

**DATED**

**June 2013**

**FEA PLANTATIONS LIMITED (ACN 055 969 429) (SUBJECT TO DEED OF COMPANY  
ARRANGEMENT) (RECEIVERS APPOINTED)**

**- and -**

**BRIAN RAYMOND SILVIA AND PETER PAUL KREJCI**

**VARIED DEED OF COMPANY ARRANGEMENT  
for FEA Plantations Limited (ACN 055 969 429) (Subject to Deed of Company  
Arrangement) (Receivers Appointed)**

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**THIS DEED** is made on

June 2013

**BETWEEN:**

- (1) **FEA PLANTATIONS LIMITED (ACN 055 969 429)** (Subject to Deed of Company Arrangement) (Receivers Appointed) c/- BRI Ferrier of 264 George Street, Sydney in the State of New South Wales ("**FEAP**")
- (2) **BRIAN RAYMOND SILVIA AND PETER PAUL KREJCI** both of BRI Ferrier, 264 George Street, Sydney in the State of New South Wales (in their capacity as joint and several Deed Administrators of FEAP pursuant to a Deed of Company Arrangement dated 14 December 2010 and extended from time to time)

**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 436A of the Corporations Act
- B On 12 May 2010, Mathew Muldoon resigned as an Administrator of FEAP.
- C By order of Justice Dodds-Streeton of 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 FEAP at the adjourned second meeting resolved that FEAP execute a Deed of Company Arrangement pursuant to s 439C of the Act.
- H Pursuant to the resolution of creditors made on 23 November 2010, the parties enter into a Deed of Company Arrangement on 14 December 2014 ('Original Deed').
- I The Original Deed has been extended on various occasions by resolution of creditors pursuant to s 445F of the Act until 30 May 2013 and thereafter successively by orders of the Federal Court of Australia made on 17 May 2013 and 11 June 2013 until 29 June 2013.

## **IT IS AGREED:**

### **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 reconstruction 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.

### **2. COMMENCEMENT DATE**

2.1 This Deed (in its prior forms) commenced on the Commencement Date and commenced operating in the form of this document on 28 June 2013. It is acknowledged by the parties that:

2.1.1 each of s 444C and 444E of the Act apply from the Resolution Date until the Operative Date or termination of the Deed unless approval of the court is obtained;

2.1.2 those provisions are to be interpreted on the basis that this Deed expressly does not provide that the Secured Creditor is prevented from realising or otherwise dealing with its Security or that the Receivers are prevented from realising or otherwise dealing with assets of FEAP the subject of their appointment.

### **3. CONTINUED OPERATION AFTER OPERATIVE DATE**

3.1 On and from the Operative Date, and subject to the FEA DOCA simultaneously beginning to operate in accordance with the terms of the document that is annexure A to the form of the FEA DOCA adopted by the resolutions of the creditors of FEA passed on 28 June 2013, this Deed will automatically:

3.1.1 cease to operate in accordance with the terms of this document; and

3.1.2 begin to operate in accordance with the terms of the document that is Schedule A to this Deed and entitled "Further Varied Deed of Company Arrangement of FEA Plantations Limited".

### **4. TERMINATION**

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

4.1.1 a court makes an order terminating the Deed pursuant to s 445D of the Act; or

4.1.2 the creditors of FEAP lawfully resolve to terminate the Deed at a meeting of creditors convened pursuant to s 445F of the Act; or

4.1.3 in accordance with s 445FA; or

4.1.4 on 30 October 2013 unless before that that time creditors have resolved to extend the Deed pursuant to a meeting of creditors convened pursuant to s 445F of the Act.

## 5. MORATORIUM

5.1 Subject to the express reservation of all rights of any Secured Creditor to realise or otherwise deal with its Security or the rights of any owner or lessor pursuant to s 444D(3) of the Act, this Deed binds:

5.1.1 in accordance with s 444D(1) of the Act, all Deed Creditors; and

5.1.2 in accordance with s 444G of the Act, FEAP, its Officers and Members and the Deed Administrators.

5.2 During the Deed Period, and subject to there being no restriction on any Secured Creditor realising or otherwise dealing with its Security or on the Receivers realising or otherwise dealing with assets of FEAP the subject of their appointment, a Deed Creditor (other than a Secured Creditor) shall not in relation to its Claim, other than with the Deed Administrators prior written consent:

5.2.1 make an application for an order to wind up the company;

5.2.2 proceed with any such application made before this Deed became binding on that Deed Creditor;

5.2.3 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;

5.2.4 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;

5.2.5 take any other action whatsoever to seek to recover any part of its claim other than pursuant to the Deed; or

5.2.6 commence or take any further step in any arbitration against FEAP.

5.3 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.

5.4 The parties acknowledge that the moratorium contained in this Deed shall not affect in any way:

5.4.1 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; or

5.4.2 the rights, powers or functions of the Receivers.

## **6. DEED ADMINISTRATORS**

### **6.1 The Deed Administrators:**

- 6.1.1 accept appointment as Deed Administrators; and
- 6.1.2 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.

### **6.2 Subject to the rights of the Secured Creditor and the Receivers, and the obligations of the Deed Administrators under the Implementation Deed, 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 (subject to the same provisos), during the Deed Period:**

- 6.2.1 shall have control of FEAP's business, property and affairs;
- 6.2.2 may carry on that business and manage that property and those affairs;
- 6.2.3 may terminate or dispose of all or any part of that business and may dispose of that property;
- 6.2.4 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;
- 6.2.5 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
- 6.2.6 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.

## **7. POWERS OF OTHER OFFICERS SUSPENDED**

- 7.1 Subject to the rights of the Secured Creditor and the Receivers, 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 functions or powers as officer of FEAP except with the Deed Administrators' prior written consent or in accordance with clause 5.4 and clause 9.

## **8. NO RESOLUTION BY FEAP'S DIRECTORS WITHOUT CONSENT**

- 8.1 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 Administrators' prior written consent.

## **9. RECEIVER'S POWERS**

- 9.1 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.

## **10. MEMBERS' OBLIGATIONS**

- 10.1 Whilst the Deed remains in effect, a Member may not transfer or otherwise deal with any shares owned by it in FEAP other than with the Deed Administrators' prior written consent.

## **11. ACKNOWLEDGEMENTS & AGREEMENTS OF OWNERS AND LESSORS**

### **Acknowledgements**

- 11.1 To the extent to which there is any liability pursuant to s 443A or 443B of the Act for payment of rent or other amounts 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**

- 11.2 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:
- 11.2.1 the court grants any equitable relief;
  - 11.2.2 the Deed so provides in relation to that Owner or Lessor who voted in favour of the resolution approving this Deed; or
  - 11.2.3 a court makes orders pursuant to s 444F(4) of the Act.

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

- 11.3 The parties acknowledge that nothing in this Deed affects or restricts, in any way at any time, such rights (if any) of the Deed Administrators as may exist to:
- 11.3.1 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
  - 11.3.2 seek relief from the court pursuant to s 444F of the Act or otherwise.

## **12. MANAGEMENT OF FEAP**

- 12.1 Subject to clause 5.4 and clause 9, 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.

## **13. POWERS OF ADMINISTRATORS**

- 13.1 Subject to clauses 5.4 and 9, the Deed Administrators shall be entitled, in their capacity as Deed Administrators to exercise all the rights, powers, privileges, authorities and discretions 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 imposed on the directors of the company pursuant to the Act whilst the Deed remains on foot.

#### **14. SPECIFIC POWERS**

- 14.1 Without limiting clause 6.2 and subject to the rights of the Secured Creditors and Receivers, the Deed Administrators will have the following powers:
- 14.1.1 the powers conferred on the directors of the company at the exclusion of the directors of the company;
  - 14.1.2 all the powers set out in paragraph 2 of schedule 8A of the Regulations;
  - 14.1.3 the power to alter share capital;
  - 14.1.4 the power to issue shares;
  - 14.1.5 the power to vary class rights attaching to shares;
  - 14.1.6 the power to change the company's name;
  - 14.1.7 the power to reduce the company's capital;
  - 14.1.8 the power to alter the company's constitution;
  - 14.1.9 the power to convene meetings of Members of the company;
  - 14.1.10 the power to convene meetings of members of any managed investment scheme of which FEAP is responsible entity;
  - 14.1.11 the power to resolve any dispute of any nature commercially;
  - 14.1.12 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.

#### **15. COMPANY'S AGENT**

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

#### **16. BOOKS OF FEAP**

- 16.1 A person (other than a Receiver or a Secured Creditor) is not entitled, as against the Deed Administrators:
- 16.1.1 to obtain or retain possession of books of FEAP; or
  - 16.1.2 to claim or enforce a lien on such books but such a lien is not otherwise prejudiced.

#### **17. SOLICITORS AND CONSULTANTS**

- 17.1 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. PROOFS OF DEBT**

- 18.1 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, once the Deed Administrators determine to make such an amendment or adjustment, the Deed Administrators must as soon as practicable publish on the Deed Administrators' Website notice of the amendment or adjustment.

## **19. ADMINISTRATORS REMUNERATION AND COSTS**

### **Administrator's remuneration**

- 19.1 The Voluntary Administrators will, subject to the Act and this Deed, be:
- 19.1.1 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
- 19.1.2 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**

- 19.2 The Deed Administrators will, subject to the Act and this Deed, be:
- 19.2.1 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 Committee of Inspection, or failing determination, by the Deed Creditors or the Court pursuant to clause 19.3; and
- 19.2.2 reimbursed by FEAP in respect of all costs, fees and expenses properly incurred in connection with the performance of their duties, obligations, responsibilities under this Deed.
- 19.3 The Deed Administrators' Remuneration shall be determined by the Committee of Inspection, or, failing determination by that committee, by a meeting of the Deed Creditors or by the Court.

## **20. DEED ADMINISTRATORS INDEMNITY**

### **Indemnity**

- 20.1 Subject to the Act and this Deed, and to the rights of the Secured Creditor and Receivers, the Deed Administrators will be indemnified out of the assets of FEAP for:

- 20.1.1 all debts, liabilities properly 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
- 20.1.2 all other costs, expenses, loss and liabilities properly 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**

- 20.2 The indemnity under clause 20.1 will not affect or prejudice any rights that 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**

- 20.3 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:
  - 20.3.1 cessation of the Deed Period;
  - 20.3.2 the termination of the deed; or
  - 20.3.3 some other reason,
- 20.4 The removal of the Deed Administrators and appointment of a new Administrator of the Deed will not be affected 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**

- 20.5 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:
  - 20.5.1 is valid and effective for the purposes of the Act; and
  - 20.5.2 is not liable to be set aside in a winding up of the Company.

### **21. MEETINGS OF DEED CREDITORS**

#### **Convening of meetings**

- 21.1 The Deed Administrators:

- 21.1.1 may at any time convene a meeting of the Deed Creditors; and
- 21.1.2 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**

- 21.2 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**

- 21.3 The Deed Administrators must give notice of any meeting of creditors of FEAP:
  - 21.3.1 in accordance with the orders of the Federal Court of Australia made on 17 May 2013; or
  - 21.3.2 in such other manner as is permitted by the Act and Regulations.

#### **Conduct of meetings**

- 21.4 Regulations 5.6.12 to 6.6.36A 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 to the Deed Administrators and with such other modifications as are necessary to comply with the provisions of this Deed.

## **22. GENERAL**

#### **Forum shopping**

- 22.1 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**

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

#### **Severance**

- 22.3 Any provisions of the Deed which:
  - 22.3.1 the court determines to be oppressive or unfairly prejudicial, or unfairly discriminatory against, one or more creditors of the Company; or
  - 22.3.2 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**

- 22.4 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.

### **Liquidation**

- 22.5 Where at a meeting convened under Section 445F of the Act the Deed Creditors pass a resolution terminating the Deed then subject to section 445E, the Deed Creditors may also resolve at the meeting that FEAP be wound up.

### **Section 513C Day**

- 22.6 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**

- 22.7 Subject to clause 5.4 and clause 9. FEAP 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 including for the avoidance of doubt the power to determine or surrender any lease held by FEAP is in capacity as responsible entity or any formal right held by FEAP over property utilisation by FEAP as responsible entity for any managed investment scheme.

### **Application to Court for directions**

- 22.8 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 A of the Act is to operate in relation to FEAP.

### **Variation**

- 22.9 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**

- 22.10 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

22.11 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:

22.11.1 If to the Voluntary Administrators or the Deed Administrators:

Address: BRI Ferrier

264 George Street, Sydney, NSW, 2000

Attention: Brian Silvia

Facsimile: +61 2 8263 2399

22.11.2 If to the Company:

Address: C/- BRI Ferrier

264 George 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

22.12 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.

## 23. DEFINITIONS AND INTERPRETATION

### Definitions

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

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

"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 and, for the avoidance of doubt, includes a Landlord Repudiation Claim.

"**Commencement Date**" means 14 December 2010.

"**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 at its Melbourne Registry.

"**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**" means the amount which the Deed Administrators are entitled to be remunerated under clause 19.2 of the Deed.

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

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

- (a) Employees;
- (b) Suppliers;
- (c) Lessors;
- (d) Grower Investors;
- (e) Other creditors other than Secured Creditor; and
- (f) Secured Creditor.

"**Deed Period**" means the period commencing on the Commencement Date and ending on the Termination Date.

"**Employees**" means all past and present employees of the Company as at the Appointment Date.

"**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.

**"FEA"** means Forest Enterprises Australia Limited (ACN 009 553 548)

**"FEA DOCA"** means the Deed of Company Arrangement in respect of FEA (in its various forms) as in force from the Commencement Date.

**"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.

**"Implementation Deed"** means the Deed dated June 2013 between FEA, FEAP, Tasmanian Plantation Pty Ltd, FEA Carbon Pty Ltd, the Receivers, the Deed Administrators and the Secured Creditor.

**"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.

**"Operative Date"** has the meaning given to that term in the Implementation Deed.

**"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.

**"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.

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

**"Resolution Date"** means the date of the meeting of creditors at which this Deed (in its original form) was approved, being 23 November 2010.

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

**"Secured Creditor"** means:

- (a) each of Commonwealth Bank of Australia and ANZ Banking Group Limited in respect of the moneys secured by securities granted by the company to ANZ Fiduciary Services Pty Ltd ACN 100 709 493 as Security Trustee; and
- (b) 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 3 of the Deed.

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

### **Interpretation**

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

- 23.2.1 words importing the singular include the plural and vice versa;
- 23.2.2 words importing any one gender include the other gender and vice versa;
- 23.2.3 words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 23.2.4 words 'written' and 'in writing' include any means of visible reproduction of words in tangible and permanently viable form;
- 23.2.5 if a word or phrase is defined, other parts of speech and grammatical forms of that words or phrase have corresponding meanings;
- 23.2.6 reference to clauses and schedules are references to clauses and schedules of the Deed;
- 23.2.7 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;
- 23.2.8 references in the Deed to Sections shall be construed as references to Sections of the Act;

- 23.2.9 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;
- 23.2.10 unless otherwise provided in the Deed, the provisions of Schedule 8A of the Regulations shall not apply to or be incorporated in this Deed;
- 23.2.11 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;
- 23.2.12 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;
- 23.2.13 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;
- 23.2.14 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
- 23.2.15 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**

- 23.3 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**

- 23.4 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**

- 23.5 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**

- 23.6 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.

**EXECUTED AS A DEED**

**DATE:**

Executed by **FEA Plantations Limited ACN 055 969 429 (Subject to Deed of Company Arrangement) (Receivers Appointed)** by being signed sealed and delivered by its joint and several Deed Administrator, Brian Silvia, in the presence of:

.....  
Signature of witness

.....  
Signature of administrator

.....  
Name of witness (print)

.....  
Name of administrator (print)

Signed, sealed and delivered by  
**Brian Raymond Silvia** in the presence of:

.....  
Signature of witness

.....  
Signature of **Brian Raymond Silvia**

.....  
Name of witness (print)

Signed, sealed and delivered by  
**Peter Paul Krejci** in the presence of:

.....  
Signature of witness

.....  
Signature of **Peter Paul Krejci**

.....  
Name of witness (print)

**SCHEDULE A**

**DATED            June 2013**

**FEA PLANTATIONS LIMITED (ACN 055 969 429)  
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)  
(RECEIVERS APPOINTED)**

**- and -**

**BRIAN RAYMOND SILVIA AND PETER PAUL KREJCI**

**FURTHER VARIED DEED OF COMPANY ARRANGEMENT  
for FEA Plantations Limited (ACN 055 969 429)  
(Subject to Deed of Company Arrangement) (Receivers Appointed)**

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140 William Street  
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**THIS DEED** is made on

June 2013.

**BETWEEN:**

- (1) **FEA PLANTATIONS LIMITED (ACN 055 969 429)** (Subject to Deed of Company Arrangement) (Receivers Appointed) c/- BRI Ferrier of 264 George Street, Sydney in the State of New South Wales ("**FEAP**")
- (2) **BRIAN RAYMOND SILVIA AND PETER PAUL KREJCI** both Chartered Accountants and both c/- 264 George Street, Sydney in the State of New South Wales (in their capacity as joint and several Deed Administrators of FEAP pursuant to the term of this Deed)

**BACKGROUND:**

- 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 436A of the Corporations Act.
- B On 12 May 2010, Mathew Muldoon resigned as an Administrator of FEAP.
- C By order of Justice Dodds-Streeton of the Federal Court of Australia, the time for convening of 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 FEAP at the adjourned second meeting resolved that FEAP execute a Deed of Company Arrangement pursuant to s 439C of the Act.
- H Pursuant to the resolution of creditors made on 23 November 2010, the parties entered into a Deed of Company Arrangement on 14 December 2010.
- I At meetings of creditors of FEAP held pursuant to s 445F of the Act the term of the Deed of Company Arrangement was extended successively until 30 May 2013 and thereafter successively by order of the Federal Court of Australia made on 17 May 2013 until 22 June 2013 and on 11 June 2013 until 29 June 2013.
- J At a meeting of creditors of FEAP held on 28 June 2013 pursuant to s 445F of the Act creditors agreed to a varied Deed of Company Arrangement which has annexed to it this Deed of Company Arrangement.

- K If the Operative Date as defined in the varied Deed of Company Arrangement referred to in Recital J occurs then as a consequence of the resolution of FEAP's creditors on 28 June 2013 this Deed of Company Arrangement automatically becomes effective in lieu of the Deed of Company Arrangement approved on that day.
- L Subject to the terms and conditions of this Deed, it binds all Deed Creditors of FEAP other than the Secured Creditor in accordance with s 444D of the Act and also binds FEAP, its officers and members in accordance with s 444G of the Act.

**IT IS AGREED:**

**1. PURPOSE AND OBJECTS**

- 1.1 The purpose of this Deed is to provide for the business, property and affairs of FEAP to be administered in a way which:
- 1.1.1 allows it to continue to be responsible entity of various schemes of which it is presently responsible entity (subject to any vote of members of any of those schemes to the contrary);
  - 1.1.2 allows it to administer those schemes and if necessary wind up those schemes;
  - 1.1.3 allows distributions to be made to Participating Creditors (including members of certain of those schemes) from funds made available under the Further Varied FEA DOCA; and
  - 1.1.4 enables it to secure a discharge and release from all Deed Creditors other than the Secured Creditor.

**2. COMMENCEMENT DATE AND SECURED CREDITOR**

This Deed (in its prior forms) commenced on the Commencement Date and upon satisfaction of the condition precedent in clause 2.2, commenced operating in the form of this document on the Operative Date. It is acknowledged by the parties that:

- 2.1.1 each of s 444C and s 444E of the Act apply from the Resolution Date until termination of the Deed unless approval of the court is obtained; and
- 2.1.2 those provisions are to be interpreted on the basis that this Deed expressly does not provide that the Secured Creditor is prevented from realising or otherwise dealing with its Security or that the Receivers are prevented from realising or otherwise dealing with assets of FEA the subject of their appointment.

**Condition Precedent**

- 2.2 It is a condition precedent to the operation of this Deed that:
- 2.2.1 the Operative Date occurs; and
  - 2.2.2 on and from the occurrence of the Operative Date, the FEA DOCA will operate in accordance with the terms of the document that is annexure A to the form of the FEA DOCA adopted by resolution of the creditors of FEA passed on 28 June 2013.

### **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 of FEAP lawfully resolve to terminate the Deed at a meeting of creditors convened pursuant to s 445F of the Act; or
- 3.1.3 in accordance with s 445FA.

### **4. MORATORIUM AND RELEASE OF CLAIMS**

4.1 Subject to the express reservation of all rights of any Secured Creditor to realise or otherwise deal with its Security or the rights of 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, and subject to there being no restriction on any Secured Creditor realising or otherwise dealing with its Security or on the Receivers realising or otherwise dealing with assets of FEAP the subject of their appointment, a Deed 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 affect, in any way:

- 4.4.1 the rights, powers or functions of the Secured Creditor in relation to the lawful enforcement of the Securities or the interests in assets of FEAP in respect of which they have security; or
- 4.4.2 the rights, powers or functions of the Receivers in relation to those assets.
- 4.5 Subject to clause 4.6, each Deed Creditor agrees that upon the occurrence of the Operative Date, all of its Claims (other than those of the Secured Creditor) are forever released and extinguished and replaced:
  - 4.5.1 in the case of Schedule A Grower Investors, by the entitlements provided for under the Implementation Deed;
  - 4.5.2 in the case of Participating Creditors, by their opportunity to receive a distribution under the Further Varied FEA DOCA.
- 4.6 Each Landlord agrees that each Landlord Repudiation Claim is, from the day after the day on which it arose, forever released and extinguished, and replaced by the opportunity to receive a distribution under the Further Varied FEA DOCA.
- 4.7 Subject to s 444D of the Act, this Deed may be pleaded by FEAP or the Deed Administrators against any person having a Claim against FEAP as an absolute bar and defence to any legal proceedings brought at any time in respect of a Claim.

## **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 Subject to the rights of the Secured Creditor and the Receivers, and the obligations of the Deed Administrators under the Implementation Deed, 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 (subject to the same provisos), during the Deed Period:
  - 5.2.1 shall 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 of the Act is to operate in relation to FEAP;

5.2.6 shall continue the role of FEAP as responsible entity for various managed investment schemes of which it is presently the responsible entity as at the date of this Deed; and

5.2.7 without limiting FEAP's powers under the various scheme constitutions or s 601NC, may seek by resolution of scheme members pursuant to s 601NB of the Act or by order of the Court pursuant to s 601ND of the Act the winding up of each of the schemes.

## **6. POWERS OF OTHER OFFICERS SUSPENDED**

6.1 Subject to the rights of the Secured Creditor and the Receivers, 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 functions or powers as officer of FEAP except with the Deed Administrators' prior written consent.

## **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 Administrators' prior written consent.

## **8. RECEIVERS' 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 FEA pursuant to the Securities.

## **9. MEMBERS' OBLIGATIONS**

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

## **10. ACKNOWLEDGEMENTS & AGREEMENTS OF OWNERS AND LESSORS**

### **Owners and lessors**

10.1 To the extent to which there is any liability pursuant to s 443A or s 443B of the Act for payment of rent or other amounts payable in respect of the lease, that liability is not in any way affected or modified by the terms of this Deed.

10.2 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:

10.2.1 the court grants any equitable relief;

10.2.2 the Deed so provides in relation to that Owner or Lessor who voted in favour of the resolution approving this Deed; or

10.2.3 a court makes orders pursuant to s 444F(4) of the Act.

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

- 10.3 The parties acknowledge that nothing in this Deed affects or restricts, in any way at any time, such rights (if any) of the Deed Administrators as may exist to:
- 10.3.1 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
- 10.3.2 seek relief from the court pursuant to s 444F of the Act or otherwise.

### **11. MANAGEMENT OF FEAP**

- 11.1 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 the Schemes.

### **12. POWERS OF ADMINISTRATORS**

- 12.1 The Deed Administrators shall be entitled, in their capacity as Deed Administrators, to exercise all the rights, powers, privileges, authorities and discretions 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 imposed on the directors of the company pursuant to the Act whilst the Deed remains on foot.

### **13. SPECIFIC POWERS**

- 13.1 Without limiting clause 5.2 and subject to the rights of the Secured Creditor and Receivers, the Deed Administrators will have the following powers:
- 13.1.1 the powers conferred on the directors of the company to 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 as principal for any act, matter or omissions relating to things done or not done in that capacity.

#### **15. BOOKS OF FEAP**

15.1 A person (other than a Secured Creditor or the Receivers) is not entitled, as against the Deed Administrators:

15.1.1 to retain possession of books of FEAP or any managed investment scheme of which FEAP is responsible entity; or

15.1.2 to claim or enforce a lien on such books but such a lien is not otherwise prejudiced.

#### **16. PROOFS OF DEBT AND CLAIMS**

16.1 Subject to this clause, 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 and the Regulations 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, once the Deed Administrators determine to make such an amendment or adjustment, the Deed Administrators must as soon as practicable publish on the Deed Administrators' Website notice of the amendment or adjustment.

#### **17. CLAIMS OF PARTICIPATING CREDITORS**

17.1 Participating Creditors are entitled to prove for all Claims they may have against FEAP in the Further Varied FEA DOCA on the terms set out in that document, and that opportunity to receive a distribution under the Further Varied FEA DOCA is in full and final satisfaction of all such Claims.

##### **Property Reserved for Schedule A Grower Investors**

17.2 Participating Creditors acknowledge that under the terms of the Implementation Deed certain payments may be made to FEAP as responsible entity of the Schedule A Managed Investment Schemes and that those payments will be made out of Scheme Property that is or will be held by FEAP on behalf of Schedule A Grower Investors to the exclusion of Participating Creditors.

#### **18. ADMINISTRATORS REMUNERATION AND COSTS**

##### **Administrators' remuneration**

18.1 The Voluntary Administrators shall be:

- 18.1.1 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
- 18.1.2 reimbursed by FEAP in respect of all costs, fees and expenses properly incurred in connection with the performance of their duties, obligations and responsibilities as Voluntary Administrators of FEAP.

**Deed Administrators' Remuneration**

- 18.2 The Deed Administrators will, subject to the Act and this Deed, be:
  - 18.2.1 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 Committee of Inspection, or failing determination, by the Deed Creditors or the Court pursuant to clause 18.3; and
  - 18.2.2 reimbursed by FEAP in respect of all costs, fees and expenses properly incurred in connection with the performance of their duties, obligations, and responsibilities under this Deed.
- 18.3 The Deed Administrators' Remuneration shall be determined by the Committee of Inspection, or, failing determination, by the Deed Creditors or the Court.

**19. DEED ADMINISTRATORS' INDEMNITY**

**Indemnity**

- 19.1 Subject to the Act and this Deed, and to the rights of the Secured Creditor and Receivers, the Deed Administrators will be indemnified out of the assets of FEAP for:
  - 19.1.1 all debts, liabilities properly 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
  - 19.1.2 all other costs, expenses, loss and liabilities properly 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.
- 19.2 Subject to the Act and this Deed, the Deed Administrators will be indemnified out of the assets of any scheme of which FEAP is responsible entity for:

- 19.2.1 all debts, liabilities properly incurred by and claims against the Deed Administrators (present or future, certain or contingent, ascertained or sounding only in damages) in relation to FEAP in acting as responsible entity in accordance with that scheme's constitution 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 as responsible entity of that scheme; and
- 19.2.2 all other costs, loss and liability properly incurred or suffered by them in performing any of their functions duties or obligations or exercising any of their powers under in accordance with this Act or any other applicable law or the deed in connection the administration of FEAP in its capacity as responsible entity of that scheme.

**Indemnity not effected**

- 19.3 The indemnity under clause 19.1 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**

- 19.4 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:

- 19.4.1 cessation of the Deed Period;
- 19.4.2 the termination of the deed; or
- 19.4.3 some other reason,

- 19.5 The removal of the Deed Administrators and appointment of a new Administrator of the Deed will not be affected 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**

- 19.6 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:

- 19.6.1 is valid and effective for the purposes of the Act; and
- 19.6.2 is not liable to be set aside in a winding up of the Company.

## **20. MEETINGS OF DEED CREDITORS**

### **Convening of meetings**

20.1 The Deed Administrators:

20.1.1 may at any time convene a meeting of the Deed Creditors; and

20.1.2 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 Creditors' claims against FEAP;

### **Voting at meetings**

20.2 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**

20.3 The Deed Administrators must give notice of any meeting of creditors of FEAP:

20.3.1 in accordance with the orders made by the Federal Court of Australia on 17 May 2013; or

20.3.2 in such other manner as is permitted by the Act or Regulations.

### **Conduct of meetings**

20.4 Regulations 5.6.11 to 5.6.30A 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.

## **21. GENERAL**

### **Forum shopping**

21.1 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**

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

### **Severance**

21.3 Any provisions of the Deed which:

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

21.3.2 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**

21.4 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.

### **Liquidation**

21.5 Where at a meeting convened under Section 445F of the Act the Deed Creditors pass a resolution terminating the Deed then, subject to section 445E, the Deed Creditors may also resolve at the meeting that FEAP be wound up.

### **Section 513C Day**

21.6 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 notwithstanding that all Claims of Deed Creditors (other than those of the Secured Creditors) will have been forever released and extinguished if such termination occurs after the Operative Date.

### **Power of Attorney**

21.7 FEAP 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 or held by FEAP (which property includes Scheme Property) and FEAP shall make, do and provide all things and documents reasonably necessary to give proper effect to this clause including for the avoidance of doubt the power to determine or surrender any lease held by FEAP in its capacity as responsible entity of any schemes or any Forest Rights held by FEAP in its capacity as responsible entity of any scheme.

### **Application to Court**

21.8 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.

### **Variation**

21.9 The provisions of this Deed may be varied by Resolution passed at a meeting of Deed Creditors convened under s 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**

- 21.10 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**

- 21.11 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:

- 21.11.1 If to the Voluntary Administrators or the Deed Administrators:

Address: BRI Ferrier

264 George Street, Sydney, NSW, 2000

Attention: Brian Silvia

Facsimile: +61 2 8263 2399

- 21.11.2 If to the Company:

Address: C/- BRI Ferrier

264 George 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**

- 21.12 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.
- 21.13 Despite clause 21.12, the terms of this Deed will automatically come into effect upon the satisfaction of the conditions in clause 2.2 and the execution of this Deed will not be a prerequisite to this Deed coming into effect.

## 22. DEFINITIONS AND INTERPRETATION

### Definitions

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

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

"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 and, for the avoidance of doubt, includes a Landlord Repudiation Claim.

"Commencement Date" means 14 December 2010.

"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 18 of the Deed.

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

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

- (a) Employees;
- (b) Suppliers;
- (c) Lessors;
- (d) Grower Investors.
- (e) Landlords in respect of any Landlord Repudiation Claim;

- (f) Other creditors other than Secured Creditor;
- (g) Secured Creditors; and

**"Deed Period"** means the period commencing on the Commencement Date and ending on the Termination Date.

**"Employees"** means all past and present employees of FEA or FEAP as at the Appointment Date.

**"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.

**"FEA"** means Forest Enterprises Australia Limited (ACN 009 553 548) (Receivers and Managers Appointed) (Subject to Deed of Company Arrangement).

**"FEA DOCA"** means the Deed of Company arrangement in respect of FEA (in its various forms) as in force from 14 December 2010.

**"FEA Group"** means Forest Enterprises Australia Limited (ACN 009 553 548) (Receivers and Managers Appointed)/(Subject to Deed of Company Arrangement), Tasmanian Plantation Pty Ltd (ACN 009 560 463) (Controllers Acting) (Subject to Deed of Company Arrangement) and FEA Carbon Pty Ltd (CAN 009 505 195) (Receivers and Managers Appointed) (Subject to Deed of Company Arrangement).

**"FEAP"** means FEA Plantations Limited ACN 055 969 429 (Subject to Deed of Company Arrangement) (Receivers appointed).

**'Further Varied FEA DOCA'** means the form of the FEA DOCA that is annexure A to the form of the FEA DOCA adopted by resolution of the creditors of FEA passed on 28 June 2013 and which comes into effect simultaneously with this Deed of Company Arrangement on the Operative Date.

**"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 severally members of each of the managed investment scheme of which FEAP is Responsible Entity set out in Schedule A or Schedule B.

**"Implementation Deed"** means the Deed dated June 2013 between FEA, FEAP, Tasmanian Plantation Pty Ltd, FEA Carbon Pty Ltd, the Receivers, the Deed Administrators and the Secured Creditors.

**"Landlord"** means any person that has granted to FEA or FEAP a lease, sub-lease, forestry right or similar grant in respect of land.

**"Landlord Repudiation Claim"** means any Claim of a Landlord against FEA or FEAP resulting from or relating to any repudiation by FEA or FEAP (as applicable) of the contract in relation to the lease, sub-lease, forestry right or similar grant which occurs within three (3) months of the Operative Date.

**"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 at 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.

**"Operative Date"** has the meaning given to that term in the Implementation Deed.

**"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 other than Schedule A Grower Investors and Secured Creditors, but for the avoidance of doubt does not include the Voluntary Administrators or the Deed Administrators.

**"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.

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

**"Resolution Date"** means the date of the meeting of creditors at which this Deed (in its original form) was approved, being 23 November 2010.

**"Schedule A Grower Investor"** means a grower who is a member of any of the managed investment schemes set out in Schedule A.

**"Schedule B Grower Investor"** means a grower who is a member of any of the managed investment schemes set out in Schedule B.

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

**"Schemes"** means the managed investment schemes set out in Schedule A and Schedule B.

**"Secured Creditor"** means:

- (a) each of Commonwealth Bank of Australia and ANZ Banking Group Limited in respect of the moneys secured by securities granted by the company to ANZ Fiduciary Services Pty Ltd ACN 100 709 493 as Security Trustee; and
- (b) 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 3 of the Deed.

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

Interpretation

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

- 22.2.1 words importing the singular include the plural and vice versa;
- 22.2.2 words importing any one gender include the other gender and vice versa;
- 22.2.3 words importing natural persons include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 22.2.4 words 'written' and 'in writing' include any means of visible reproduction of words in tangible and permanently viable form;
- 22.2.5 if a word or phrase is defined, other parts of speech and grammatical forms of that words or phrase have corresponding meanings;
- 22.2.6 reference to clauses and schedules are references to clauses and schedules of the Deed;
- 22.2.7 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;
- 22.2.8 references in the Deed to Sections shall be construed as references to Sections of the Act;
- 22.2.9 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;

- 22.2.10 unless otherwise provided in the Deed, the provisions of Schedule 8A of the Regulations shall not apply to or be incorporated in this Deed;
- 22.2.11 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;
- 22.2.12 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;
- 22.2.13 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;
- 22.2.14 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
- 22.2.15 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**

- 22.3 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**

- 22.4 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**

- 22.5 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**

- 22.6 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.

#### **EXECUTED AS A DEED**

**DATE:**

Executed by **FEA Plantations Limited ACN 055 969 429 (Subject to Deed of Company Arrangement) (Receivers Appointed)** by being signed sealed and delivered by its joint and several Deed Administrator, Brian Silvia, in the presence of :

.....  
Signature of witness

.....  
Signature of administrator

.....  
Name of witness (print)

.....  
Name of administrator (print)

Signed, sealed and delivered by  
**Brian Raymond Silvia** in the presence of:

.....  
Signature of witness

.....  
Signature of **Brian Raymond Silvia**

.....  
Name of witness (print)

Signed, sealed and delivered by  
**Peter Paul Krejci** in the presence of:

.....  
Signature of witness

.....  
Signature of **Peter Paul Krejci**

.....  
Name of witness (print)

## SCHEDULE A

<b>Tasmanian Forests Trust No. 2</b>	<b>ARSN 093 165 505</b>
<b>Tasmanian Forests Trust No. 3</b>	<b>ARSN 093 165 005</b>
<b>Tasmanian Forests Trust No. 4</b>	<b>ARSN 093 165 103</b>
<b>Tasmanian Forests Trust No. 5</b>	<b>ARSN 093 165 050</b>
<b>Tasmanian Forests Trust No. 6</b>	<b>ARSN 093 165 327</b>
<b>Tasmanian Forests Trust No. 7</b>	<b>ARSN 093 164 866</b>
<b>Tasmanian Forests Project 2000</b>	<b>ARSN 092 500 984</b>
<b>Australian Forests Project 2001</b>	<b>ARSN 094 614 678</b>

## SCHEDULE B

<b>Australian Forests Project 2002</b>	<b>ARSN 099 656 381</b>
<b>Forest Enterprises Plantation Project 2003</b>	<b>ARSN 104 311 533</b>
<b>FEA Plantations Project 2004</b>	<b>ARSN 108 148 198</b>
<b>FEA Plantations Project 2005</b>	<b>ARSN 113 195 583</b>
<b>FEA Plantations Project 2006</b>	<b>ARSN 119 069 591</b>
<b>FEA Plantations Project 2007</b>	<b>ARSN 125 108 063</b>
<b>FEA Plantations Project 2008</b>	<b>ARSN 129 750 296</b>
<b>FEA Plantations Project 2009</b>	<b>ARSN 136 438 616</b>