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## **Deed of Company Arrangement**

FEA Plantations Limited (ACN 055 969 429)

Brian Raymond Silvia & Peter Paul Krejci

DLA Phillips Fox is part of  
DLA Piper Group, an alliance of  
legal practices.

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**This Deed of Company Arrangement** is made on the 14th day of December 2010 between:

**FEA PLANTATIONS LIMITED** (Administrators Appointed) (Receivers Appointed) (ACN 055 969 429) C/- BRI Ferrier of 1 Castlereagh Street, Sydney in the State of New South Wales ('FEAP')

-and-

**BRIAN RAYMOND SILVIA** and **PETER PAUL KREJCI** both Chartered Accountants and both C/- 1 Castlereagh Street, Sydney in the State of New South Wales (in their capacity as joint & several Administrators of FEAP)

-and-

**BRIAN RAYMOND SILVIA** and **PETER PAUL KREJCI** both of BRI Ferrier, 1 Castlereagh Street, Sydney in the State of New South Wales (in their capacity as joint & several Deed Administrators of FEAP pursuant to the terms of this Deed)

#### **RECITALS**

- A By resolution of the directors of FEAP made on 14 April 2010, Brian Raymond Silvia, Peter Paul Krejci and Mathew Muldoon were appointed Administrators of FEAP pursuant to the provisions of s 436E of the *Corporations Act*.
- B On 12 May 2010, Mathew Muldoon resigned as an Administrator of FEAP.
- C By order of Justice Dodds-Streeton in the Federal Court of Australia, the time for convening the second meeting of creditors ('second meeting') of FEAP was extended until 13 September 2010.
- D On 9 September 2010, the Administrators gave notice to creditors of FEAP of the convening of the second meeting of creditors to be held pursuant to s 439A of the *Corporations Act* ('the Act').
- E On 20 September 2010, the second meeting of creditors of FEAP was held. At that time a resolution was passed adjourning that second meeting of creditors of FEAP to a date not later than 45 business days after that initial second meeting of creditors of FEAP.

- F On 11 November 2010, the Administrators gave notice to creditors of FEAP that the adjourned second meeting was to be held on 23 November 2010.
- G On 23 November 2010, creditors of FEA at the adjourned second meeting resolved that FEAP execute a Deed of Company Arrangement pursuant to s 439C of the Act in the terms of the Proposal attached as Schedule One.
- H Pursuant to the resolution of creditors made on 23 November 2010, the parties enter into this Deed as the Deed of Company Arrangement.

## **OPERATIVE PROVISIONS**

### **1 Purpose and objects**

1.1 The purpose of the Deed is to be provide for the business property and affairs of FEAP to be administered in a way that preserves the current position of FEAP and to allow negotiation between the Deed Administrators, Creditors and third parties interested in participating in a re-construction of the affairs of FEAP:

1.1.1 Without effecting a compromise of claims of creditors; and

1.1.2 To enable a better return to creditors to be made other than that which might arise from the appointment of liquidators to FEAP.

The parties acknowledge that the Deed may be varied pursuant to resolutions passed at a meeting of creditors of FEAP to be convened pursuant to s 445A of the Act.

### **2 Commencement date**

2.1 This Deed shall commence on the Commencement Date. It is acknowledged by the parties that each of s 444C and 444E of the Act apply from the Resolution Date until termination of the Deed unless approval of the court is obtained.

### **3 Termination**

- 3.1 The Deed will terminate when the first of the following occurs:
- 3.1.1 A court makes an order terminating the Deed pursuant to s 445D of the Act;  
or
  - 3.1.2 The Creditors resolve to terminate the Deed at a meeting of creditors convened pursuant to s 445F of the Act; or
  - 3.1.3 The Deed Administrators form the opinion that the Deed ought terminate whereupon the Deed Administrators will execute a notice of termination of the Deed; or
  - 3.1.4 In accordance with s 445FA; or
  - 3.1.5 The date six (6) months following the Effective Date unless prior to that time Creditors have resolved to extend the Deed pursuant to a meeting of creditors convened pursuant to s 445F of the Act.

### **4 Moratorium**

- 4.1 Subject to the rights of any secured creditor pursuant to s 444D(2) of the Act or any owner or lessor pursuant to s 444D(3) of the Act, this Deed binds:
- 4.1.1 In accordance with s 444D(1) of the Act, all Deed Creditors; and
  - 4.1.2 In accordance with s 444G of the Act, FEAP, its Officers and Members and the Deed Administrators.
- 4.2 During the Deed Period, a Deed Creditor (other than a Secured Creditor) shall not in relation to its Claim, other than with the Deed Administrators prior written consent:
- 4.2.1 Make an application for an order to wind up the company;

- 4.2.2 Proceed with any such application made before this Deed became binding on that Deed creditor;
  - 4.2.3 Begin or continue any proceeding against FEAP or in relation to any of its property other than with the leave of the Court in which case such proceeding shall be in accordance with such terms (if any) as the Court may impose;
  - 4.2.4 Begin or continue with any enforcement process in relation to the property of FEAP other than with the leave of the Court and in which case in accordance with such terms (if any) as the Court may impose;
  - 4.2.5 Take any other action whatsoever to seek to recover any part of its claim other than pursuant to the Deed; or
  - 4.2.6 Commence or take any further step in any arbitration against FEAP.
- 4.3 Deed Creditors acknowledge that the Deed Administrators have no liability in damages or otherwise by reason of a refusal to give an approval or consent for the purposes of this moratorium.
- 4.4 The parties acknowledge that the moratorium contained in this Deed shall not:
- 4.4.1 Affect, in any way, the rights, powers or functions of Secured Creditors in relation to the lawful enforcement of the Securities or the interests in assets of FEAP in respect of which they have security whilst the Deed remains on foot; or
  - 4.4.2 The rights, powers or functions of the Receivers.

## **5 Deed Administrators**

- 5.1 The Deed Administrators:

- 5.1.1 Accept appointment as Deed Administrators; and
  - 5.1.2 Agree to act as Administrators of the Deed whilst the Deed remains in force or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Act whichever first occurs.
- 5.2 The Deed Administrators shall administer the Deed with all of the powers, functions and duties conferred upon them by either the Deed or the Act. In particular, the Deed Administrators shall, during the Deed period:
- 5.2.1 Have control of FEAP's business, property and affairs;
  - 5.2.2 May carry on that business and manage that property and those affairs;
  - 5.2.3 May terminate or dispose of all or any part of that business and may dispose of that property;
  - 5.2.4 May perform any function or exercise any power that FEAP or any of its Officers could perform or exercise if FEAP were not subject to the Deed;
  - 5.2.5 May apply to the court for directions in relation to any matter under the Deed or how part 5.3 of the Act is to operate in relation to FEAP; and
  - 5.2.6 Continue the role of FEAP as responsible entity for various managed investment schemes of which it is the responsible entity

Provided that the Deed Administrators recognise that their role may be limited by the Secured Creditors and/or the Receivers pursuant to the terms of the securities granted by FEAP to the Secured Creditors.



## **6 Powers of Other Officers Suspended**

- 6.1 Whilst FEAP is subject to this Deed, a person (other than a Deed Administrator) cannot perform or exercise and must not purport to perform or exercise functional powers as officer of FEAP accept with the Deed Administrators' prior written consent or in accordance with clause 4.4 and clause 8.

## **7 No resolution by FEAP's directors without consent**

- 7.1 The directors of FEAP may not pass any resolution, including, but not limited to, a resolution to place FEAP in voluntary administration or take any steps to wind it up other than with the Deed Administrator's prior written consent.

## **8 Receiver's Powers**

- 8.1 Nothing in this Deed limits or otherwise affects the rights, powers and functions of the Receivers in relation to their appointment over certain of the assets and undertakings of FEAP pursuant to the Securities.

## **9 Members' Obligations**

- 9.1 Whilst the Deed remains in effect a Member may not transfer any shares owned by it in FEAP other than with the Deed Administrators prior written consent.

## **10 Acknowledgements & Agreements of owners and lessors**

### **Acknowledgements**

- 10.1 Each owner and lessor bound by the Deed acknowledges and agrees that:

- 10.1.1 The Voluntary Administrators have not, during the voluntary administration period, or prior to the Effective Date, adopted, ratified or become liable to any lessor under any lease;
- 10.1.2 The Deed Administrators will not adopt, ratify or become liable to lessors under any lease; and
- 10.1.3 It must use its best endeavours to mitigate any loss and damage suffered by it.

**Administrators not personally bound**

- 10.2 The Voluntary Administrators have not ratified, adopted or any other matter become bound or become liable to any lessor under any lease by virtue of:
  - 10.2.1 Any discussion or correspondence they may have had when entered into with any lessor; or
  - 10.2.2 The use, occupation or possession of any premises or equipment by FEAP during the voluntary administration period; or
  - 10.2.3 To the extent to which there is any liability pursuant to s 443A or 443B of the Act for payment of rent or other matters payable in respect of the lease, that liability is not in any way affected or modified by the terms of this Deed.

**Owners and lessors**

- 10.3 The Deed does not affect any possessory right that an owner or lessor of real property has in relation to that real property except so far as:
  - 10.3.1 The court grants any equitable relief;
  - 10.3.2 The Deed so provides in relation to that owner or lessor who voted in favour of the resolution approving this Deed; or

10.3.3 A court makes orders pursuant to s 444F(4) of the Act.

#### **No limitation on the rights of the Deed Administrators**

10.4 The parties acknowledge that nothing in this Deed affects or restricts, in any way at any time, the rights of the Deed Administrators to:

10.4.1 Oppose any attempt by a Secured Creditor, Owner or Lessor to enforce, realise or otherwise deal with its Security, real property or property as the case may be either at common law or pursuant to the provisions of the Act;  
or

10.4.2 To seek relief from the court pursuant to s 444F of the Act or otherwise.

### **11 Management of FEAP**

11.1 Subject to clauses 4.4 and 8, the Deed Administrators shall retain day to day management and control of FEAP until the Deed is terminated to the exclusion of the Company's directors. The parties acknowledge that this applies also to the role of FEAP as responsible entity of managed investment schemes.

### **12 Powers of Administrators**

12.1 Subject to any power specifically conferred upon the receivers and continued by clauses 4.4 and 8, the Deed Administrators shall be entitled, in their capacity as Deed Administrators or any other capacity, conferred pursuant to this Deed, to exercise all the rights, powers, privileges, authorities and discretions which are ordinarily exercised by or vested in a trustee of a fixed trust or which are conferred by FEAP's constitution or otherwise by law on the directors of FEAP to the exclusion of FEAP's directors provided that the Deed Administrators shall not be responsible for such

obligations as may be continued to be imposed on the directors of the company pursuant to the Act whilst the Deed remains on foot.

### **13 Specific powers**

13.1 Subject to clause 4.4 and 8 and without limiting clause 5.2, the Deed Administrators will have the following powers:

13.1.1 The powers conferred on the directors of the company at the exclusion of the directors of the company;

13.1.2 All the powers set out in paragraph 2 of schedule 8A of the Regulations;

13.1.3 The power to alter share capital;

13.1.4 The power to issue shares;

13.1.5 The power to vary class rights attaching to shares;

13.1.6 The power to change the company's name;

13.1.7 The power to reduce the company's capital;

13.1.8 The power to alter the company's constitution;

13.1.9 The power to convene meetings of Members of the company;

13.1.10 The power to convene meetings of members of any managed investment scheme of which FEAP is responsible entity;

13.1.11 The power to resolve any dispute of any nature commercially;

13.1.12 In relation to the property and assets of FEAP, all the powers of a natural person who is the absolute and beneficial owner of that property including, without limitation, the power to sell or otherwise realise any such property,

assets or rights pursuant to sale process conducted by the Deed Administrators.

## **14 Company's agent**

14.1 Whilst the Deed remains in force, the Deed Administrators are acting as the agents of the company and accept no personal liability for any act, matter or omissions relating to things done or not done in that capacity.

## **15 Investigations of FEAP**

15.1 The Deed Administrators may, if they so determine, investigate FEAP's business, property and affairs and financial circumstances and may report the results of that investigation to ASIC and/or the Creditors.

## **16 Books of FEAP**

A person (other than a Receiver or a Secured Creditor):

16.1 is not entitled, as against the Deed Administrators, to obtain possession of books of FEAP or any managed investment scheme of which FEAP is responsible entity; or

16.2 To claim or enforce a lien on such books but such a lien is not otherwise prejudiced.

## **17 Sale and realisation of assets**

### **Sale and best price reasonably obtainable**

17.1 Subject to clause 13, the Deed Administrator shall take reasonable care and endeavour to sell or otherwise realise all property, assets and rights of the company for the best price that is reasonably obtainable having regard to s 442C of the Act and circumstances existing when those assets are sold and having regard to the

diminution of FEAP's liabilities in general and a reduction in payment to Participating Creditors in particular.

17.2 The Deed Administrators will hold Scheme Property separately for FEAP as Responsible Entity for the benefit of Grower Investors or shall apply it in accordance with the Schemes and the Deed Administrators shall be entitled to incur expenses, charges and liabilities in connection with the carrying on of the Schemes and shall be exonerated out of Scheme Property.

17.3 The Deed Administrators have the power to engage solicitors and consultants and FEAP shall pay all costs of any solicitors and consultants engaged by the Deed Administrators.

## **18 Further assurances**

18.1 FEAP and each person bound by the Deed shall do all such things and sign all such documents required by the Deed Administrators to effect, ratify and perfect any transfer assets and liabilities of FEAP to a third party.

## **19 Proof of debts**

19.1 The rules and mechanisms to be applied to proofs of debt and the statement of claims shall be similar to the rules and mechanisms for such things prescribed by the Act in the context of a liquidation of a company, amended or adjusted as appropriate to make the process as cost effective as possible provided that the Administrators may, by notice posted on their website, vary the operation of any part of the Act or the Regulations in order to more efficiently or more effectively adjudicate on Claims.

## **20 The specific realisations for FEAP - payments of claims**

### **Funds for distribution to Deed Creditors**

20.1 Subject to clause 4.4, FEAP shall hold, for its own benefit:

20.1.1 The proceeds of the sale of any Assets owned by it.

20.1.2 The proceeds of the realisation of any of its other Assets including proceedings

which shall constitute the Distribution Amounts.

### **Payment of Distribution Amounts**

20.2 The Distribution Amounts shall be applied in payment to the Voluntary Administrators, the Deed Administrators and Participating Creditors of FEAP as follows:

20.2.1 Firstly, the Voluntary Administrators and the Deed Administrators in relation to any amounts owing to them and unpaid pursuant to the terms of the Deed, to the extent to which they were to be afforded priority in a winding up of FEAP;

20.2.2 Secondly, in the order of priority set out in s 556, 560 and 561 of the Act:

(a) Employees of FEAP entitled pursuant to s 556, 560 or 561 of the Act;

(b) Any other participating Creditors of FEAP entitled to a priority under s 556 of the Act as if the company were being wound up;

20.2.3 Thirdly, (subject to clause 20.4), other Participating Creditors of FEAP on a pro-rata basis in the amounts and the dates determined by the Deed Administrators in their absolute discretion.

20.2.4 Provided that the Administrators need not pay a dividend of less than \$25

Provided that if the whole or part of a debt by way of superannuation contribution shall not be admissible at all if:

- (a) A debt by way of superannuation guarantee charge;
  - (i) Has been paid; or
  - (ii) Is admissible to proof against FEAP; and
- (b) The Deed Administrators are satisfied that the superannuation guarantee charge is attributable to the whole or part of the first mentioned debt. In that event, the debt or the part attributable to the superannuation guarantee charge is extinguished.

### **Meeting of Creditors**

20.3 When the Deed Administrators have sold or otherwise realised sufficient assets so that they are able to make an accurate estimate of amounts to be paid to Participating Creditors in accordance with the priority regime set out in clause 20.1 and prior to distribution of any money to Participating Creditors (other than priority Creditors) in accordance with clause 20.2, the Deed Administrators shall convene a meeting of Creditors under s 445F of the Act to consider:

20.3.1 Any proposed variation to the Deed, including the incorporation in the Deed of provisions for releasing claims of Deed Creditors less their entitlements and the pooling of assets and liabilities; or

20.3.2 In the alternative, a resolution to terminate this Deed and wind up the Company. For the purpose of such a meeting, the Deed Administrators shall advertise nationally and make available to the Deed Administrators on the Administrator's website:



- (a) Particulars of the proposed variation; and
- (b) Such information as would be sent to Deed Creditors as if the meeting were a second meeting of creditors held pursuant to s 439A of the Act;

20.3.3 Any other matter of business the Administrators may consider warranted.

#### **Deed Administrator's discretion**

20.4 The entitlement of a Deed Creditor to payment of the portion of that Deed Creditor's claim as the Deed Administrators in their absolute discretion determined they are able to pay in accordance with clause 20.2.

20.5 No Deed Creditor shall be entitled to receive more than its entitlement. If it does it must repay any amount paid to it in excess of its entitlement ('excess') to the Deed Administrators as soon as practicable but not later than 7 days after becoming aware that the excess has been paid to it.

#### **Certificate final and binding**

20.6 A certificate signed by the Deed Administrators that the amount paid by it to a Deed Creditor constitutes an entitlement for the purpose of the Deed shall, in the absence of a manifest error, be final and conclusive and binding on the Deed Creditor.

#### **Unclaimed distributions**

20.7 The entitlement of any Deed Creditor which remains unclaimed after a reasonable period of time (such period to be determined by the Deed Administrators in their absolute discretion) may be cancelled by the Deed Administrators and remitted to ASIC to be dealt with under Part 9.7 of the Act.

## **21 Administrators remuneration and costs**

### **Administrator's remuneration**

21.1 The Voluntary Administrators shall be:

21.1.1 Remunerated by FEAP in respect of any work done by them and any partner or employee of the Voluntary Administrators acting on behalf of the Voluntary Administrators in connection with the performance of their duties, obligations, responsibilities as Administrators of FEAP and the scale of rates charged from time to time for the provision of services during the period of FEAP's administration or as otherwise agreed by Deed Creditors and the Administrators; and

21.1.2 Reimbursed by FEAP in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations and responsibilities as Voluntary Administrators of FEAP.

### **Deed Administrator's Remuneration**

21.2 The Deed Administrators will be:

21.2.1 Remunerated by FEAP in respect of any work done by the Deed Administrators or any partner or employee of the Deed Administrators acting on behalf of the Deed Administrators in connection with the performance of the duties, obligations and responsibilities under this Deed at the scale of rates charged from time to time for the provision of services during the period of the Company's administration or such greater sum as agreed by the Deed Creditors and the Deeds Administrators pursuant to clause 23; and

21.2.2 Reimbursed by FEAP in respect of all costs, fees and expenses incurred in connection with the performance of their duties, obligations, responsibilities under this Deed.

21.3 The Deed Administrators' Remuneration shall be determined by the Committee of Inspection, or, failing determination, by the Deed Creditors or the Court.

## **22 Deed Administrators Indemnity**

### **Indemnity**

22.1 Subject to the Act, the Deed Administrators will be indemnified out of the assets of FEAP for:

22.1.1 All loss and damages suffered by them as a consequence of or arising out of FEAP's failure to comply with its obligations under clauses 20.1 and 20.2;

22.1.2 All debts, liabilities incurred by and claims against the Deed Administrators (present or future, certain or contingent ascertained or sounding only in damages in relation to the administration of the Deed or acting as Deed Administrators including any amounts held by a court or agreed to be accepted by the Deed Administrators as being payable by the Deed Administrators for services rendered, goods bought or property hired, leased, used or occupied by or on behalf of or in the possession of FEAP; and

22.1.3 All other costs, expenses, loss and liabilities incurred or suffered by them in performing any of their functions, duties or obligations or exercising any of their powers under or in accordance with the Act or any other applicable law or the deed in connection with the administration of FEAP.

**Indemnity not effected**

22.2 The indemnity under clause 22.1 will not affect or prejudice any rights of the Deed Administrators may have against FEAP or any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Deed Administrators of and incidental to the exercise or performance of any of the powers or authorities conferred on the Voluntary Administrators or the Deed Administrators at law or by this Deed or otherwise.

**Continuing indemnity**

22.3 Each indemnity in this clause is a continuing indemnity and inures for the benefit of the Voluntary Administrators and the Deed Administrators and their legal personal representatives notwithstanding:

22.3.1 Cessation of the Deed Period;

22.3.2 The termination of the deed; or

22.3.3 Some other reason.

22.4 The removal of the Deed Administrators and appointment of a new Administrator of the deed and will not be effected or limited in any way by any defect or invalidity in the appointment or the Deed Administrators. The indemnity shall extend to cover all actions, suits, proceedings, accounts, liabilities, claims and demands arising out of any defect in the appointment of the Deed Administrators or any defect in the approval or execution of this Deed or otherwise.

**Section 451C**

22.5 All persons bound by this Deed acknowledge and agree that a payment made, transaction entered into or other act or thing done in good faith by or with the consent of the Voluntary Administrators or the Deed Administrators:

22.5.1 Is valid and effective for the purposes of the Act; and

22.5.2 Is not liable to be set aside in a winding up of the Company.

## **23 Meetings of Deed Creditors**

### **Convening of meetings**

23.1 The Deed Administrators:

23.1.1 May at any time convene a meeting of the Deed Creditors; and

23.1.2 Must convene a meeting of the Deed Creditors if so requested in writing by Deed Creditors, the value of whose claims against FEAP is not less than 10% of the value of all Deed Creditor's claims against FEAP;

### **Voting at meetings**

23.2 Deed Creditors will be entitled to vote at these meetings on the same basis as if the meeting were a second meeting of creditors under s 439A of the Act.

### **Notice of meetings**

23.3 Written notice need not be sent by post to Deed Creditors of any further meetings. A notice of meeting will be advertised in newspapers nationally and on the Administrator's website and may be given by such other means as the Administrators may determine are likely to give reasonable notice of the meeting.

### **Conduct of meetings**

23.4 Regulations 5.6.12 to 5.6.36A of the regulations apply to meetings of Deed Creditors held under this Deed as if reference to 'liquidator', 'liquidator or provisional liquidator', 'liquidator, provisional liquidator or chairman' or 'a liquidator, provisional liquidator or trustee for debenture' as the case may be were reference is to the Deed

Administrators and with such other modifications as are necessary to comply with the provisions of this Deed.

## **24 General**

### **Forum shopping**

24.1 All persons bound by the Deed agree that any application or proceedings concerning the Deed or a claim shall only be made to or brought in the Court, unless otherwise agreed in writing by the Deed Administrators or unless the Court does not have jurisdiction to deal with such applications or proceedings.

### **Jurisdiction**

24.2 This Deed is governed by and construed in accordance with the laws for the time being in force in the State of Victoria.

### **Severance**

24.3 Any provisions of the Deed which:

24.3.1 Court order - unfair prejudice:

(a) the court determines to be oppressive or unfairly prejudicial, or unfairly discriminatory against, one or more creditors of the Company; or

24.3.2 General:

(a) is otherwise prohibited by or unlawful or unenforceable under any applicable law actually applied by any court of competent jurisdiction,

will, to the extent permitted by the Court or such law, be severed from the Deed and rendered ineffective so far as is possible without modifying the remaining provisions of this Deed.

**Reporting**

24.4 Except as required by law, the Deed Administrators will not be required to report to Deed Creditors. However, the Deed Administrators may, in their absolute discretion, report to Deed Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Deed Creditors.

**Further assurances**

24.5 All persons bound by this Deed must exercise all such powers as are available to them do all such acts and things, sign execute and deliver all such documents and instruments and provide assistance and co-operation as may be reasonably required to give full effect to the provisions of the Deed.

**Liquidation**

24.6 Where:

24.6.1 At a meeting convened under Section 445F of the Act the Deed Creditors pass a resolution terminating the Deed;

24.6.2 Whether or not the notice of the meeting set out a proposed resolution that FEAP would be wound up,

The Deed Creditors may also resolve at the meeting that FEAP be wound up.

**Section 513C Day**

24.7 For the avoidance of doubt, if the Deed Creditors resolve to wind-up FEAP, the winding up will be deemed to have begun or commenced on the date on which the administration of FEAP began.

**Power of Attorney**

24.8 Subject to clauses 4.4 and 8FEAP hereby irrevocably appoints the Deed Administrators its attorney to exercise or refrain from exercising (in the Deed Administrators' absolute discretion) any and all of FEAP's rights or powers in relation to or in connection with its right, title and interest in all the property of FEAP and FEAP shall make, do and provide all things and documents reasonably necessary to give proper effect to this clause which property includes Scheme Property.

**Application to Court**

24.9 Directions

The Deed Administrators may at any time apply to the Court for directions in relation to any particular matter arising under this Deed or about how Part 5.3A of the Act is to operate in relation to FEAP.

24.10 Unforeseen Circumstances

If any circumstances arise for which this Deed does not either expressly or by necessary implication make provision the Deed Administrators may in their sole and absolute discretion make such provision as they think fit for the purpose of effectuating this Deed, and they may, if they think fit, apply to the Court for directions.

**Variation**

24.11 The provisions of this Deed may be varied by Resolution passed at a meeting of Deed Creditors convened under Section 445F of the Act, but only if the variation is not materially different from a proposed variation set out in the notice of meeting.

**Waiver**

24.12 The waiver by any of the persons bound by the Deed in respect of any breach by another person bound by the Deed of any of the provisions of the Deed shall not be deemed to be a waiver in respect of any other breach or of any subsequent similar



breach by a person bound by the Deed and no delay or omission on the part of a person to exercise or avail itself of any rights accruing to it under the Deed shall operate as a waiver in respect of any default by another person under the Deed.

## Notices

24.13 All notices, requests, demands, requisitions, approvals, elections, consents or other communications ('notices') required to be given or served to or upon any of the parties pursuant to or in connection with the Deed shall be in writing in the English language and shall be deemed to be duly given or made when delivered (in the case of facsimile provided confirmation of transmission has been received) to the party to which such notice is given or served at the address of such party as follows:

24.13.1 If to the Voluntary Administrators or the Deed Administrators:

Address: BRI Ferrier

1 Castlereagh Street, Sydney, NSW, 2000

Attention: Brian Silvia

Facsimile: +61 2 8263 2399

24.13.2 If to the Company:

Address: C/- BRI Ferrier

1 Castlereagh Street, Sydney, NSW, 2000

Attention: Brian Silvia

Facsimile: +61 2 8263 2399

or at such other address as the relevant party may hereafter specify for such purpose to the other parties by notice in writing. A written notice includes a notice by

facsimile. Any notice given by facsimile on a day which is not a business day shall be deemed despatched on the next succeeding Business Day. Any such notice may be given or signed on behalf of the party giving or serving the same by a director, secretary or other duly authorised person thereof.

## Counterparts

24.14 This Deed may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same document.

## 25 Definitions and Interpretation

### Definitions

25.1 In this Deed unless the subject or context otherwise requires:

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

**'Administrators' Website'** means collectively the website maintained at the following URL <http://www.briferrier.com.au>.

**'Administrators'** has the meaning given to that term in clause 21.1.

**'Appointment Date'** means, in respect of the Company, the date the Voluntary Administrators were appointed its administrators, being 14 April 2010.

**'ASIC'** means the Australian Securities and Investments Commission.

**'Asset'** includes a mere cause of action or chose in action.

**'Business Day'** means any day other than a Saturday, Sunday or public holiday in Melbourne, Sydney or Launceston .

**'Claim'** means a debt payable by, and all claims against, the Company (present or future, certain or contingent, ascertained or sounding only in damages), being debts or claims the circumstances giving rise to which occurred on or before the Appointment Date.

**'Commencement Date'** means the date of this Deed.

**'Committee of Inspection'** means the Committee of Inspection initially appointed at the adjourned Second Meeting of Creditors held on 23 November 2010.

**'Court'** means the Federal Court of Australia.

**'Deed'** means this Deed of Company Arrangement as amended from time to time.

**'Deed Administrators'** means Brian Raymond Silvia and Peter Paul Krejci in their capacities as administrators of the Deed.

**'Deed Administrators' Remuneration, Costs and Indemnity'** means the amount which the Deed Administrators are entitled to be remunerated, reimbursed and indemnified against under clause 21.2 of the Deed.

**'Deed Creditor'** means any person who has a Claim, including (to the extent applicable):

- (a) Employees;
- (b) Suppliers;
- (c) Lessors;
- (d) Secured Creditors; and
- (e) Grower Investors.

**'Deed Period'** means the period commencing on the Effective Date and ending on the Termination Date.

**'Distribution Amounts'** means the amounts described in clause 20.1.

**'Effective Date'** means the date of the Reconvened Meeting (being 23 November 2010, which was the date the creditors of the Company resolved to execute this Deed).

**'Employees'** means all past and present employees of the Company as at the Effective Date.

**'Employee Amounts'** means in relation to an Employee, all amounts owing (if any) to an Employee in respect of their employment including (but without limitation) entitlements to payment of wages or salary in lieu of notice, long service leave, annual and sick leave.

**'Enforcement Process'** in relation to property means:

- (a) execution against the property; or
- (b) any other enforcement process in relation to that property that involves a court or sheriff.

**'Entitlement'** means the amount of a Claim that a Particular Creditor is entitled to be paid as a distribution in accordance with the provisions of the Deed.

**'FEAP'** means FEA Plantations Limited ACN 055 969 429.

**'Goods'** means any trading stock, packaging or other goods or materials supplied to the Company on or before the Appointment Date.

**'Grower Investors'** means persons who are members of any managed investment scheme of which FEAP is Responsible Entity.

**'Lease'** means any lease, licence or other agreement to which a Lessor is a party.

**'Legal Personal Representative'** means a trustee or executor appointed to the Voluntary Administrators or Deed Administrators upon death, incapacity, insanity or any combination of them.

**'Lessor'** means any person other than the Company who is the legal or beneficial owner of Real Property or other property that is occupied or use or in the possession of the Company or in relation to which the Company is liable as the Appointment Date.

**'Members'** means shareholders of the Company.

**'Officer'** has the meaning given in paragraphs (a) and (b) of that term as defined in Section 9 of the Act.

**'Owner'** means any person other than the Company who is the legal or beneficial owner of property used or occupied by or on behalf of or in the possession of the Company at the Appointment Date.

**'Participating Creditors'** means Deed Creditors.

**'Premises'** means any Real Property used, occupied by or in the possession of the Company or in relation to which the Company is liable as at the Appointment Date and which is not owned by the Company.

**'Priority Creditors'** means:

- (a) the Voluntary Administrators and the Deed Administrators in relation to any amounts due and payable to the Previous Administrators, Voluntary Administrators or the Deed Administrators pursuant to the Act or the terms of the Deed;

- (b) Secured Creditors in relation to the amounts they are entitled to be paid in priority to Participating Creditors who are not Priority Creditors pursuant to the terms of their Security;
- (c) Employees.

**'Priority Creditor Amounts'** means:

- (a) in the case of Employees, the amount to which they would be afforded priority under Section 556, 560 or 561 of the Act if the Company were wound up;
- (b) in the case of the Previous Administrators, Voluntary Administrators or the Deed Administrators, the Previous Administrators' Remuneration Costs and Indemnity, the Voluntary Administrators' Remuneration, Costs and Indemnity and the Deed Administrators' Remuneration Costs and Indemnity respectively; and
- (c) in the case of Secured Creditors, the amount which they are entitled to be paid in priority to Participating Creditors who are not Priority Creditors pursuant to the terms of the Security granted in favour of that Secured Creditor by the Company.

**'Real Property'** means a legal or equitable estate or interest in real property of any description.

**'Receiver'** means Timothy Bryce Norman and Salvatore Algeri being the Receivers appointed by ANZ Fiduciary Services Pty Ltd on 3 June 2010

**'Regulations'** means the Corporations Regulations.

**'Reconvened Meeting'** has the meaning given in the Background.

**'Related Body Corporate'** has the meaning given in the Act and **'Related'** bears a corresponding meaning.

**'Resolution'** means a resolution passed at a meeting of Deed Creditors convened in accordance with this Deed.

**'Scheme Property'** means the Scheme Property of the Managed Investment Schemes of which FEAP was, at the Appointment Date, Responsible Entity.

**'Secured Creditor'** means:

each of Commonwealth Bank of Australia and ANZ Banking Group Limited in respect of the advances made by them and secured by securities granted by the company to ANZ Fiduciary Services Pty Ltd ACN 100 709 493 as Security Trustee; and

any other person who had the benefit of a Security which was valid at the Appointment Date.

**'Security'** means any mortgage, chattel mortgage, pledge, charge, agreement, encumbrance, lien, any right of set-off, assignment which provides for and secures the payment of any debt or monetary liability or the performance of any obligation.

**'Supplier'** means a person whose Claim arises from, or in consequence of, the supply of Goods.

**'Termination Date'** means the date upon which the Deed is terminated pursuant to clause 18 of the Deed.

**'Voluntary Administration Period'** means the period of time commencing on the Appointment Date and concluding on the Effective Date.

**'Voluntary Administrators'** means Brian Raymond Silvia, Peter Paul Krejci or Mathew Muldoon in their capacity as administrators of the Company.

**'Voluntary Administrators' Remuneration, Costs and Indemnity'** means the amount which the Voluntary Administrators are entitled to be remunerated, reimbursed and indemnified against under clause 21.1 of the Deed.

### Interpretation

25.2 In the Deed, unless the subject or context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any one gender include the other gender and vice versa;
- (c) words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- (d) words 'written' and 'in writing' include any means of visible reproduction of words in tangible and permanently viable form;
- (e) if a word or phrase is defined, other parts of speech and grammatical forms of that words or phrase have corresponding meanings;
- (f) reference to clauses and schedules are references to clauses and schedules of the Deed;
- (g) references in the Deed to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;



- (h) references in the Deed to Sections shall be construed as references to Sections of the Act;
- (i) references to (or to any specified provision of) the Deed or to any other agreement or document shall be construed as references to (that provision of) the Deed or that other agreement or document as amended, substituted, novated, supplemented, varied or replaced with the agreement of the relevant parties and in force at any relevant time;
- (j) unless otherwise provided in the Deed, the provisions of Schedule 8A of the Regulations shall not apply to or be incorporated in this Deed;
- (k) a construction that would promote the purpose or object underlying the Deed (whether or not stated in this Deed) is to be preferred to a construction that would not promote that purpose or object;
- (l) headings in the Deed are for the purpose of more convenient reference only and do not form part of the Deed or affect its construction or interpretation;
- (m) a reference to 'a Form' means a reference to the applicable form as set out in Schedule One of the Regulations, with such modification as the Voluntary Administrators or the Deed Administrators (as the case may be) considers appropriate to adapt the Form to the circumstances for which the Form is to be used under the Deed;
- (n) a term or expression not otherwise defined in this Deed shall have the same meaning, if any, as provided for in the Act

provided that meaning is not inconsistent with the purpose or object of the Deed; and

- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Deed or any part of it.

### **Inconsistency with Act or Regulations**

- 25.3 If there is any inconsistency between the provisions of the Deed and the Act or Regulations, the Deed shall prevail to the extent permitted by law.

### **Other Inconsistencies**

- 25.4 If there is any inconsistency between the provisions of the Deed and the Constitution of the Company or any other obligation binding on the Company, the provisions of the Deed shall prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Company.

### **Business Days**

- 25.5 Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, such act, matter or thing shall be done on the immediately succeeding Business Day.

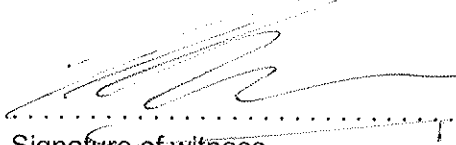
### **Successors and Assigns**

- 25.6 The obligations and liabilities imposed and rights and benefits conferred on the parties under the Deed shall be binding upon and inure in favour of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

**Execution and date**

Executed as a deed.

The common seal of **FEA PLANTATIONS LIMITED** (Administrator Appointed) is affixed in accordance with section 437A of the Corporations Act 2001 in the presence of:



Signature of witness



Signature of Administrator

Name of witness (print)

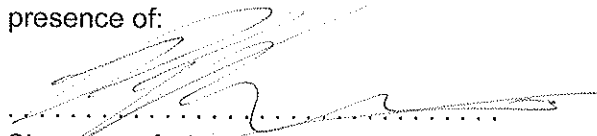
**PETER JOHN SHEPPARD**

A Commissioner for taking affidavits in the Supreme Court of South Australia and an Australian Legal Practitioner under the Legal Profession Act 2004 (NSW) number 53603  
Level 13, 1 Castlereagh Street, Sydney

*Brian Raymond Silvia*

Name of Administrator (print)

Signed by **BRIAN RAYMOND SILVIA** in the presence of:



Signature of witness

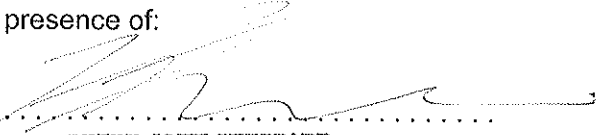


Signature of **BRIAN RAYMOND SILVIA**

**PETER JOHN SHEPPARD**

A Commissioner for taking affidavits in the Supreme Court of South Australia and an Australian Legal Practitioner under the Legal Profession Act 2004 (NSW) number 53603  
Level 13, 1 Castlereagh Street, Sydney

Signed by **PETER PAUL KREJCI** in the presence of:



Signature of witness



Signature of **PETER PAUL KREJCI**

**PETER JOHN SHEPPARD**  
A Commissioner for taking affidavits in the Supreme Court of South Australia and an Australian Legal Practitioner under the Legal Profession Act 2004 (NSW) number 53603  
Level 13, 1 Castlereagh Street, Sydney

Name of witness (print)

**FEA PLANTATIONS LIMITED**

**FOREST ENTERPRISE AUSTRALIA LIMITED**

**PROPOSAL FOR HOLDING DEED OF COMPANY ARRANGEMENT**

**1 PARTIES**

The parties to the deed will be:

- 1.1 The Company (FEAP or FEA as appropriate);
- 1.2 Brian Silvia and Peter Krejci, both as Voluntary Administrators and as Deed Administrators.

The following parties are bound to the Deed:

- 1.4 The Grower-Investors;
- 1.5 Other creditors ; and
- 1.5 The company's officers and members.

**2 PURPOSE AND OBJECTS**

The purpose of the Deed is to provide for the business, property and affairs of the Company to be administered in a way that preserves the companies' status quo so as to allow further negotiation as to the reconstruction and/or realization of assets, without effecting a compromise of creditors' claims, to enable a better return to creditors than would be achieved from immediate liquidation.

It is contemplated that the Deed will be varied in the future in accordance with the Corporations Act.

**3 MORATORIUM**

While the Deed is operative, Creditors other than the Secured Creditor, and including Grower-Investors, other than the Secured Creditors are restrained from proceeding with an action in relation to Claims.

The Deed does not release, compromise or commute any Creditor claim.

**4 ROLE OF DEED ADMINISTRATORS**

The Deed Administrators will have control of the Company's business, property and affairs; may carry on that business and manage that property and those affairs and may terminate or dispose of all or part of that business.

Additionally, they may exercise any power of the Company [*FEAP only*: and may carry on the company's activities as Responsible Entity of Managed investments Schemes and shall be entitled to the use of the Australian Financial Services Licence].

**5 DEED ADMINISTRATORS ACT AS THE COMPANIES AGENTS AND ATTORNEYS**

The Deed Administrators will be taken to be acting as Agents of the Company and shall be its Attorneys.

## 6 POWERS OF OTHER OFFICERS SUSPENDED

While the Deed is operative, only the Deed Administrators and, within the scope of their appointment, the Receivers, may do anything as an officer of the company. The Deed Administrators may consent in writing to the performance of other officers' actions.

## 7 DEED ADMINISTRATORS MAY INVESTIGATE AFFAIRS

The Deed Administrators may investigate the Company's affairs and may report the results of their investigations to ASIC and Deed Creditors. The Deed Administrators can seek examinations under the *Corporations Act*.

## 8 DEED ADMINISTRATORS' RIGHT TO THE COMPANY'S BOOKS

The Deed Administrators shall, subject to the rights of the Receivers, be entitled to possession of all books of the Company. *[FEAP only: and of the Schemes.]*

## 9 DEALING WITH ASSETS AND CARRYING ON BUSINESS

The Deed Administrators will seek to sell the assets for the best price available having regard to all market circumstances. They will manage and carry on so much of the company's business as, in their opinion, may be beneficial to creditors. *[FEAP only: The Deed Administrators may carry out the Managed Investment Schemes of which the company is Responsible Entity.]*

## 10 POSSIBLE AMENDMENTS

Everyone bound by the Deed acknowledges that the Deed may be varied.

## 11 CREDITOR CLAIMS

The Deed will contain a mechanism for making claims and establishing proofs of debt similar to those that apply in winding up, modified to make the process as efficient and cheap as possible, and dealing, in particular with proof by Lessors, Suppliers, Grower-Investors and by the Secured Creditors for their shortfall.

All parties will be required to mitigate their losses.

## 12 LESSORS AND PROPERTY OWNERS

The Deed Administrators will not become liable to the Lessors or owners of property used or occupied by them or the company, but nothing in the Deed will affect in any way the rights of the Lessors in relation to their leased property during the Deed Period except so far as the Court grants relief or orders or the Deed provides in relation to a Lessor who voted in favour of the Deed.

## 13 SPECIFIC REALISATIONS FOR THE COMPANY

The Deed Administrators will hold the assets of the Company as the General Deed Fund, including the proceeds of any tax or stamp duty refunds, and apply it in payment of claims in accordance with the priorities applicable in a winding up in insolvency, including applicable statutory and general law liens.

*[FEAP only: The Deed Administrators will hold Scheme Property separately for the company as Responsible Entity for the benefit of Grower Investors and shall apply it in accordance with the Schemes*

and the Deed Administrators shall be entitled to incur expenses charges and liabilities in connection with carrying on the schemes and shall be exonerated out of Scheme Property].

In applying section 553C of the Act, the companies shall be deemed to have had notice of insolvency at all times.

#### **14 POWERS OF ADMINISTRATORS**

The Deed Administrators will have, Deed Administrators, all powers possessed by the company or its directors; by a Deed Administrator under the Act, and of a trustee of a fixed trust.

#### **15 TERMINATION OF DEED**

The Deed will terminate when the first of the following occurs:

15.1 A Court orders its termination;

15.2 The Creditors resolving to terminate it;

15.3 If the Deed Administrators form the opinion that it should terminate, by their determination.

#### **16 ADMINISTRATORS' REMUNERATION, COSTS AND INDEMNITY**

The Voluntary Administrators and Deed Administrators will be remunerated for their work and reimbursed their costs and expenses.

The amount of remuneration shall be determined by meetings of Creditors, by meetings of the Committee of Creditors, or by meetings of a Committee of Inspection.

The Voluntary Administrators and Deed Administrators will be indemnified by the Company.

#### **17 COMMITTEE OF INSPECTION**

There will be a committee of inspection comprising the members of the Committee of Creditors and any other person the committee may co-opt or the creditors may elect.

#### **18 MEETINGS OF CREDITORS AND GROWER-INVESTORS**

The Deed Administrators may convene meetings of the Creditors at any time. They may give notice by any means likely to come to the attention of creditors.

#### **19 REPORTING**

The Deed Administrators may prepare any report, but will only be bound to report as required by the *Corporations Act*.

#### **20 RELATION-BACK DAY**

If this deed is terminated and the company is wound up, the Section 513C day will be the date on which the administration of the Company began.