

# Loan Agreement

**W.A. Blue Gum Project 2016**

between

**Albany Financial Pty Ltd ACN 060 326 409 (Financier)**

and

**«Growers\_Name» (Grower)**



**W.A. Blue Gum Limited**

ACN 060 179 982 AFS Licence 246 264

Level 33

140 William Street

Melbourne Vic 3000

t (03) 9242 4797

f (03) 9242 4778

e [info@wablugum.com.au](mailto:info@wablugum.com.au)

# Details

**This Deed** is made

between **Albany Financial Pty Ltd** ACN 060 326 409 of Level 33, 140 William Street, Melbourne, Victoria (**Financier**)

of the one part

and **«Growers\_Name» of «Address», «Suburb», «State» «PCode» (Grower)**

of the second part

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## Recitals

- A. The Grower is the sub-lessee of certain land described in the Schedule hereto (**the land**) suitable for forestry operations or has entered into an Agreement to Sub-lease such land and wishes to engage an appropriate person to establish (by way of coppicing and planting), tend and manage the said forestry operations.
- B. W.A. Blue Gum Ltd ACN 060 179 982 (**the Project Manager**) is a company suited and qualified to establish, tend and manage the said forestry operations.
- C. The Financier is willing to advance money to the Grower for the purpose of permitting the Grower to engage the Project Manager to so establish, tend and manage the said forestry operations.

## Operative terms

1. In consideration of the Grower entering into an agreement with the Project Manager to establish, tend and manage the said forestry operations on the land, the Financier hereby agrees to advance to the Grower the principal sum set out in the Schedule hereto (**the Principal Sum**), receipt whereof is hereby acknowledged.
2. Interest shall be payable at the rate of **12.15%** per annum on the amount of the Principal Sum outstanding from time to time.
3. The Grower shall repay, by way of direct debit, the Principal Sum and interest thereon by equal monthly instalments on the dates and in the amount provided in the Schedule hereto under the heading "Repayment of the Principal Sum and Interest".
4. Notwithstanding the provisions of **Clause 2** herein, in the event that any part of the Principal Sum is not repaid as provided in the Schedule herein, interest at the rate of **16.4%** per annum shall be due and payable from the date the unpaid part of the Principal Sum fell due until the date the same is paid by the Grower.
5. The Grower shall be entitled upon at least three (3) months' notice to the Financier on any day fixed for payment of an instalment of the Principal Sum to repay the whole or any part of the Principal Sum then outstanding without penalty for early repayment.
6. The Grower, hereby subject to **Clause 8** herein, assigns, transfers and sets over to the Financier by way of security all its right, title and interest in and under:
  - (a) the Plantation Management Contract(s) between the Grower and the Project Manager in respect of the forestry operations on the land;
  - (b) the sub-lease(s) and agreement(s) to sub-lease of the land from W.A. Blue Gum Limited ACN 060 179 982;
  - (c) the Wood Purchase Agreement(s) with W.A. Chip & Pulp Co. Pty Ltd ACN 008 720 518 in respect of the forestry operations on the land and any other agreement whereby the Grower is to dispose of the wood growing on the land (which Wood Purchase Agreement and any other such agreements are jointly and severally called **the Wood Purchase Agreement**);
  - (d) all money payable to the Grower under the Wood Purchase Agreement;
  - (e) the insurances effected in respect of the forestry operations on the land (**the Insurances**) and all money payable to the Grower under such Insurances,

PROVIDED ALWAYS that upon the repayment of the Principal Sum, interest thereon and all other money secured by this Agreement, this assignment shall be void and of no further effect notwithstanding lack of formal re-assignment of the subject matter thereof.
7. The Grower covenants and agrees with the Financier as follows:
  - (a) From time to time and at all times hereafter upon the request of the Financier to make, do and execute or cause to be made, done and

executed all such acts, deeds and assurances whatsoever for more satisfactorily securing to and vesting in the Financier by way of security the interest of the Grower in the sum or sums payable to it under the Wood Purchase Agreement and in the Insurances effected in respect of the forestry operations on the land and all sum or sums payable to the Grower under such Insurances;

- (b) Subject to the provisions of this Agreement not to mortgage, charge or encumber in any way whatsoever the Grower's interest in the sum or sums payable under the Wood Purchase Agreement and in the Insurances effected in respect of the forestry operations on the land and all sum or sums payable to the Grower under such Insurances and further subject to the provisions of the sub-lease not to mortgage, charge or encumber in any way whatsoever its interest in the said sub-lease;
- (c) Upon demand by the Financier to duly execute and deliver to it a full, sufficient, separate, unconditional and irrevocable notice addressed to W.A. Chip & Pulp Co. Pty Ltd or other purchaser of the wood growing on the land and to the Project Manager relating to the assignment by the Grower to the Financier of its interest in the sum or sums payable under the Wood Purchase Agreement and the interest of the Grower in the Insurances effected in respect of the forestry operations on the land the subject matter of the Wood Purchase Agreement and all sum or sums payable to the Grower under such Insurances, such notice to be served by the Financier on W.A. Chip & Pulp Co. Pty Ltd or other purchaser and on the Project Manager either forthwith or at any time hereafter at the discretion of the Financier.

8. The security hereby constituted shall at the option of the Financier become immediately enforceable and the money hereby secured shall at the like option become immediately due and payable and the Financier may commence legal action for recovery on the happening of any one or more of the following events:

- (a) If the Grower makes default in payment of any interest which ought to be paid on the Principal Sum and such default is not remedied within 14 days of notice in writing by the Financier to the Grower requiring remedy thereof;
- (b) If the Grower makes any default in payment of any instalment of the Principal Sum as and when the same ought to be paid and such default is not remedied within 14 days of notice in writing by the Financier to the Grower requiring remedy thereof;
- (c) If:
  - (i) an order is made for the winding up or dissolution without winding up of the Grower; or
  - (ii) the Grower makes a composition with its creditors or its estate is the subject of a sequestration order;
  - (iii) an effective resolution is passed for the winding up of the Grower;
  - (iv) a Receiver is appointed of or an encumbrancee in an amount exceeding \$10,000.00 takes possession of the assets or undertaking or any part thereof of the Grower;

- (v) any distress or execution is levied or enforced against or upon any of the assets or property of the Grower for a sum exceeding \$5,000.00 and the same is not stayed or discharged within seven days;
- (vi) default (other than default covered by any other sub-clause of this clause) is made by the Grower in the performance or observance of any obligation, covenant, condition, agreement, warranty, term or provision binding on the Grower under this Agreement;
- (vii) the Grower pays any dividend while any interest or any instalment of the Principal Sum has become payable and remains unpaid;
- (viii) any part of the assets of the Grower is resumed, confiscated or forfeited.

9. In consideration of the Principal Sum agreed to be lent and advanced as aforesaid the Grower hereby irrevocably nominates, constitutes and appoints the Directors from time to time of the Financier jointly and each of them severally to be the attorneys and attorney of the Grower while any money remains secured by this Agreement for and in the name and as the act and deed of the Grower:

- (a) To make, perform and observe all such payments, acts, matters and things as the said attorney may at any time consider requisite and expedient to effectuate the rights and powers of the Financier herein;
- (b) To sign all documents and all other and any manner of things for the purposes of this Agreement;
- (c) To effectuate the rights and powers conferred upon the Financier by this Agreement or implied by the provisions hereof in any manner the said attorney considers appropriate;
- (d) To sign, lodge, file and deliver any documents as may be necessary in the opinion of the said attorney to protect the interests of the Financier hereunder;
- (e) To execute all deeds, instruments, agreements, documents and papers and to do all acts, matters and things as the said attorney may consider necessary or expedient for perfecting and safeguarding the security of the Financier in the interest of the Grower under the documents referred to in **Clause 6** herein and in the Insurances effected in respect of the forestry operations on the land and all sum or sums payable to the Grower under the Wood Purchase Agreement and any such Insurances and for carrying out the powers hereby or by any security collateral hereto or concurrent herewith given or implied or by any Act of the Parliament of Victoria for the time being in force in Victoria given or implied;
- (f) Generally to execute, perform, make, institute and carry through all such acts, deeds, documents, authorities, payments and obligations, proceedings, matters and things as the said attorney shall think fit and with power to the said attorney to appoint and substitute from time to time one or more attorneys and attorney under them or him with the same or more limited powers.

10. The Grower hereby ratifies and confirms and agrees to allow ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done under and by virtue of this Power of Attorney and declares that this Power or Attorney shall continue and be of full force and effect until all such acts, deeds, payments, matters and things as the said attorney thinks proper to execute, perform, make, institute or carry through shall have been done made and completed and the Grower HEREBY DECLARES that this Power of Attorney is irrevocable and that all provisions of Section 109 of the *Instruments Act 1958* (Vic) or any modification thereof shall apply to this Power of Attorney as if such provisions were specifically set out herein.
11. The Financier may waive from time to time and at any time and on any terms and conditions any breach by the Grower of any of the covenants, obligations, agreements or stipulations binding upon the Grower under this Agreement and no such waiver shall be deemed a waiver of any continuing or recurring breach by the Grower. Any such waiver shall not in any way affect, abrogate or prejudice the rights of the Financier under this Agreement.
12. The Grower will pay all costs, charges and expenses, including Stamp Duty reasonably and properly payable in connection with the preparation, execution and enforcement of this Agreement.
13. The Financier and the Grower are not partners in relation to the said forestry operations and nothing herein shall constitute the Financier and the Grower partners or give rise to the relationship of partners between them.
14.
  - (a) In the event any question, dispute or difference between any of the Parties to this Agreement arises relating to the subject matter of this Agreement, any Party may give to the other notice in writing of the matter and at the expiration of 1 month, unless it shall have been otherwise settled by or between them, the question, dispute or difference shall be referred to an arbitrator selected by the President, for the time being, of the Law Institute of Victoria and such arbitrator shall act in accordance with and subject to the *Commercial Arbitration Act 2011* (Vic). The adjudication by the arbitrator shall be final and binding on the Parties upon every such reference.
  - (b) The costs of and incidental to the reference to and adjudication by the arbitrator shall be at the discretion of the arbitrator who shall also determine the amount of the costs and shall direct by whom and to whom and in what manner the same shall be borne and paid.
15. This Agreement shall be construed and take effect in accordance with, and the rights and obligations of the Parties shall be governed by, the laws of Victoria. Each of the Parties submits to the jurisdiction of the courts of the State of Victoria.
16.
  - (a) A notice or other communication in connection with this Agreement is to be in writing, signed by the Party giving it or its solicitor or authorised representative and may be:
    - (i) left in the presence of an adult person at the address of the addressee;
    - (ii) sent by prepaid security post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
    - (iii) sent by facsimile to the facsimile number of the addressee.

- (b) A notice or other communication takes effect from the time it is received unless a later time is specified in it.
- (c) A notice or other communication is taken to be received:
- (i) if left at the address of the addressee, at the time it is left in the presence of an adult person;
  - (ii) if it is posted, on the third day after posting (on actual receipt, if posted from a place outside Australia); or
  - (iii) if it is sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.
17. In any case where one party to this Agreement has a liability for Goods and Services Tax on any transaction or supply between the parties, the other party will be liable to pay to the first party, in addition to any other amount, an amount equivalent to the relevant Goods and Services Tax liability of the first party. Any amount payable under this provision will be payable at the same time as the first payment is due in respect of that transaction or supply.
18. In the event of any part of this Agreement being or becoming void or unenforceable, then that part shall be severed from this Agreement to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and shall be unaffected by any severance.
19. (a) The Financer may, by giving written notice to the Grower at any time, require the Grower to do any or all of the following things:
- (i) take all reasonable steps, provide information, produce documents and obtain consents;
  - (ii) execute any notice, consent, document or amendment to this Agreement; or
  - (iii) do any other thing,
- that the Financer considers necessary or desirable to:
- (iv) ensure that this Agreement or any security interest arising under it is enforceable, effective and perfected;
  - (v) register, protect, perfect, record, or better secure the position of the Financier under this Agreement;
  - (vi) obtain or preserve the priority positions contemplated by this Agreement; or
  - (vii) overcome any defect or adverse effect arising from the *Personal Property Securities Act (2009) Cth (the PPSA)*.
- (b) The parties agree that this Agreement and the transactions contemplated by it are confidential and may not be disclosed without with express written permission of both parties or as required by law. Neither the Financer nor

the Grower will disclose information of the kind mentioned in section 275(1) of the PPSA and neither the Financer or the Grower will authorise the disclosure of such information.

- (c) To the extent permitted, all provisions of the PPSA listed in sections 115(1) or 115(7) are excluded in full and will not apply to any security interest created under this Agreement.
- (d) The Financer waives its right to receive any notice required under section 157 of the PPSA or the provisions of the PPSA (referred to in section 144 of that Act).

20. If the Grower comprises more than one person, this Agreement binds each of such persons jointly and all of them severally. If any of the persons comprising the Grower is a trustee, this Agreement binds that person both in its capacity as a trustee and personally.



# Signing page

**Executed** as an Agreement.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2016

**Signed** for and on behalf of **Albany Financial Pty Ltd** ACN 060 326 409 by its duly authorised officer in the presence of:

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Name (print)

Signed by **Anthony Henry May**, Attorney under Power for «**Growers\_Name**» in the presence of:

\_\_\_\_\_  
By executing this Agreement the attorney states that the attorney has received no notice of revocation of the power of attorney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name (print)

# Schedule 1

**The Grower**«**Growers\_Name**»

of «Address», «Suburb», «State», «PCode»

**The Land**Establishment Area: «**Hec**» hectares**Land****The Principal Sum**«**Loan**»**Repayment of the Principal Sum and Interest:**By equal monthly instalments of **Repayment Amount** on the 15<sup>th</sup> day of each month during the period from 15 July 2016 to 15 June 2021 inclusive