

HARVEST LOAN MORTGAGE OF RIGHTS (AUGUST 2006)

**In favour of
Elders Rural Bank Limited
(ABN 74 083 938 416)**



Elders Rural Bank
Committed to Agribusiness

ABN 74 083 938 416
Australian Financial Services Licence (AFSL) 238042
Registered Office: 27 Currie Street, Adelaide, SA 5000

THIS MORTGAGE OF RIGHTS is made on the date specified in *Item 1* of the *Schedule*

BY: The person named in *Item 2* of the *Schedule* ("mortgagor")

IN FAVOUR OF: ELDERS RURAL BANK LIMITED (ABN 74 083 938 416)
of the address specified in *Item 3* of the *Schedule* ("Bank")

OPERATIVE PART:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this *document* words and expressions defined in the *terms* have the same meaning but as if all references to "borrower" were references to "mortgagor" and:

"**administrator**" has the same meaning as in the *Corporations Act*;

"**attorney**" means any attorney appointed under this *document*, and any person who by delegation directly or indirectly derives a right from any such attorney;

"**controller**" has the same meaning as in the *Corporations Act*;

"**document**" means this mortgage of rights as varied from time to time;

"**mortgagor**" means each person described in *Item 2* of the *Schedule* and if more than one person is so described, a reference to "mortgagor" is a reference to them jointly and each of them severally;

"**receiver**" means any receiver or receiver and manager appointed under this *document* or any *collateral security*;

"**schedule**" means the schedule as completed on the Power of Attorney document;

"**secured money**" means at any time, all money and damages:

- (a) which now or in the future are owing (whether actually or contingently), by the *mortgagor* to the *Bank*;
- (b) which having become owing (actually or contingently), cease to be owing under any law relating to insolvency or bankruptcy and remain unpaid by the *mortgagor* and unreleased by the *Bank*;
- (c) that now or in the future there is a prospect may become owing (whether actually or contingently) by the *mortgagor* to the *Bank*; for any reason and includes moneys and damages payable:
 - (i) by the *mortgagor* alone or jointly and severally with any person;
 - (ii) if there is more than one *mortgagor*, by all or any of them;
 - (iii) whether the *mortgagor* is liable as principal debtor or surety;
 - (iv) by the *mortgagor* in its own right or in any capacity;
 - (v) to the *Bank* in its own right or in any capacity; and
 - (vi) whether payable before or after the date of this *document*;

"**security interest**" means any security or preferential interest or arrangement of any kind in any asset or other right of or arrangement of any kind with any creditor to have its claim satisfied before other creditors with or from the proceeds of any asset, any deposit of money by way of security and any retention of title; and

"**terms**" means the *Bank's* Harvest Loan Facility Terms forming part of the *loan application*.

1.2 Interpretation

Clause 1.2 of the *terms* is incorporated in this document as if set out in full and as if the reference to "these *terms*" was a reference to "this *document*".

2. CONSIDERATION AND ASSIGNMENT

2.1 Consideration

The *mortgagor* acknowledges entering into, and incurring obligations under, this *document* for valuable consideration received from the *Bank*.

2.2 Assignment

The *mortgagor* assigns to the *Bank* by way of security all the *mortgaged property* to secure the due and punctual payment of the *secured money* and the due and punctual performance of each of the *mortgagor's* other obligations in this *document* and in each *agreement*.

2.3 Reconveyance

Upon all of the *secured money* being paid in full to the *Bank*, the *Bank* must, at the *mortgagor's* cost, reassign the *mortgaged property* to the *mortgagor* unless, in the reasonable opinion of the *Bank*, there is a prospect that any moneys paid to the *Bank* could be avoided or be required to be repaid under any law relating to insolvency or for any other reason.

2.4 Prospective liability

Where the *mortgagor* is a corporation and for the purposes of sections 280 to 282 inclusive of the *Corporations Act* only, the maximum prospective liability secured by this *document* does not exceed the amount specified in **Item 4** of the **Schedule** and this sub-clause does not otherwise limit the amount secured by this *document*.

2.5 After acquired property

Legal title to any *mortgaged property* (legal title to which is acquired by the *mortgagor* after the dated of this document) to the extent it has not already vested in the *Bank* will pass to the *Bank* upon the first to occur of:

- (a) the *mortgagor* delivering wheat to *AWBI* under the *NPDO*; and
- (b) the *mortgagor* delivering a *wheat ticket* to the *Bank*.

3. FURTHER ASSISTANCE

When requested by the *Bank*, the *mortgagor* must do or cause to be done anything requested by the *Bank* to provide more effective security over the *mortgaged property* to the *Bank*, to facilitate the realisation of the *mortgaged property*, to aid in the execution or exercise of any right, power, remedy or authority under this *document* and to perfect or preserve the priority or enforceability of this *document*.

4. RECEIVER

4.1 Appointment

At any time after an *event of default* has occurred, the *Bank* may appoint any person or any two or more persons severally, jointly or jointly and severally as receiver or receiver and manager of all or any of the *mortgaged property*. The *Bank* may, in its absolute discretion, determine the conditions and remuneration relating to that appointment. That remuneration together with any costs, charges and expenses of whatever nature incurred by the *receiver* is included in the *secured money*.

4.2 Bank's rights

Notwithstanding that a *receiver* may or may not be appointed, the *Bank* may at any time after an *event of default* has occurred and without giving any notice, exercise all or any of the rights, powers and remedies conferred on a *receiver* under this *document* or on *mortgagees* or *receivers* under any applicable law.

4.3 Receiver's powers

A *receiver* may do one or more of the following:

- (a) collect, sue for and receive all moneys payable under, and in connection with, a *wheat pool contract*;
- (b) sell or exercise all rights under, and in connection with, a *wheat pool contract*; and
- (c) exercise any right or remedy that an owner or a *receiver* of the *mortgaged property* may have under any applicable legislation.

4.4 Agent of mortgagor

The *receiver* will be the agent of the *mortgagor* and the *mortgagor* alone is responsible for the *receiver's* acts, defaults and remuneration until the *Bank* otherwise directs in writing.

4.5 Power to appoint

The power to appoint a *receiver* may be exercised notwithstanding that:

- (a) at the time this *document* becomes enforceable or at the time when an appointment is made, an *insolvency event* may have occurred; and
- (b) a *receiver* appointed in those circumstances may not, or may not in some respects, act as the *mortgagor's* agent.

4.6 No need to enquire

On exercise of any right, power or remedy contained in this *document* no person dealing with the *Bank*, the *receiver* or any *attorney* will be bound to enquire whether this *document* has become enforceable, whether an *event of default* has occurred or as to the due appointment of the *receiver* or any *attorney* or otherwise as to the propriety or regularity of any exercise of any such right, power or remedy. Even if there is an irregularity or impropriety, any exercise of a right, power or remedy will, as regards the protection of such person, be deemed to be authorised by the powers and authorities in this *document* and will be valid accordingly.

4.7 Liability

The *Bank* and the *receiver* will not be liable by reason of taking possession of all or any of the *mortgaged property* to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

4.8 Give up possession

The *Bank* may at any time give up possession of any of the *mortgaged property* and may at any time withdraw any receivership.

4.9 No obligation to perform

The *Bank* and the *receiver* are not personally obliged to perform or observe any term binding the *mortgagor* in any instrument forming part of the *mortgaged property*.

5. APPLICATION OF MONEY RECEIVED

5.1 Application

All money received by the *receiver* or the *Bank* or any other person on their behalf under or by virtue of this *document* must be applied in the following manner and order:

- (a) first, in payment of all costs, charges and expenses of the *Bank*, the *receiver* and any *attorney* incurred in or incidental to the exercise or performance of any right, power or remedy conferred by or otherwise in relation to this *document*;

- (b) second, in payment of such other outgoings as the *receiver* or the *Bank* or any *attorney* thinks fit to pay;
- (c) third, in payment of the *receiver's* remuneration;
- (d) fourth, in discharge of any *security interest* in the *mortgaged property* of which the *Bank* is aware having priority over this *document* in order of priority;
- (e) fifth, in payment to the *Bank* of the *secured money* and to the holder of any *security interest* in the *mortgaged property* which ranks *pari passu* with this *document* to the extent that the *security interest* secures the payment of those moneys *pari passu* with the *secured money*; and
- (f) sixth, in payment to any person who, in the reasonable opinion of the *Bank*, is the holder of a *security interest* in the *mortgaged property* ranking after this *document*,

and the surplus, if any, will belong to the *mortgagor* and will carry no interest. The *receiver* or the *Bank* or any *attorney* may pay the surplus to the credit of an account in the name of the *mortgagor* in the books of any authorised deposit-taking institution carrying on business in Australia and will then be under no further liability in respect of the surplus.

5.2 Credit only for actual receipt

In applying any money towards satisfaction of the *secured money* the *mortgagor* will be credited only with so much of that money available for that purpose as the *Bank* actually receives. The credit will date from the time of receipt of cleared and immediately available funds.

5.3 Contingent obligations

If, at the time of distribution of any money under this clause, any part of the *secured money* is contingently owing to the *Bank*, the *receiver* or the *Bank* or any person acting on their behalf may retain any part of that amount and place it on short term interest bearing deposit until the amount contingently owing becomes actually due and owing and then pay to the *Bank* the amount actually due and apply any surplus in accordance with this clause.

5.4 Foreign currency

In making an application under this clause, the *Bank*, any *receiver* or *attorney* may purchase any currency with another, whether spot or forward and direct or through an intermediate currency in such manner and at such time as it thinks fit.

5.5 Appropriation

The *Bank* may appropriate any payment it receives in any way it sees fit towards satisfaction of moneys owing by the *mortgagor*. Any law, to the extent permissible, and any direction from the *mortgagor*, as to appropriation does not apply.

6. EXERCISE OF RIGHTS

6.1 No hindrance

The *mortgagor* must not cause or permit the *Bank*, a *receiver* or an *attorney* to be prevented or hindered from exercising its rights under this *document*.

6.2 Legislation

- (a) The rights and powers conferred on the *Bank* and any *receiver* by any law are in addition to the rights and powers conferred by this *document* and are excluded or varied only insofar as they are inconsistent with the terms of this *document*.
- (b) The provisions implied in mortgages and charges by any statute shall for the purposes of this *document* be negated or varied only so far as they are inconsistent with the provisions of this *document* and are otherwise varied so as to become consistent with this *document*.
- (c) Any statutory restrictions (other than mandatory restrictions) upon any right of the *Bank*, *receiver* or *attorney* to lease or otherwise deal with the *mortgaged property* do not apply to the rights of those persons under this *document*.

6.3 Time for compliance

The *Bank* or a *receiver* need not give notice or a demand to the *mortgagor* or allow time to elapse before exercising a right, power or remedy under this *document* or conferred by law, unless notice or demand or a lapse of time is required by law which cannot be excluded. If the law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right, power or remedy under this *document* or conferred by law may be exercised, then:

- (a) where a particular period of time or lapse of notice is mandatory, that period of notice or that lapse of time must occur or be permitted by the *Bank* or a *receiver*; or
- (b) where a law provides that the relevant period of notice or lapse of time may be stipulated or fixed by this *document*, one day is stipulated and fixed as that period of notice or lapse of time and, without limitation, where applicable, one day is stipulated and fixed as the period of notice or lapse of time during which:
 - default must continue before a notice is given or requirement otherwise made for payment of the *secured money* or the observance of obligations under this *document*; and
 - a notice or requirement for payment of the *secured money* or the observance of obligations under this *document* must remain not complied with before the *Bank's* or a *receiver's* rights, powers or remedies may be exercised.

7. POWER OF ATTORNEY

7.1 Appointment

The *mortgagor* irrevocably appoints the *Bank* and each *authorised officer* severally its attorney with the right:

- (a) at any time to:
 - comply with the obligations of the *mortgagor* under this *document*;
 - do everything which in the *attorney's* reasonable opinion is necessary or expedient to enable the exercise of any right of the *Bank* or any *receiver* in relation to this *document*;
 - complete and date this *document* and any blank instrument executed by the *mortgagor* and deposited with the *Bank*;
 - appoint substitutes and otherwise delegate its rights (including this right of delegation); and
- (b) after an *event of default* has occurred to do everything that the *mortgagor* may lawfully authorise an agent to do in respect of this *document* and the *mortgaged property* including anything described in **clause 4.3**.

7.2 General

- (a) Any *attorney* may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- (b) The *mortgagor* must from time to time and at all times ratify any exercise of a right by an *attorney*.
- (c) The power of attorney is granted:
 - to secure compliance by the *mortgagor* with its obligations to the *Bank* under this *document* and any proprietary interests of the *Bank* under this *document*; and
 - for valuable consideration (receipt of which is acknowledged).

7.3 Indemnity

The *mortgagor* indemnifies and will keep indemnified any *attorney* against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the *attorney* under this power of attorney.

8. LIABILITY OF THE BANK AND INDEMNITIES

8.1 No liability for loss

The *Bank*, its *authorised officers* and their respective employees or agents are not responsible for any loss which may occur or for any outstanding moneys following the exercise or attempted exercise or non-exercise of any right in or incidental to this *document*. They are not responsible for more money than is actually received by them, or for the neglect, recklessness, or dishonesty of any employee or agent, unless positive and willful default can be proved to have been made by the *Bank*, or an *authorised officer* or a *receiver*.

8.2 Disclosure to mortgagor

All inspections, valuations, reports, opinions or certificates made or received by the *Bank* or a *receiver* (in this clause, "documents") are for the *Bank's* purposes. The documents are not required to be disclosed to the *mortgagor*, even if to do so would be of assistance to the *mortgagor*. If the contents or effect of the documents or any oral statement become known to the *mortgagor*, they are not to be relied upon by the *mortgagor* for any purpose. They do not constitute a representation or warranty by the *Bank* or a *receiver* as to the state or value of the *mortgaged property*, the financial position of any person, or any other matter. Neither the *Bank* nor a *receiver* is responsible for any false, negligent, defamatory or misleading statements in the documents or statements should they become known to or relied on by the *mortgagor*.

8.3 Indemnity to Bank

The *mortgagor* indemnifies the *Bank*, every *receiver* and every *authorised officer* and their respective agents and employees against all liabilities, claims, actions, suits, costs, losses and expenses (including claims by the *mortgagor*) incurred by or arising against the *Bank* or any such person arising out of:

- (a) any act or omission of the *Bank* or such person concerning this *document* or a *relevant document*;
- (b) the exercise, attempted exercise or non-exercise of any rights in or incidental to this *document* or a *relevant document*;
- (c) any tenancy or agreement affecting the *mortgaged property*; and
- (d) the entry by any person upon, or into occupation of, any of the *mortgaged property*.

8.4 Preservation of rights

The *mortgagor's* obligations under this *document* or a *relevant document* or other arrangement are unconditional and are not discharged, terminated, reduced, modified or otherwise affected by anything which might release the *mortgagor* from all or any part of those obligations including by any of the following:

- (a) any delay, failure, neglect or refusal by the *Bank* to exercise its rights or to recover any of the *secured money* under this *document* or any judgment or specialty;
- (b) the granting to the *mortgagor* or any co-surety of any time, waiver, credit, forbearance, indulgence or other concession (either for or without consideration or by operation of law);
- (c) any partial, or absolute release, discharge, abandonment, surrender, waiver, variation, transfer, exchange, relinquishment or renewal (either with or without consideration) of rights against the *mortgagor*, a co-surety or any other person;
- (d) the *Bank* becoming party to or bound by any compromise, assignment of property, scheme of arrangement, composition of debts, scheme of reconstruction or other arrangement relating to the *mortgagor*, a co-surety or any other person;
- (e) any variation of this *document* except to the extent that the variation is unequivocally expressed to amend or overrule this *document*;

- (f) any act, omission, acquiescence, default, mistake or delay on the part of the *Bank* or any other person in respect of the *mortgagor* or a co-surety;
- (g) any payment by the *mortgagor* of, or any obligation to pay, the *secured money* becoming void, voidable or otherwise unenforceable;
- (h) this *document* becoming void, voidable or otherwise unenforceable in whole or in part;
- (i) the death, mental incapacity, bankruptcy, assignment for the benefit of creditors, winding up, reconstruction, administration, receivership or other incapacity, insolvency or demise of the *mortgagor*;
- (j) where the *mortgagor* is or becomes a partnership or firm, any change that may be made, whether by death, winding up, dissolution, retirement or otherwise in the partnership or firm or any persons now or in the future constituting or trading under the name of the firm;
- (k) the *mortgagor* not being or ceasing to be authorised or empowered to enter into this *document* or any relevant transaction;
- (l) the transfer or assignment by the *Bank* of this *document*;
- (m) obtaining judgment against the *mortgagor*;
- (n) any negotiable or other instrument or document for the time being outstanding;
- (o) any variation in or alteration to the status, nature or composition (including takeover, merger, amalgamation and reconstruction) of the *Bank* or the *mortgagor* or the constitution, rules, trusts or other documents relating to the *Bank* or the *mortgagor*; or
- (p) any other thing which, but for this **clause 8.4**, might abrogate, prejudice or limit them or the effectiveness or priority of this *document*.

9. NOTICES

Any notice, demand, consent, or other communication under this *document* to the *mortgagor* must be in English and in writing signed by the *Bank* or any *authorised officer* and may be served on the *mortgagor* (in addition to any method authorised by law) by being delivered personally or by being sent by:

- post to the registered office or its address shown in this *document* or in any *agreement*;
- facsimile to the facsimile number shown on any document sent to the *Bank* or specified in a facsimile directory; or
- to such other address or facsimile number as may be last known to the person signing or sending such communication.

If sent by post it will be deemed to be given two days after it is posted and if sent by facsimile on completion of the transmission.

10. MISCELLANEOUS

10.1 Completion of blank documents

The *Bank*, any *authorised officer* or any *receiver* or *attorney* may date and complete this *document* and any other document issued in connection with this *document*, including, any *irrevocable direction*.

10.2 Continuing security

This *document* is a continuing security and is not considered as wholly or partially discharged by the payment at any time of any of the *secured money* or by any other matter or thing and applies until the *Bank* has given a final discharge of this *document* to the *mortgagor*.

10.3 Set-off and combination

The *Bank* may at any time set-off against, or combine with any money, any amount standing to the credit of any account of the *mortgagor* with the *Bank* in or towards satisfaction of any sum due but unpaid by the *mortgagor* to the *Bank*.

The *Bank* has no obligation to exercise its rights under this clause.

To the extent legally permissible, the *mortgagor* may not exercise against the *Bank* any right of set-off available to it.

10.4 No merger

Nothing in this *document* affects any other *security interest* held by the *Bank* or any right the *Bank* may have against the *mortgagor* or any other person nor does any other *security interest* held by the *Bank* prejudicially affect its rights under this *document*.

10.5 Governing law

This *document* is governed by the laws of the jurisdiction determined in accordance with the *agreement* and the parties submit to the non-exclusive jurisdiction of the courts of that place.

10.6 Limited Recourse

The *Bank* must, in exercising its rights under this *document*, comply with any limitation imposed on the exercise of those rights in the *terms*.