73

Last Instalment Date:

01/09/2009

Number of Instalments:

12 [Monthly]

Fees and Charges

Application Fee:

\$ 50.00

Cancellation Fee:

\$ 50.00

Stamp Duty:

\$ 0.00

Dishonour fee:

\$ 15.00

Other fees:

\$

Funded Policies

Insurer

Class

Policy Number

Inception Date

Expiry Date

Premium

Details provided by Broker

Are there any co-insureds under the above Funded Policies? (Yes / No):

If yes, please name co-insureds:

Direct Debit Request

By completing the account details below, the Borrower requests MBL, until further notice in writing, to debit the account below, any amounts which Macquarie Bank Limited (User ID 204665) may debit or charge me/us, through the Bulk Electronic Clearing System

Financial institution:

BSB:

Name on account:

Account no:



Borrowers Offer And Declaration to MBL

By executing below, the Borrower:

1. offers to borrow from MBL the Premium Loan to fund the payment of premiums due under the Funded Policies, and agrees that on MBL's acceptance of the offer (evidenced by accepting the Initial Instalment), this Premium Funding Agreement comes into effect;
2. offers to assign to MBL, by way of mortgage, (if MBL makes the Premium Loan) the Borrower's interest in the Funded Policies and Refund Proceeds to secure repayment of the Premium Loan;
3. declares that all information it has provided to MBL and the Premium Funding Details are correct and not misleading, and authorises MBL to verify that information with other sources;
4. acknowledges for itself (and also agrees to ensure that each individual about whom it has given information to MBL is made aware) that:
 - (a) MBL needs to collect and verify personal information about all such individuals to enable MBL to enter into the Premium Funding Agreement, and without that information, MBL may not be able to provide the Premium Loan;
 - (b) subject to the Privacy Act 1988 (Cth), each individual can access information about them held by MBL (and advise MBL if they think it is inaccurate, incomplete or out-of-date) by writing to MBL's Privacy Officer at 20 Bond Street, Sydney, NSW 2000; and
 - (c) MBL's practices of collection, use, disclosure and management of personal information is contained in MBL's Privacy Policy, which is available on request;
5. declares having read and understood all parts of the Premium Funding Agreement, and having been given the opportunity to obtain independent legal and financial advice before executing below
6. if *acting as the trustee of a trust*, acknowledges that this Premium Funding Agreement binds it personally and in its capacity as trustee; that it enters into this Premium Funding Agreement for a proper trust purpose; that it has power and authority under the trust to enter this Premium Funding Agreement and it has the right to be fully indemnified from trust property before the trust's beneficiaries for all liabilities it incurs; and
7. if an individual, declares that the credit to be provided to the Borrower by MBL 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.

Execution by Borrower dated: / /

INDIVIDUAL

Signed by the Borrower in the presence of the witness below

Signature of Borrower

Signature of witness

Name of witness (print)

PARTNERSHIP

Signed for and on behalf of the Borrower by an authorised partner in the presence of the witness below

Signature of authorised partner

Name of authorised partner (print)

Signature of witness

Name of witness (print)

COMPANY

Executed by the Borrower

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Business Description (e.g. Builder, Retailer)

SOLE DIRECTOR / SOLE SECRETARY COMPANY

Executed by the Borrower

Signature of sole director and sole company secretary

Name of sole director and sole company (print)

By signing above, the sole director and sole company secretary states that he or she is the sole director and the sole company secretary of the Borrower

Premium Funding Conditions

1 Defined terms

- 1.1 In this document, capitalised words have the meaning given in the Premium Funding Details or as defined below:

Default means a default specified in clause 10.1.

Funded Policies means:

- (a) the insurance policies specified in the Premium Funding Details (or as otherwise agreed by MBL and the Borrower in writing); and
- (b) each other insurance policy effected now or in the future (including any renewal or replacement policy) where the Borrower is an insured and all or part of the premium is funded by MBL.

Initial Instalment means the Initial Instalment described in the Premium Funding Details which includes a deposit, Application Fee and Stamp Duty (if applicable).

Instalments means the Initial Instalment and the equal monthly or quarterly Subsequent Instalments (as specified in the Premium Funding Details), calculated by MBL to repay the Premium Loan and pay all Loan Charges to MBL by the Last Instalment Date.

Insurer means each insurer of a Funded Policy.

Loan Charges means the Total Interest Charges, and Fees and Charges payable to MBL described in the Premium Funding Details.

Premium Funding Agreement means the agreement made by MBL's acceptance of the Borrower's offer contained in this document, and any other agreement between the Borrower and MBL to fund insurance premiums.

Premium Funding Details means the section at the front of this document titled "Premium Funding Details".

Refund Proceeds means all money at any time paid or payable to the Borrower under or in connection with any Funded Policy by way of premium refund (whether on cancellation or otherwise) or as indemnity for loss.

Secured Money means all money that the Borrower is or may become liable at any time (actually or contingently) to pay to MBL on any account under or in connection with the Premium Funding Agreement or otherwise.

2 Direction to pay advance amount

- 2.1 The Borrower acknowledges that MBL has provided the Premium Loan by making available committed funds with effect from the First Instalment Date, the proceeds of which will be paid in accordance with clause 2 and 3.

- 2.2 If MBL accepts the Borrower's offer, the Borrower directs MBL to pay the Premium Loan amount as follows:

- (a) to pay to each Insurer or Broker the relevant premium under the Funded Policies and any related charges due; and
- (b) to pay to MBL the Application Fee specified in the Premium Funding Details.

- 3 MBL has no responsibility or liability to ensure how an Insurer or the Broker applies an amount paid under clause 2.2(a).

3 Advances, additional advances and re-advances

- 3.1 MBL need not pay the Premium Loan as directed by the borrower under clause 2.2, or re-advance the Premium Loan (or any part of it) if a Default has occurred or if MBL has not received the following in form and substance satisfactory to it:

- (a) evidence that each Insurer has accepted the Borrower's proposal for the Funded Policies;
- (b) the original of this document properly completed and fully signed by the Borrower;
- (c) all information, credit checks and documents requested by MBL in relation to the Borrower or the Funded Policies;
- (d) the Initial Instalment in cleared funds; and
- (e) any Subsequent Instalments which are currently due by the Borrower.

- 3.2 MBL may, at the Borrower's request (which may be made through the Broker), vary the Premium Funding Agreement to increase the Premium Loan to fund premiums for any additional policies that MBL and the Borrower agree are to be added as Funded Policies during the term of the Premium Funding Agreement. MBL's decision to make any additional advance is subject to clause 3.1. If MBL approves the Borrower's request:

- (a) MBL will notify the Borrower in writing, specifying the additional Funded Policies and other details of the variation to the Premium Funding Agreement;

- (b) any additional advance will be subject to the terms specified in MBL's notice to the Borrower and these Premium Funding Conditions; and

- (c) the Borrower undertakes to MBL to observe and perform the Premium Funding Agreement as varied.

- 3.3 MBL may, at the Borrower's request (which may be made through the Broker), re-advance the Premium Loan to the Borrower on the Last Instalment Date, or other date acceptable to MBL, to fund premiums for any replacement or renewals of the Funded Policies. MBL's decision to re-advance is subject to clause 3.1. If MBL approves the Borrower's request:

- (a) MBL will notify the Borrower in writing, specifying the Funded Policies and other details of the new Premium Funding Agreement;
- (b) the re-advance will constitute a new Premium Funding Agreement between the Borrower and MBL subject to the terms specified in MBL's notice to the Borrower and these Premium Funding Conditions; and
- (c) the Borrower undertakes to MBL to observe and perform the new Premium Funding Agreement.

- 3.4 MBL will not be liable to the Borrower for any loss or damage in connection with any delay in advancing or re-advancing the Premium Loan due to a pre-condition in clause 3.1 not having been satisfied.

4 Fees and commissions

- 4.1 The Borrower must pay to MBL all fees specified in the Premium Funding Details and other fees notified to the Borrower from time to time. All fees are non-refundable.

- 4.2 The Borrower acknowledges that MBL may pay commissions to the Insurer or Broker in relation to the introduction or arranging of the Premium Loan.

- 4.3 If the Premium Funding Agreement terminates for any reason before the Last Instalment Date (including due to Default), the Borrower must pay to MBL on demand the Cancellation Fee.

- 4.4 If any direct debit is declined, or a cheque is dishonoured, the Borrower must pay to MBL on demand the Dishonour Fee.

5 Interest

- 5.1 Interest accrues on the amount of the Premium Loan at the Flat Interest Rate from the date the Premium Loan is provided until it is repaid in full.

- 5.2 The Borrower must pay accrued interest periodically in advance as part of the Loan Charges that are included in the Instalments.

6 Repayment and Loan Charges - by Instalment

- 6.1 The Borrower must repay the Premium Loan and pay the Loan Charges to MBL by paying the Instalments in advance.

- 6.2 The Initial Instalment is due on the First Instalment Date. Subsequent Instalments are due monthly or quarterly (as specified in the Premium Funding Details) on the first business day of that period. The Borrower must pay to MBL the last Subsequent Instalment and all other Secured Money on the Last Instalment Date.

- 6.3 MBL may, without cause, demand payment of all Secured Money attributable to a particular Funded Policy at any time before MBL receives an amount (as determined between MBL and the relevant Broker or Insurer) equal to the Initial Instalment and all Subsequent Instalments payable by the Borrower to MBL.

- 6.4 The Borrower may not prepay all or any part of the Premium Loan without the consent of MBL.

7 Payments generally

- 7.1 All payments to MBL must be in Australian currency, and in full without set-off, counterclaim or deduction.

- 7.2 Any amount due and payable under the Premium Funding Agreement which is not paid on its due date will also bear interest calculated on a daily basis (at the Flat Interest Rate divided by 365) until paid in full. Any such interest is payable by the Borrower to MBL on demand from time to time.

- 7.3 Payments are only credited when actually received by MBL in cleared funds. If received on a non-business day or after 12:00pm (at the place payment is due to be made) on any business day, MBL may refuse to credit receipt until the next business day. Interest accrues on that amount until the receipt is credited.

- 7.4 MBL may apply payments received against any part of the Secured Money in its absolute discretion. MBL need not pay or credit the Borrower with interest on an overpayment made under this document.



8 Security

- 8.1 To secure payment of the Secured Money, the Borrower assigns to MBL, by way of mortgage, all of its right, title and interest in and to each Funded Policy, all Refund Proceeds and all rights, powers and remedies to cancel or enforce any Funded Policy and obtain Refund Proceeds.
- 8.2 This security continues until all Secured Money has been paid in full. While any Secured Money remains unpaid:
- (a) the Borrower may not require reassignment from MBL of anything secured under clause 8.1;
 - (b) MBL may possess the originals of all policies and documents evidencing Funded Policies; and/or
 - (c) MBL may notify each Insurer of the Borrower's security to MBL, and arrange for MBL's name (Macquarie Bank Limited) and interest to be noted on Funded Policies and in the Insurer's records.
- 8.3 The Borrower must not do (or attempt or agree to do) any of the following without MBL's prior written consent:
- (a) assign, transfer, mortgage or otherwise deal with, any right or power relating to any Refund Proceeds;
 - (b) cancel, terminate or vary any Funded Policy or make or settle any claim under any Funded Policy; or
 - (c) do or allow anything to be done which might prejudice MBL's security over or collection of, any Refund Proceeds, or reduce the amount payable in respect of any Refund Proceeds.

9 Further assurances

- 9.1 If MBL requests, the Borrower agrees to do, sign or cause to be done anything reasonably necessary to:
- (a) perfect the Borrower's assignment of, and MBL's security in respect of any Refund Proceeds; and
 - (b) register this document and any security given under it with the priority intended by MBL; and
 - (c) promptly comply with any requisition raised by any authority in connection with this document, its stamping or registration.
- 9.2 The Borrower must provide to MBL, in form and substance satisfactory to MBL, details of all persons holding a mortgage, charge, lien or other security interest affecting any Funded Policy. At MBL's request, the Borrower must notify all such persons of MBL's security over the Refund Proceeds and obtain all necessary consents and releases from them to perfect the assignment and payment to MBL of any Refund Proceeds.
- 9.3 The Borrower must notify each Insurer of MBL's interests and rights in respect of the Refund Proceeds, and that the Borrower irrevocably:
- (a) authorises the Insurer to cancel the Funded Policies identified in a notice of cancellation issued by MBL to the Insurer and to pay to MBL all sums representing Refund Proceeds for such cancelled policies; and
 - (b) directs the Insurer to pay all amounts representing Refund Proceeds to MBL or as MBL directs.

10 Default

- 10.1 A Default occurs if:
- (a) a claim arises under any Funded Policy and the Borrower fails to meet the Insurer's requirements on time, or any Funded Policy is cancelled, invalid or otherwise void;
 - (b) the Borrower fails to pay any Secured Money when due and in the manner required;
 - (c) the Borrower fails to perform or breaches any of its other obligations under the Premium Funding Agreement;
 - (d) where the Borrower carries on a business, the Borrower ceases to carry on its business, or a substantial part of its business;
 - (e) a representation or warranty made by the Borrower in connection with the Premium Funding Agreement is incorrect or misleading in a material respect when made;
 - (f) the Borrower is unable to pay its debts as and when they fall due or is otherwise insolvent;
 - (g) if the Borrower elected to pay by direct debit, the Borrower cancels the Direct Debit Request without MBL's prior consent; or
 - (h) a receiver, liquidator, administrator or trustee in bankruptcy is appointed to the Borrower or to any of its assets.
- 10.2 If a Default occurs, MBL may do one or more of the following:
- (a) declare that the Secured Money is immediately due and payable, in which case the Borrower must immediately pay the Secured Money to MBL;

- (b) cancel or otherwise deal with any Funded Policy, Refund Proceeds and the Borrower's rights to those things, as MBL sees fit;
- (c) terminate the Premium Funding Agreement (and all of MBL's obligations under it); and
- (d) exercise and enforce all its rights under the Premium Funding Agreement and at law.

10.3 If a Default occurs, the Borrower must pay or reimburse to MBL any enforcement expenses reasonably incurred by MBL on demand (including expenses reasonably incurred by the use of staff and facilities of MBL).

11 Representations and warranties

- 11.1 The Borrower represents and warrants to MBL that while there is any Secured Money outstanding:
- (a) no other person has or will have any interest in any Funded Policy;
 - (b) the Borrower has fully complied, and will continue to comply, with its duties of disclosure and utmost good faith in relation to each Funded Policy;
 - (c) the Borrower has not done or allowed to occur anything or made any misrepresentation which may result in a denial or reduction of any claim which may be made under any Funded Policy;
 - (d) the Borrower has not relied on any representation or statement by or on behalf of MBL to enter the Premium Funding Agreement, to select any Funded Policy, nor to effect an enforceable contract of insurance in relation to any Funded Policy, and in each case does so based solely on its own assessment after having obtained its own independent advice;
 - (e) the Borrower has obtained all necessary consents and releases, and complied with all internal procedures for the execution and performance of this document, including without limitation, if the Borrower is a partnership, that the signatory to this document is authorised by each of the principals of the partnership to enter into this document.

11.2 The Borrower acknowledges that MBL relies on the Borrower's representations and warranties in order to provide the Premium Loan.

12 Power of attorney

- 12.1 For valuable consideration, the Borrower irrevocably appoints MBL and each of its officers and employees whose title includes 'director', 'manager' or 'executive' from time to time severally as the Borrower's attorney, with power to do anything the attorney considers desirable to:
- (a) give effect to the Premium Funding Agreement and to facilitate the exercise of MBL's rights under it;
 - (b) date, complete or correct any details in the Premium Funding Details (before or after acceptance);
 - (c) if a Default has occurred, cancel, terminate or procure the cancellation or termination of any Funded Policy (which is cancellable) and obtain and collect any Refund Proceeds; and
 - (d) give valid receipts for any Refund Proceeds.

12.2 The Borrower will promptly ratify all acts of its attorneys.

13 Borrower's indemnities

- 13.1 The Borrower indemnifies MBL against, and must pay MBL on demand amounts for, all actions, claims, demands, losses, liabilities, and expenses (including legal costs) of any nature incurred at any time actually or contingently by MBL arising in connection with:
- (a) a Default occurring;
 - (b) MBL relying on any information supplied by or on behalf of the Borrower which proves to be a misrepresentation or misleading (including by omission of information);
 - (c) any part of the Premium Loan being repaid or discharged early;
 - (d) MBL exercising or enforcing any rights under the Premium Funding Agreement and obtaining or collecting any Secured Money;
 - (e) acting as the Borrower's attorney or providing any indemnity to any person so acting;
 - (f) all stamp duty, taxes and levies (including fines and penalties) payable or assessed in respect of the Premium Funding Agreement or any transaction contemplated by it; or
 - (g) the interest rate applying to a judgment debt being less than that applying to the Borrower's original payment obligation for which judgment was obtained.
- 13.2 MBL need not incur an expense or make a payment before enforcing an indemnity. Unless otherwise stated, each indemnity is separate and independent of each other obligation of the Borrower, is absolute, irrevocable and unconditional and continues despite any settlement of account, termination of the Premium Funding Agreement or anything else.



13.3 A certificate or statement by MBL is conclusive evidence of the amount payable by the Borrower pursuant to this clause.

14 Direct Debit Service Agreement

14.1 If the Borrower has elected to pay MBL by direct debit in the Premium Funding Details, the Borrower acknowledges that, unless otherwise agreed between MBL and the Borrower:

- (a) the Borrower's nominated financial institution may, in its absolute discretion, at any time by notice in writing to the Borrower, terminate the direct debit arrangement as to future debits;
- (b) either party may, by giving 3 days written notice to the other party, vary the timing of future debits;
- (c) the Borrower can stop or cancel the regular debits at any time by giving MBL and its own financial institution 3 days notice in writing;
- (d) if at any time the Borrower believes that a direct debit against its nominated account is inappropriate or incorrect it is its responsibility to notify MBL as soon as possible;
- (e) it is the Borrower's responsibility to ensure that there are sufficient cleared funds in its nominated account to meet debits, and MBL may cancel the debit arrangement (on 3 days written notice) if 3 direct debit payments are dishonoured because of insufficient funds within a 12 month period. MBL will charge the cost of dishonoured direct debits against the Borrower's account;
- (f) MBL may need to pass on details of the Borrower's direct debit request to its bank to assist with the checking of any incorrect or wrongful debits to the Borrower's nominated account;
- (g) MBL may vary this clause by providing 14 days notice in writing;
- (h) the Borrower must immediately notify MBL or its own financial institution if it believes an error has occurred in relation to a direct debit; and
- (i) any direct debit that is scheduled to occur on a day that is not a business day will occur on the preceding business day.

15 Notices

15.1 Subject to any method of service prescribed by law, a notice, demand, consent approval or communication (Notice) given by a party in connection with the Premium Funding Agreement must be hand delivered or sent by registered post or facsimile to the address or facsimile number set out in the Premium Funding Details (or such other address or facsimile number notified in writing to the other party).

15.2 Service under this clause is taken to be effected:

- (a) if hand delivered, on delivery;
- (b) if sent by registered post, 3 days after posting; and
- (c) if sent by facsimile, on production of a transmission report by the sending machine indicating it was sent in its entirety to the facsimile number of the recipient,

except where actual delivery is made or the facsimile is sent after 4.30 pm or on a day which is not a business day. In such cases service will be deemed to be effected at 9.00 am on the immediately following business day.

16 Account statements

16.1 MBL will provide to the Borrower a statement of its account in respect of the Premium Loan following:

- (a) termination of the Premium Funding Agreement; and
- (b) the Borrower's written request and payment of MBL's associated costs (as notified by MBL).

17 GST

17.1 The amounts set out in the Premium Funding Agreement have been calculated without regard to goods and services tax (GST, as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)).

17.2 If GST becomes payable in respect of any supply made by MBL under or in connection with the Premium Funding Agreement, the payment for that supply will be increased by the amount necessary so that MBL actually receives what it would have been entitled to receive if there had not been GST in respect of that supply.

17.3 The Borrower indemnifies MBL against any loss, cost, damage or expense due to MBL failing to receive the amount of the increase in payment.

18 Privacy

18.1 Subject to the Privacy Act 1988 (Cth), the Borrower authorises MBL to make credit enquiries concerning the Borrower in relation to the Premium Loan, and to exchange with any credit provider to the Borrower and any other person any credit-related information concerning the Borrower.

18.2 The Borrower agrees that MBL may disclose personal information it collects about the Borrower in connection with the Premium Funding Agreement to:

- (a) its relevant staff, affiliates and agents involved in delivering MBL's services, including but not limited to Macquarie Premium Funding Pty Limited;
- (b) contractors and contracted service providers engaged by MBL to deliver its services; and
- (c) the Broker and any Insurers (which may include Insurers located outside Australia).

18.3 The Borrower's agreement in clause 18.2 remains valid until the Borrower changes it by written notice to MBL. If the information is personal information (within the meaning of the Privacy Act 1988 (Cth)), the Borrower can ask MBL what personal information MBL holds about the Borrower and, where necessary, notify MBL in writing of changes so that MBL can ensure that the information MBL holds about the Borrower is accurate, complete and up to date.

19 Disputes

19.1 The Borrower should notify MBL (or its own financial institution) if it believes that an error or unauthorised transaction has occurred in relation to any transaction under or in connection with this document.

19.2 If MBL does not rectify any problem notified by the Borrower to MBL under this clause (to the Borrower's satisfaction), the Borrower may take the matter to the Banking and Financial Services Ombudsman Limited (BFSO Limited). BFSO Limited offers an independent and free resolution process of disputes between banks and customers. However, the Ombudsman cannot investigate problems that:

- (a) involve a claim for more than \$250,000;
- (b) originate from a company other than a small business (as defined in the BFSR Limited Terms of Reference);
- (c) involve a commercial decision by MBL; or
- (d) involve MBL's general policy or practice.

To contact the Ombudsman, write to: Banking and Financial Services Ombudsman Limited, GPO Box 3, Melbourne VIC 3001, or call Toll Free: 1800 337 444.

20 Code of Banking Practice

20.1 If the Borrower is an individual (as defined in the Code of Banking Practice, 1993 (COBP)), MBL is bound by the COBP when providing our products and services to the Borrower to the extent that those products and services are provided to the Borrower wholly or exclusively for private or domestic use.

20.2 If requested, MBL will provide the Borrower with a copy of the COBP (or a copy can be downloaded on the internet at www.bankers.asn.au).

21 General

21.1 MBL may assign its obligations, rights or interest under this Premium Funding Agreement without the Borrower's consent. The Borrower must not assign its obligations, rights or interest in this Premium Funding Agreement and any purported assignment is void.

21.2 The Premium Funding Agreement is governed by the laws of New South Wales and the Borrower accepts the non-exclusive jurisdiction of that State.

21.3 A provision of the Premium Funding Agreement that is illegal or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of the Premium Funding Agreement in any jurisdiction.

21.4 Unless the context otherwise requires, in this document:

- (a) time is of the essence for payment by the Borrower of all Secured Money, and where no time is specified for payment, the amount is payable on demand;
- (b) headings are for reference only and do not affect interpretation;
- (c) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting;
- (d) references to the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (e) examples and use of the word "including" and similar expressions do not limit what else may be included;
- (f) reference to a party to any document includes their successors and permitted substitutes and assigns, and a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.