

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

S CI 2011

**IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) (ACN 063 263 650)**

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) (ACN 063 263 650) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2 AND IN ITS CAPACITY AS
MANAGER OF THE UNREGISTERED SCHEMES LISTED IN SCHEDULE 3
AND ORS ACCORDING TO SCHEDULE 1**
Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 13 December 2011
Filed on behalf of: the Plaintiffs

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This is the exhibit marked "CDC-24" now produced and shown to **CRAIG DAVID CROSBIE** at the time of swearing his affidavit on 13 December 2011.

MATTHEW GORDON JACKSON
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Level 21, 333 Collins Street
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An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Before me: _____



Exhibit "CDC-24"
**Constitution of the Willmott Forests Premium
Forestry Blend Project (ARSN 131 549 589)**

Constitution of the Willmott Forests Premium Forestry Blend Project

Responsible Entity: Willmott
Forests Limited
(ACN 063 263 650)

Date: June 2008

Constitution of the Willmott Forests Premium Forestry Blend Project

Date:

Operative provisions:

This deed poll is declared by Willmott Forests Limited to be the constitution of the Willmott Forests Premium Forestry Blend Project.

1 Name of Project

- 1.1 The Project is called the Willmott Forests Premium Forestry Blend Project or by such other name as the Manager determines from time to time¹.
- 1.2 If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Project to a name that does not imply an association with the former Manager or its business.

2 Assets held on trust

- 2.1 The Manager must hold the Assets on trust for Growers².
- 2.2 The Assets vest in the Manager, but must be clearly identified as property of the Project and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires³.

3 Application Price for Woodlots⁴

- 3.1 —A Woodlot must only be issued at an application price of \$5,000 (excluding GST, if applicable).

4 Application procedure

Application form

- 4.1 An applicant for Woodlots must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

¹ See Corporations Regulation 5C.1.02

² See section 601FC(2) of the Corporations Act

³ See section 601FC(1)(i)

⁴ Required to be included by Section 601GA(1)(a)

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Payment

4.2 Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application; or
- (b) be received by or made available to the Manager within such period before or after the Manager receives the application form as the Manager determines from time to time.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimburseable out of the Assets.

Manager may reject

4.3 The Manager may reject an application in whole or in part without giving any reason for the rejection.

Minimum amounts

4.4 The Manager may set a minimum application amount and a minimum holding for the Project and alter those amounts at any time.

Issue date

4.5 Woodlots are taken to be issued when the Manager accepts the application.

Uncleared funds

4.6 Woodlots issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 30 days of receipt of the application.

Procedure following issue

4.7 Within 30 days of the issue of Woodlots pursuant to clause 4.5 the Manager shall notify in writing the applicant of such acceptance.

4.8 As soon as practicable, following the issue of Woodlots, the Manager will prepare and, unless the Grower has appointed the Manager as his, her or its attorney, forward to the applicant at least 2 copies of each of:

- (a) the Land Tenure Agreement; and
- (b) the Land Sourcing and Forestry Management Agreement;

and the applicant will within 14 days of receipt (or such longer period as the Manager may in writing approve) lodge or cause to be lodged with the Manager each such copy signed by or on behalf of the applicant.

Forestry Right

4.9 The Manager must use its best endeavours to create a Forestry Right (including, as required, registering that Forestry Right, or a transfer of it, under applicable legislation) in respect of the Land on which the Woodlots are located for the benefit of all Growers who have acquired Woodlots on that Land, as soon as practicable after the

issue of those Woodlots. The Forestry Right (which includes a Carbon Sequestration Right) may be granted to a third party as trustee, custodian or agent for the Growers.

Grant of Land Tenure Agreement

- 4.10 If the Manager fails to grant to the Grower the Land Tenure Agreement (and create a Forestry Right as contemplated by clause 4.9) in respect of the Grower's Woodlots within 15 months (or such other period required by the Manager's AFSL or by law) of the end of the Income Year in which the first payment is made by the Grower under the Project, the Manager must, within 14 days after receiving a written request from the Grower, issue to the Grower a full refund of the amount of the application monies against which the Woodlots were issued. In such circumstances, the relevant Woodlots will be taken to be void and, subject to the Corporations Act, on payment of the refund, the Manager will have no further liability to the Grower in respect of the issue of the Woodlots or otherwise.
- 4.11 Within 2 months of receipt of the documents signed by the applicant pursuant to clause 4.8 or following execution of the Project Documents if the Grower has appointed the Manager as his, her or its attorney, the Manager will Register the name of the person described in the Land Sourcing and Forestry Management Agreement as the Grower and the date of issuing the Woodlots.
- 4.12 If requested by the Grower in writing, the Manager will provide to the Grower one copy of each of the Project Documents.

Third party interests

- 4.13 The Manager need not recognise any claim or interest in a Woodlot by any person other than the holder, even if the Manager has notice of it.
- 4.14 Except as otherwise provided in this constitution, the Manager shall recognise the Grower or the Grower's executors or administrators as the absolute owner of the Woodlots as set out in the Register and the Manager shall not except:
- (a) as otherwise provided in this constitution;
 - (b) as ordered by a Court of competent jurisdiction; or
 - (c) as required by statute,
- be bound to take notice of any trust or equity (whether express implied or constructive) affecting the ownership of any Woodlot or any incidental rights and the receipt by such Grower or the Grower's executors or administrators for any moneys payable in respect of the Woodlots is to be a good discharge to the Manager.

Joint tenancy

- 4.15 Persons Registered jointly as the holder of a Woodlot hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

No certificates

- 4.16 No certificates will be issued in respect of Woodlots.

Pools

- 4.17 A Pool is established in respect of each Financial Year in which a Woodlot is issued. Each Woodlot issued during a Financial Year forms part of the Pool in respect of that Financial Year.

Cooling off

- 4.18 Nothing in this clause 4 prevents the Manager from complying with any requirement to return application money to Growers in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the Manager or the Project.

Defective Applications

- 4.19 Where, within 10 Business Days (or such longer period as the Manager determines) of the issue of Woodlots, the Manager determines that:

- (a) the applicant was not entitled to hold the Woodlots issued;
- (b) if the applicant were to continue to hold the Woodlots the Manager may or would breach a legislative obligation imposed on the Manager;
- (c) the application was incorrectly executed or executed without power or authority; or
- (d) the application form was defective and was accepted in error,

then the Manager may in its sole discretion cancel those Woodlots, make an appropriate entry in the Register of the Project, repay the application money to the applicant and, if applicable, give notice to the applicant that the Project Documents have been terminated.

5 Payments

- 5.1 Money payable by the Manager to a Grower may be paid in any manner the Manager decides.

- 5.2 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

Joint Growers

- 5.3 A payment to any one of joint Growers will discharge the Manager in respect of the payment.

Sums owed to Manager

- 5.4 The Manager may deduct from any amount to be paid to a Grower any money due to it by the Grower.

Tax

- 5.5 The Manager may deduct from any amount to be paid to a Grower, or received from a Grower, any amount of Tax (or an estimate of it) which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

6 Powers of the Manager

Powers

- 6.1 Subject to this constitution and the Project Documents, the Manager has all the powers in respect of the Project as though it were the absolute owner of the Assets and the Trees and acting in its personal capacity.

Power of delegation⁵

- 6.2 The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.
- 6.3 The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.
- 6.4 The agent or delegate may be an associate of the Manager.⁶

Exercise of discretion

- 6.5 The Manager may in its absolute discretion decide how and when to exercise its powers.

Legal Proceedings

- 6.6 Subject to any contrary direction by a majority of the Growers, the Manager may commence, institute, carry on and prosecute all actions, suits and proceedings at law:
- (a) to procure compliance with the provisions of this constitution;
 - (b) to obtain and recover any moneys payable to it;
 - (c) to enforce the payment of any money payable to it; or
 - (d) for damages against any person arising out of any loss suffered by any Grower,

and to pursue the same to judgement, decree, order and execution or to discontinue, become non-suited in or abandon or otherwise to act as the Manager may determine and the Manager shall be indemnified out of that Grower's interest in the Project in respect of all costs, charges and expenses incurred by it in relation to any such act, suit or proceeding.

Land Held Beneficially

- 6.7 All Land acquired by the Manager for the purposes of the Project is held beneficially by the Manager in the course of, and in accordance with, its duties as responsible entity of the Project.

Duties in relation to Land Tenure Agreements

- 6.8 The Manager must ensure that:

⁵ See also Section 601FB.

⁶ Subject to Part 5C.7

- (a) a Land Tenure Agreement is not terminated other than in accordance with its terms or with the written consent of the relevant Grower; and
- (b) a Grower's rights under a Land Tenure Agreement are not adversely affected other than as contemplated by the terms of the Land Tenure Agreement, as required by law or with the written consent of the relevant Grower.

7 Rights and liabilities of Manager

Holding Woodlots

- 7.1 The Manager and its associates may hold Woodlots in the Project in any capacity⁷.

Other capacities

- 7.2 Subject to the Corporations Act⁸, nothing in this constitution restricts the Manager (or its associates) from:
- (a) dealing with itself (as manager of the Project or in another capacity), an associate or with any Grower;
 - (b) being interested in any contract or transaction with itself (as manager of the Project or in another capacity), an associate or with any Grower or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
 - (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

Manager may rely

- 7.3 The Manager may take and may act upon:
- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Project;
 - (b) advice, opinions, statements or information from any bankers, accountants, auditors, Consultant Foresters, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
 - (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Grower of a person to act as their agent for any purpose connected with the Project; and
 - (d) any other document provided to the Manager in connection with the Project upon which it is reasonable for the Manager to rely.

⁷ See Section 601FG, Section 253E and Part 5C.7

⁸ Refer Part 5C.7

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- 7.4 The Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document, except to the extent that any loss is attributable to the Manager's own neglect or default.
- 7.5 The Manager undertakes to supply to Growers at its own expense any information in its possession or over which it has control which may be relevant to a determination of whether a particular loss is attributable to the Manager's own neglect or default.

8 Limitation of liability and indemnity in favour of Manager

Limitation on Manager's liability

- 8.1 Subject to the Corporations Act, if the Manager acts in good faith and without negligence, it is not liable in contract, tort or otherwise to Growers for any loss suffered in any way relating to the Project.
- 8.2 Subject to the Corporations Act, the liability of the Manager to any person other than a Grower in respect of the Project (including in respect of any contracts entered into as manager of the Project or in relation to any Assets) is limited to the Manager's ability to be indemnified from the Assets.
- 8.3 Subject to the Corporations Act, the Manager will not incur any liability to anyone in respect of performing or doing or any failure to perform or do any act or thing which by reason of any provision of:
- (a) any present or future law of the Commonwealth of Australia or any State or Territory of Australia;
 - (b) any ordinance, rule, regulation, or by-law made pursuant to such a law; or
 - (c) any decree, order or judgement of any competent Court

the Manager is hindered, prevented or forbidden from doing or performing.

Indemnity in favour of Manager

- 8.4 The Manager is entitled to be indemnified out of the Assets for any liability or expense incurred by it in properly performing or exercising any of its powers or duties in relation to the Project⁹.
- 8.5 To the extent permitted by the Corporations Act¹⁰, the indemnity under clause 8.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.
- 8.6 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as manager of the Project.

⁹ See Section 601GA(2)

¹⁰ See Sections 601FB(2) and 601GA(2)

9 Liability of Growers

Liability limited

- 9.1 Subject to this clause 9, the liability of a Grower is limited to the amount if any which remains unpaid in relation to the Grower's subscription for their Woodlots.
- 9.2 A Grower need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Project unless it is obliged to do so under a separate agreement.
- 9.3 The Manager is entitled to be indemnified by a Grower to the extent that the Manager incurs any liability for Tax as a result of the Grower's action or inaction.
- 9.4 Joint Growers are jointly and severally liable in respect of all payments including payments of Tax to which clause 9.3 applies.
- 9.5 The Manager may deduct from any money payable to a Grower in connection with the Project any money owing by the Grower to the Manager under the Constitution or under the Project Documents.

Recourse

- 9.6 In the absence of separate agreement with a Grower, the recourse of the Manager and any creditor is limited to the Assets.

Restrictions on Growers

- 9.7 A Grower must not interfere with any rights or powers of the Manager under this constitution.

10 Remuneration and expenses of the Manager

Fees

- 10.1 Subject to the proper performance of its duties, the Manager is entitled, in respect of each Pool, to:
- (a) a rental fee equal to 5% of the aggregate of:
 - (i) the Pine Amount; and
 - (ii) the Silky Oak Amount; and
 - (iii) the She-oak Amount;
 - (b) a maintenance fee of 4% of the aggregate of:
 - (i) the Pine Amount; and
 - (ii) the Silky Oak Amount; and
 - (iii) the She-oak Amount;
 - (c) a marketing fee equal to 1% of the aggregate of:
 - (i) the Pine Amount; and

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- (ii) the Silky Oak Amount ; and
 - (iii) the She-oak Amount;
 - (d) 50% of the amount equal to the proceeds from the Control of Carbon Sequestration Rights less any expenses for which the Manager is entitled to be indemnified under clause 8.4 (excluding the Manager's own administration costs, such as rent for the Manager's premises, expenses incurred for computer equipment, salaries and similar expenses); and
 - (e) any other amounts agreed in writing with Growers.
- 10.2 Each Grower in respect of a Pool must pay a pro rata proportion of the fees described in clause 10.1 calculated by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by the Grower.

Waiver of fees

- 10.3 The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.
- 10.4 The Manager is not required to effect any transaction or deal with any transfer or other instrument or with any part of the Assets or investments of the Growers for any Grower unless the Grower first pays in cash or otherwise provides to the Manager's satisfaction for all duties, taxes, governmental charges, brokerage, transfer fees, registration fees and other charges of any nature ("duties and charges") which may have become or may be payable in relation to the transaction or dealing.
- 10.5 The Manager may if it so thinks fit pay and discharge all of any of the duties and charges referred to in clause 10.4 and to retain the amount out of any moneys or property to which the Grower or representative may be or become entitled under this constitution.

Entitlement to fees if replaced as responsible entity

- 10.6 If the Manager is replaced as the responsible entity of the Project, other than:
- (a) as a result of the Manager's fraud, negligence or wilful default; or
 - (b) in accordance with sections 601FN and 601FP of the Corporations Act,
- the outgoing Manager is entitled to an amount equal to the maintenance fee, rental fee and marketing fee in respect of each Pool to which it would otherwise have been entitled if the outgoing Manager had not been replaced and the Trees had been harvested (if applicable) and sold, less any amount previously paid to an outgoing Manager in accordance with this clause 10.6.
- 10.7 For the purposes of clause 10.6:
- (a) all standing and harvested but not sold timber is deemed to have been sold on the date on which the outgoing Manager is replaced as responsible entity of the Project; and

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- (b) the incoming Manager must appoint an Independent Valuer as soon as reasonably practicable to either:
 - (i) determine the market value, using an appropriate valuation methodology, on the deemed sale date of the Trees; or
 - (ii) verify the market value on the deemed sale date of the Trees determined by the incoming Manager; and
 - (c) the incoming Manager must pay the amount to which the outgoing Manager is entitled under this clause 10.6 within 3 months of the Independent Valuer, appointed under clause 10.7(b), determining or verifying the value of the Trees (whether standing or harvested but not sold) on the deemed sale date.
- 10.8 If an amount is paid to an ongoing Manager in accordance with clause 10.6, the maintenance fee, rental fee and marketing fee to which the current Manager is entitled under clause 10.1 is reduced by an amount equal to all amounts paid in accordance with clause 10.6.

11 Retirement of Manager

Voluntary retirement

- 11.1 The Manager may retire as the responsible entity of the Project as permitted by law¹¹.

Compulsory retirement

- 11.2 The Manager must retire as the responsible entity of the Project when required by law¹².

New responsible entity

- 11.3 Any proposed replacement manager must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

Release

- 11.4 When the Manager retires or is replaced, the Manager is released from all obligations in relation to the Project arising after the time it retires or is removed.¹³

12 Stocking Guarantee

- 12.1 The Manager may, in its absolute discretion, maintain or cause to be maintained, replacement and re-establishment insurance in relation to a Pool's Radiata Pine, Silky Oak and She-oak trees in accordance with clause 13.1.
- 12.2 If during the Stocking Guarantee Period for a Pool more than 15% of a Grower's Trees which are referable to the Pool are Materially Damaged the Manager will, at its own expense, unless insurance has been maintained in relation to the Pool to which the Grower's Trees are referable in accordance with 13.1, remove the damaged or

¹¹ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

¹² See Section 601FM and 601FA.

¹³ See section 601FR for the Scheme Operator's obligation to transfer records, etc. Section 601FS restricts this release.

destroyed Trees, prepare the ground and acquire and plant new cuttings or seedlings of a quality comparable to the original cuttings or seedlings (as applicable) planted in accordance with the relevant Land Sourcing and Forestry Management Agreement.

- 12.3 If required to plant new seedlings in accordance with clause 12.2, the Manager must, in respect of an area of land, plant a minimum of 85% of the number of cuttings or seedlings (as applicable) initially planted on that area of land.

13 Insurances

- 13.1 The Manager covenants that it will, in respect of each Pool and at its expense, maintain or cause to be maintained for a period of 5 Years commencing at the end of the second Year in respect of that Pool, an insurance policy to cover the cost of planting new trees on the Land to replace any Radiata Pine, Silky Oak and She-oak trees as may be damaged or destroyed by fire. The Manager may, in its discretion and at its expense, obtain an insurance policy to cover the costs of planting new trees on the Land to replace any Radiata Pine, Silky Oak and She-oak trees as may be damaged or damage by an event other than fire.
- 13.2 The proceeds of any claim in respect of the damage or destruction of all or any of a Grower's Trees ("the proceeds of any claim") pursuant to the policy referred to in clause 13.1 will be held by the Manager in a bank account established and kept solely for that purpose, pending application of the proceeds of the claim in accordance with clause 13.3.
- 13.3 Where the Manager maintains or causes to be maintained, insurance in relation to a Grower's Trees in accordance with Clause 13.1, the Manager will be entitled to be paid or reimbursed for all costs, charges and expenses which may be incurred in or about the removal of the damaged or destroyed Trees, preparing the ground and acquiring and planting new seedlings.
- 13.4 Upon completion of the works set out in clause 13.3, the residue (if any) will be paid to the Manager.
- 13.5 In relation to all Growers, the Manager must in good faith:
- (a) negotiate a variation of any subsisting Land Sourcing and Forestry Management Agreement relating to Trees that are damaged or destroyed to take account of any additional works and services which may be required as a result of the damage to, or destruction of, the Grower's Trees; and
 - (b) negotiate an extension of the relevant Land Tenure Agreement (and any applicable Forestry Right) to take account of the damage to, or destruction of the Grower's Trees.
- 13.6 For each Pool, the Manager must use reasonable endeavours to arrange, each Year after the 5 Year period referred to in clause 13.1 and until completion of the sale of the Radiata Pine trees and Silky Oak trees in respect of that Pool for the issue to the Manager of an insurance policy in respect of fire which covers the Radiata Pine trees and the Silky Oak trees in respect of each Woodlot referable to that Pool for an

amount of at least the application price of each of such Woodlots. Subject to the Corporations Act, the Manager may recover a pro rata proportion of:

- (a) the cost of such insurance; and
- (b) any other cost in connection with such insurance,

from each Grower whose Woodlots are referable to that Pool calculated by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by each Grower.

14 Harvesting and sale of trees

Responsibility for harvesting

14.1 In respect of all Woodlots in each Pool:

- (a) the harvesting and sale of the Pool's Silky Oak trees is to be carried out, or arranged to be carried out, by the Manager on behalf of Growers; and
- (b) the harvesting and sale of the Pool's She-oak trees is to be carried out, or arranged to be carried out, by the Manager on behalf of Growers; and
- (c) prior to the sale (if applicable) of a Pool's Radiata Pine trees in accordance with clause 16, the harvesting and sale of the Pool's Radiata Pine trees is to be carried out, or arranged to be carried out, by the Manager on behalf of Growers.

For the purposes of this clause 14.1, a reference to harvesting a tree includes harvesting any part, or the produce, of a tree and any part, or produce of, the tree which has become separated from the tree.

14.2 In respect of each Pool, if the Responsible Entity enters into an agreement to sell the standing Radiata Pine trees referable to that Pool in accordance with clause 14.1(c), each Grower whose Woodlots are referable to that Pool shall do all things reasonably necessary to transfer the Grower's interest in the land on which the relevant Radiata Pine trees are grown to the acquiror of such standing Radiata Pine trees and, if necessary, the Grower's interest in, or in any right or entitlement which forms part of, the Forestry Right in respect of such land.

14.3 To the extent permitted by law and if necessary, WFIM agrees to do all things reasonably necessary to:

- (a) permit the harvesting and sale of the She-oak trees by the Manager in respect of a Grower if the Manager has re-entered Land under the terms of that Grower's Land Tenure Agreement;
- (b) to assign the Forestry Right in respect of the land referred to in clause 14.2 to the acquiror of the standing Radiata Pine trees;

-
- (c) permit the harvesting and sale of the Radiata Pine trees by the Manager in respect of a Grower if the Manager has re-entered Land under the terms of that Grower's Land Tenure Agreement;
 - (d) enable the harvesting and sale of the Silky Oak trees by the Manager in accordance with clause 14.1(a);
 - (e) enable the harvesting and sale of the She-oak trees by the Manager in accordance with clause 14.1(b);
 - (f) enable the harvesting and sale of the Radiata Pine trees by the Manager in accordance with clause 14.1(c); and
 - (g) permit the harvesting and sale of the Silky Oak trees by the Manager in respect of a Grower if the Manager has re-entered Land under the terms of that Grower's Land Tenure Agreement.

Distributions of harvesting proceeds from the sale of She-oak trees

14.4 The She-oak Distribution Amount in respect of a Pool will be dealt with as follows:

- (a) the fees set out in clauses 10.1(a), 10.1(b), 10.1(c) and clause 10.1(e) in respect of all Woodlots referable to the relevant Pool which are outstanding will be deducted from the She-oak Amount in respect of the relevant Pool; and
- (b) the balance of the She-oak Amount will be distributed to the Growers on a pro rata basis by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by each Grower.

Distribution of harvesting proceeds from the sale of Radiata Pine trees

14.5 The Pinus Radiata Distribution Amount in respect of a Pool will be dealt with as follows:

- (a) the fees set out in clauses 10.1(a), 10.1(b), 10.1(c) and clause 10.1(e) in respect of all Woodlots in the relevant Pool which are outstanding will be deducted from the Pinus Radiata Distribution Amount in respect of the relevant Pool; and
- (b) the balance of the Pinus Radiata Distribution Amount will be distributed to the Growers on a pro rata basis by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by each Grower.

Distribution of harvesting proceeds from the sale of Silky Oak trees

14.6 The Silky Oak Distribution Amount in respect of a Pool will be dealt with as follows:

- (a) the fees set out in clauses 10.1(a), 10.1(b), 10.1(c) and clause 10.1(e) in respect of all Woodlots referable to the relevant Pool which are outstanding will be deducted from the Silky Oak Amount in respect of the relevant Pool; and

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- (b) the balance of the Silky Oak Amount will be distributed to the Growers on a pro rata basis by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by each Grower.

Payment of the proceeds

- 14.7 Unless the Manager reasonably considers that it is impracticable to do so, the Manager must distribute the proceeds from the harvesting and sale of a Pool's Trees within a period of 6 months commencing on the date on which the proceeds are received by the Manager. If the Manager reasonably considers that it is impractical to distribute the proceeds within 6 months, it must do so as soon as reasonably practicable thereafter. Any interest received in respect of such proceeds will be distributed to the relevant Growers on a pro rata basis by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by each Grower.

Re-entry under Land Tenure Agreement

- 14.8 Despite any other provision of this constitution, if the Manager has re-entered Land under the terms of a Grower's Land Tenure Agreement:
- (a) the clause of the relevant Land Tenure Agreement in relation to re-entry applies;
 - (b) the proceeds from the harvesting (if applicable) and sale of standing timber in respect of the relevant Land do not form part of the Pinus Radiata Distribution Amount, She-oak Distribution Amount or the Silky Oak Distribution Amount, (as the case may be);
 - (c) the Grower has no entitlement to distributions under clauses 14.4 to 14.6 (inclusive) of this constitution; and
 - (d) the Grower's Woodlots are disregarded in calculating entitlements to distributions under clauses 14.4 to 14.6 (inclusive).

15 Carbon sequestration rights

- 15.1 The net proceeds from the Control by the Manager of Carbon Sequestration Rights held by WFIM that relate to Woodlots referable to a Pool will be dealt with as follows:
- (a) the fees set out in clause 10.1(d) in respect of all Woodlots referable to the relevant Pool will be deducted from the net proceeds in respect of the relevant Pool; and
 - (b) the balance of proceeds will be distributed to the Growers on a pro rata basis by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by each Grower.
- 15.2 For the purposes of clause 15.1, the "net proceeds" in respect of Woodlots referable to a Pool is the proceeds from the Control by the Manager of Carbon Sequestration Rights held by WFIM that relate to Woodlots referable to the Pool, less:
- (a) any expenses for which the Manager is entitled to be indemnified under clause 8.4 (excluding the Manager's own administration costs, such as rent for
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- the Manager's premises, expenses incurred for computer equipment, salaries and similar expenses); and
- (b) any liability (whether actual, anticipated, contingent or otherwise) which the Manager, WFIM or a Grower will or may incur in relation to the Carbon Sequestration Rights.
- 15.3 Following satisfaction of the liabilities referred to in clause 15.2(b), any residue is to be distributed to the relevant Growers on a pro rata basis by reference to the proportion of the total number of Woodlots referable to the relevant Pool which is held by each Grower.
- 15.4 To the extent permitted by law and if necessary, WFIM agrees to do all things reasonably necessary to permit the Manager to Control the Carbon Sequestration Rights that relate to Woodlots.
- 15.5 If the Manager has re-entered Land under the terms of a Grower's Land Tenure Agreement:
- (a) the Grower has no entitlement to any proceeds received after the date of re-entry in respect of Carbon Sequestration Rights that relate to the relevant land;
- (b) despite any other provision of the Constitution any proceeds received after the date of re-entry in respect of Carbon Sequestration Rights that relate to the relevant land do not form part of the "net proceeds" for the purposes of clause 15; and
- (c) the Grower's Woodlots are disregarded in calculating entitlements to the net proceeds under clause 15.1.

16 Sale guarantee

- 16.1 The Manager must use reasonable endeavours, in respect of Radiata Pine trees referable to a Pool ("**Relevant Pool**"), to, between the commencement and end of Year 15 in respect of such trees or:
- (a) during such alternative period directed by a Resolution of a majority of 75% of Growers whose Woodlots are referable to the Relevant Pool; or
- (b) during such longer period as is reasonably required if the Manager having taking reasonable steps is unable to procure that an Independent Valuer value, or verify the value of, the standing Radiata Pine trees referable to the Relevant Pool,
- enter into a binding agreement to sell the Radiata Pine trees in respect of the Relevant Pool to a third party or to the Manager, in its personal capacity or the Manager's nominee on behalf of the Growers.
- 16.2 The consideration for the sale of the Relevant Pool's Radiata Pine trees must be either:
- (a) equal to or greater than the value of Guarantee Amount; or

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- (b) less than the Guarantee Amount provided that the Manager, in its personal capacity, makes a contribution to the Project in respect of that Pool (for the benefit of Growers whose Woodlots are referable to that Pool) equal to the Guarantee Amount less the consideration.
- 16.3 The Guarantee Amount in respect of the Relevant Pool's Radiata Pine trees is an amount equal to 90% or such other amount as may be specified in a product disclosure document or other disclosure document, of:
- (a) the market value of such Trees either determined using an appropriate valuation methodology by an Independent Valuer or by the Manager and verified by an Independent Valuer; or
- (b) if the Manager engages a second Independent Valuer pursuant to clause 16.5, the average of the market values determined by the Independent Valuers.
- 16.4 For the purposes of this clause 16:
- (a) the Manager must engage the services of one or more Independent Valuers to determine the value of the Relevant Pool's Radiata Pine trees or verify the value of such trees determined by the Manager;
- (b) the date of the valuation or verification must not be more than 6 months prior to the date of completion of the sale of the Relevant Pool's Radiata Pine trees;
- (c) the Independent Valuer is permitted to take in account such factors as the Independent Valuer considers appropriate in determining the value of the Relevant Pool's Radiata Pine trees; and
- (d) the Manager must make available to the Independent Valuer all information in relation to the Relevant Pool's Radiata Pine trees as is reasonably required by the Independent Valuer for the purposes of determining the value of the Relevant Pool's Radiata Pine trees.
- 16.5 If the Manager, acting reasonably, considers that the market value determined by an Independent Valuer is not a reasonable reflection of the market value of the Relevant Pool's Radiata Pine trees determined using an appropriate valuation methodology, the Manager may engage an alternative Independent Valuer to determine the market value of the Relevant Pool's Radiata Pine trees.

17 Transfer and transmission of Woodlots

Transfer of Woodlots

- 17.1 All or part of a Grower's interest in the Project may be transferred provided such transfer is of an entire Woodlot (including the relevant Land Tenure Agreement and Land Sourcing and Forestry Management Agreement, if still subsisting).
- 17.2 All transfers of Woodlots shall be effected by transfer in writing ("Instrument of Transfer") in a form which the Manager approves and every Instrument of Transfer shall be delivered to the Manager, together with (if required by the Manager):

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- (a) if previously provided to the Grower, a copy of the Land Sourcing and Forestry Management Agreement relating to the Woodlot to be transferred (if applicable);
 - (b) if previously provided to the Grower, a copy of the Land Tenure Agreement in respect of the Woodlot to be transferred;
 - (c) a duly executed and stamped assignment or novation (as required) of the Land Sourcing and Forestry Management Agreement in respect of the Woodlots to be transferred, in a form acceptable to the Manager;
 - (d) a duly executed and stamped assignment of the Land Tenure Agreement in respect of the Woodlots to be transferred, in a form acceptable to the Manager;
 - (e) a duly executed and stamped power of attorney, in a form acceptable to the Manager;
 - (f) if required, a duly executed and stamped transfer or assignment of the Grower's interest in any Forestry Right relating to the relevant Woodlot; and
 - (g) payment in full of any taxes, duties, lodging fees and any other statutory charges or fees payable in order to fully affect the transfer of the Grower's interest in the Woodlot to the transferee.
- 17.3 The Manager may refuse to Register any transfer of a Woodlot while there is any money due but unpaid under the terms of any relevant Project Document.
- 17.4 Subject to clause 17.3, the Manager shall within 21 days of receipt by the Manager of the documents and moneys referred to in clause 17.2:
- (a) advise the Grower and the proposed transferee that the Manager has approved of the proposed transferee; and
 - (b) Register the name of the transferee in respect of that Woodlot.

Project Documents

- 17.5 Within 1 month after entry of the name of the transferee in the Register the Manager, if requested by the transferee, shall deliver to the transferee:
- (a) if requested by the transferee, the Grower's copy of the relevant Land Sourcing and Forestry Management Agreement (if applicable);
 - (b) the transferee's copy of the relevant Instrument of Transfer executed by the transferee;
 - (c) the Grower's copy of the relevant Land Tenure Agreement; and
 - (d) the transferee's copy of the assignment of the Land Sourcing and Forestry Management Agreement referred to in clause 17.2(c) (if applicable);
 - (e) the transferee's copy of the assignment of Land Tenure Agreement referred to in clause 17.2(d); and

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- (f) the transferee's copy of the transfer or assignment of the interest in a Forestry Right referred to in clause 17.2(f) (if applicable).
- 17.6 Within 1 month after entry of the name of the transferee in the Register the Manager shall, if requested by the transferor, deliver to the transferor:
- (a) the transferor's copy of the relevant Instrument of Transfer;
 - (b) the transferor's copy of the assignment of the Land Sourcing and Forestry Management Agreement (if applicable);
 - (c) the transferor's copy of the assignment of Land Tenure Agreement; and
 - (d) the transferor's copy of the transfer or assignment of the interest in a Forestry Right (if applicable).
- 17.7 The Manager shall on behalf of and as duly appointed agent and attorney of and at the cost of the transferee lodge with any governmental or other statutory authority all such documents as are necessary to fully affect the transfer of the Woodlot to the transferee.
- 17.8 The transferor of a Woodlot shall be deemed to remain the owner until the name of the transferee is Registered in respect of that Woodlot.

Death, legal disability of a Grower

- 17.9 In case of the death of a Grower the survivor or survivors of the deceased Grower where that person was a joint holder or the executors or administrators of the deceased Grower where that person was a sole holder shall be the only persons recognised by the Manager as having any title to the interest of the Grower in the Project.
- 17.10 Any person becoming entitled to a Woodlot in consequence of the death, liquidation or bankruptcy of a Grower may upon such evidence being produced as may from time to time be required by the Manager and subject to this constitution elect either to be Registered as the Grower or to have some person nominated by that person Registered as the transferee.
- 17.11 If the person so becoming entitled elects to be Registered that person must deliver or send to the Manager a notice in the form prescribed by the Manager confirming the election.
- 17.12 If the person so becoming entitled elects to have a nominee Registered, the person and the nominee shall confirm the election by delivering or sending to the Manager a notice in the form prescribed by the Manager stating that they so elect.
- 17.13 All the provisions of this constitution relating to the Registration of transfers of Woodlots are applicable to any notice under clause 17.9 or 17.10 as if the death or bankruptcy of the Grower had not occurred and the notice was an Instrument of Transfer executed by such Grower.
- 17.14 A person becoming entitled to any Woodlot in consequence of the death, bankruptcy or liquidation of a Grower shall be entitled to receive and may give a discharge for all moneys payable in respect of the Grower's interest in the Project but shall not be entitled to receive notices of or attend or vote at any meetings of Growers until being Registered.

- 17.15 Subject to the provisions of any applicable stamp duty legislation and clauses 4.13 and 4.14, any persons becoming entitled to any Woodlot in consequence of the death, bankruptcy or liquidation of any Grower or any person becoming entitled in equity to any Woodlot in consequence of any change of trusteeship in respect of any Woodlot, upon producing evidence of entitlement as required under this clause as the Manager may think fit may:
- (a) be Registered as a Grower in respect of such Woodlot; or
 - (b) may subject to the provisions of this constitution regarding transfers, transfer such Woodlot.

18 Meetings of Growers

Corporations Act

- 18.1 The Manager may at any time convene a meeting of Growers, and must do so if required by the Corporations Act.¹⁴

Manager may determine

- 18.2 Subject to this clause 18 and the Corporations Act¹⁵, the Manager may determine the time and place at which a meeting of Growers will be convened and the manner in which the meeting will be conducted.

Quorum

- 18.3 The quorum for a meeting of Growers is at least 5 Growers present in person or by proxy together, unless the Project has less than 5 Growers who may vote on a Resolution, in which case the total number of Growers constitutes a quorum.

No quorum

- 18.4 If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Growers - dissolved; or
 - (b) otherwise - adjourned to such place and time as the Manager decides.

At any adjourned meeting, those Growers present in person or by proxy constitute a quorum.

Chairperson

- 18.5 Subject to the Corporations Act¹⁶ the Manager may appoint a person to chair a meeting of Growers.
- 18.6 The decision of the chairperson on any matter relating to the conduct of the meeting is final.

¹⁴ Refer Part 2G.4

¹⁵ Refer Part 2G.4

¹⁶ Refer Part 2G.4 and Section 601FC(1)

Adjournment

- 18.7 The chairperson has power to adjourn a meeting for any reason to such place and time as the chairperson thinks fit.

Resolutions binding

- 18.8 A Resolution binds all Growers, whether or not they were present at the meeting.
- 18.9 No objection may be made to any vote cast unless the objection is made at the meeting.

19 Period of the project

Commencement

- 19.1 The Project commences when the first Woodlots are issued.

Termination

- 19.2 The Project terminates on the earliest of:
- (a) the 80th anniversary of the day before the Project commenced;
 - (b) where there are no contractual obligations to be fulfilled or performed by the Manager under any Project Document, the date specified by the Manager as the date of termination of the Project in a notice given to Growers, such date being at least 3 months after the notice is given; and
 - (c) the date on which the Project terminates in accordance with another provision of this constitution or by law¹⁷.

20 Procedure on termination

Realisation of Assets

- 20.1 Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that. The Manager must keep records of the Assets referable to each Pool and the proceeds of realisation of these Assets.

Audit of winding up

- 20.2 If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Project by a registered company auditor.

Retention for claims

- 20.3 The Manager is entitled to retain out of any moneys in its hands full provision for and to pay out of it all costs, charges, expenses, liabilities (whether actual, prospective or contingent), claims and demands incurred, made or apprehended by the Manager in connection with the Project or arising out of the termination of the Project, including the fees of any agents, solicitors, bankers, valuers, accountants or other persons (including the Manager) whom the Manager employs in connection with the winding

¹⁷ See Part 5C.9 on winding up

up of the Project, and is entitled out of the moneys so retained to be indemnified against any of those costs, and charges, expenses, liabilities, claims and demands.

Distribution

- 20.4 On the termination of the Project the Manager may, subject to any right of indemnity, distribute the whole or any part or parts of the Assets held by the Manager to the Growers in kind and may for that purpose set any value which the Manager considers fair on any property to be so distributed.
- 20.5 The Manager must on completion of any realisation of Assets, in respect of each Pool distribute the net proceeds of realisation and all other property forming part of the Project that is to be distributed in kind referable to the relevant Pool, to the Growers whose Woodlots are referable to the relevant Pool in proportion to their respective holdings of Woodlots referable to the relevant Pool at the time of termination of the Project.
- 20.6 If after distribution there remains in the hands of the Manager any money resulting from rounding down those payments to the next whole cent, that money accrues to the Manager.
- 20.7 The Manager is only obliged to make distributions against delivery of any receipt and discharge which it reasonably requires.
- 20.8 No further Woodlots in the Project may be issued under this constitution if:
- (a) notice to terminate the Project is given by the Manager; or
 - (b) at a meeting of Growers of the Project convened in accordance with this constitution and the Corporations Act a resolution is passed in accordance with of the Corporations Act, that the Project be wound up.

21 Notices to Growers

- 21.1 Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Grower must be given in writing (which includes a fax) or in such other manner as the Manager determines, and be delivered or sent to the Grower at the Grower's physical or electronic address last advised to the Manager for delivery of notices.
- 21.2 A cheque payable to a Grower may be posted to the Grower's physical address or handed to the Grower or a person authorised in writing by the Grower¹⁸.
- 21.3 In the case of joint Growers, the physical or electronic address of the Grower means the physical or electronic address of the Grower first named in the Register.
- 21.4 A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof

¹⁸ See Clause 7.3(c)

of actual receipt is not required. Subject to the law¹⁹, the Manager may determine²⁰ the time at which other forms of communication will be taken to be received.

22 Notices to the Manager

- 22.1 A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.
- 22.2 The notice is effective only at the time of receipt.
- 22.3 The notice must bear the actual, facsimile or electronic signature of the Grower or a duly authorised officer or representative of the Grower²¹ unless the Manager dispenses with this requirement.

23 Amendments to this constitution

Manager may amend

- 23.1 Subject to the Corporations Act²², the Manager may by deed amend this constitution.

Statutory requirements

- 23.2 If the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC or any condition of the Manager's AFSL requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 23.1 does not apply to provisions deemed by this clause 23.2 to be incorporated in the constitution.

24 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act²³.

25 Complaints

- 25.1 If a Grower submits to the Manager a written complaint alleging that the Grower has been adversely affected by the Manager's conduct in its management or administration of the Project, the Manager:
- (a) must acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;

¹⁹ See Section 601FC(1)(d)

²⁰ See Section 252G(4)

²¹ See Clause 7.3(c)

²² See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

²³ See section 601JF

- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Grower as a direct result of the breach (if any); and
- (e) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
 - (i) its determination;
 - (ii) the remedies (if any) available to the Grower; and
 - (iii) information regarding any further avenue for complaint.

25.2 If any of the matters set out in clause 25.1 cease to be required by the Corporations Act or ASIC policy, the Manager will ensure that it has in place an adequate system to deal with Grower complaints.

26 Inspection of constitution

26.1 A copy of this constitution shall at all times during usual business be made available by the Manager at its registered office in Melbourne for the inspection of Growers who shall be entitled to receive from the Manager a copy of this constitution and all supplemental deeds (if any) on payment to the Manager of the sum of \$20.00 or such other reasonable sum as the Manager may from time to time prescribe.

27 Interpretation

Definitions

27.1 In the interpretation of this constitution, wherever the context shall permit:

AFSL: means an Australian financial services licence issued under Part 7.6 of the Corporations Act.

ASIC: the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

Assets: all the property, rights and income of the Project, but not application money or property in respect of which Woodlots have not yet been issued.

Business Day: a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne.

Carbon Sequestration Rights: include, but are not limited to, any legal, commercial or other rights, interests, benefits or credits to carbon sequestration generated by or attributable to any existing or future tree or forest, which are or may be recognised under any current or future carbon, emissions or forestry scheme, including:

- (a) carbon sequestration rights as recognised under section 87A of the *Conveyancing Act 1919* (NSW);
- (b) carbon sequestration rights as recognised under the *Forestry Rights Act 1996* (Vic); and
- (c) rights to carbon sequestration as recognised under the *Forestry Act 1959* (Qld).

Compliance Committee Member: a member of a compliance committee established by the Manager in connection with the Project.

Consultant Forester: any person appointed by the Manager to make recommendations and reports to the Manager in respect of the Plantation and the works required to be undertaken on the Land.

Control: includes but is not limited to the right to assign, dispose of or grant any interest in the Carbon Sequestration Rights, and the right to exercise or enforce the Carbon Sequestration Rights.

Corporations Act: *Corporations Act 2001* (Cth).

Financial Year:

- (a) for the last financial year, the period from 1 July before the date the Project terminates to the date of distribution on winding up of the Project; and
- (b) in all other circumstances, the 12 month period ending on 30 June in each year.

Forestry Right: is an interest in the land granted by the owner of the land, or any other person entitled to grant such an interest in the land, under which the person who has the benefit of the interest is generally, among other things, entitled to enter the land to establish, maintain and harvest a crop of trees on the land. It includes, but is not limited to:

- (a) Carbon Sequestration Rights;
- (b) for land in NSW, a forestry right as defined in section 87A of the *Conveyancing Act 1919* (NSW);
- (c) for land in Victoria, a forest property right as defined in the *Forestry Rights Act 1996* (Vic); and

- (d) for land in Queensland, a right to Natural Resource Products as defined in the *Forestry Act 1959* (Qld).

Grower: the person Registered as the holder of a Woodlot, and includes persons jointly or to be deemed jointly so Registered.

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee Amount: an amount determined in accordance with clause 16.3.

Income Year: means "income year" has the meaning given in section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

Independent Valuer: a valuer who is qualified to determine, and has relevant market experience in determining, the market value of forestry plantations or similar assets.

Land: any land made available by the Manager, or a third party, for the purposes of the Project.

Land Sourcing and Forestry Management Agreement: a contract for the sourcing of land and the establishment, development, maintenance and harvesting of a Grower's Trees in the form for the time being specified by the Manager.

Land Tenure Agreement: one or more agreements or other instruments under which the Manager grants to the Grower a right to enter, occupy and use Land which may include a Lease Agreement or Licence.

Lease Agreement: a lease or sub-lease in the form for the time being specified by the Manager.

Liabilities: all present liabilities of the Project including any provision which the Manager decides should be taken into account in determining the liabilities of the Project.

Licence: a licence, sub-licence or sub-licence in the form for the time being specified by the Manager.

Manager: the company which is registered with the ASIC as the single responsible entity for the Project under the Corporations Act.

Materially Damaged: destroyed or damaged, other than by:

- (a) acts of terrorism, war, hostilities or rebellion;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or waste, the combustion of nuclear fuel or nuclear weapons material;
- (c) snow or another severe weather condition; or
- (d) any other cause of damage specified for this purpose in a product disclosure statement or other disclosure document,

so that, in the reasonable opinion of an independent forester appointed by the Manager, there is a materially adverse impact on the value or long term viability of the relevant Trees.

Radiata Pine Amount: in respect of a Pool:

- (a) the proceeds from the harvesting (if applicable) and sale of Radiata Pine timber on Woodlots referable to that Pool less any expenses for which the Manager is entitled to be indemnified under clause 8.4, including expenses in connection with harvesting and transporting such timber, but excluding the Manager's own administration costs, such as rent for the Manager's premises, expenses incurred for computer equipment, salaries and similar expenses; and
- (b) if one or more Growers receives one or more payments under an insurance policy in respect of the damage to, or destruction of, the Grower's Radiata Pine trees on a Woodlot referable to the Pool, the aggregate amount of those payments.

Pinus Radiata Distribution Amount: in respect of a Pool:

- (a) the proceeds from the harvesting (if applicable) and sale of Radiata Pine timber on Woodlots referable to that Pool less any expenses for which the Manager is entitled to be indemnified under clause 8.4, including expenses in connection with harvesting and transporting such timber, but excluding the Manager's own administration costs, such as rent for the Manager's premises, expenses incurred for computer equipment, salaries and similar expenses; and
- (b) any amount contributed by the Manager in accordance with clause 16.2.

Plantation: that part of the Land as is planted with Trees, together with such of the Land as is required for the purposes of access and firebreaks.

Pool: the pool to which a Woodlot is allocated in accordance with clause 4.17.

Project: the project established pursuant to this constitution and includes all the Assets and Liabilities of the Project.

Project Document: the current Land Tenure Agreement and current Land Sourcing and Forestry Management Agreement, executed by a Grower and the Manager.

Radiata Pine: means the species *Pinus Radiata*.

Register: the register of Growers kept by the Manager under the Corporations Act.

Registered: recorded in the Register.

Registration: recording in the Register.

Resolution:

- (a) a resolution passed at a meeting of Growers:

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- (i) on a show of hands, by the required majority of Growers present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Growers present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Growers holding the required majority of the Woodlots.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority²⁴.

She-oak: means a species of the genus *Casuarina*.

She-oak Amount: in respect of a Pool:

- (a) the proceeds from the harvesting and sale of She oak biomass on Woodlots referable to that Pool less any expenses for which the Manager is entitled to be indemnified under clause 8.4, excluding expenses in connection with harvesting and transporting such timber, and excluding the Manager’s own administration costs, such as rent for the Manager’s premises, expenses incurred for computer equipment, salaries and similar expenses; and
- (b) if one or more Growers receives one or more payments under an insurance policy in respect of the damage to, or destruction of, the Grower’s She-oak trees on a Woodlot referable to the Pool, the aggregate amount of those payments.

She-oak Distribution Amount: in respect of a Pool, the proceeds from the harvesting and sale of She-oak timber on Woodlots referable to that Pool less any expenses for which the Manager is entitled to be indemnified under clause 8.4, excluding expenses in connection with harvesting and transporting such timber, and excluding the Manager’s own administration costs, such as rent for the Manager’s premises, expenses incurred for computer equipment, salaries and similar expenses.

Silky Oak: means the species *Grevillea Robusta*.

Silky Oak Amount: in respect of a Pool:

- (c) the proceeds from the harvesting and sale of Silky Oak timber on Woodlots referable to that Pool less any expenses for which the Manager is entitled to be indemnified under clause 8.4, including expenses in connection with harvesting and transporting such timber, but excluding the Manager’s own administration costs, such as rent for the Manager’s premises, expenses incurred for computer equipment, salaries and similar expenses; and
- (d) if one or more Growers receives one or more payments under an insurance policy in respect of the damage to, or destruction of, the Grower’s Silky Oak trees on a Woodlot referable to the Pool, the aggregate amount of those payments.

²⁴ Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)), winding up by Growers, and choosing a new responsible entity.

Silky Oak Distribution Amount: in respect of a Pool, the proceeds from the harvesting and sale of Silky Oak timber on Woodlots referable to that Pool less any expenses for which the Manager is entitled to be indemnified under clause 8.4, including expenses in connection with harvesting and transporting such timber, but excluding the Manager's own administration costs, such as rent for the Manager's premises, expenses incurred for computer equipment, salaries and similar expenses.

Stocking Guarantee Period: in relation to a Pool is the greater of:

- (a) the period from the date a Grower is registered as a holder of the Woodlot in respect of that Pool to the end of Year 2; and
- (b) the period from the end of the Financial Year in which the Pool was established to the end of Year 2.

Tax: all kinds of taxes, duties, imposts, deductions and charges imposed by a government, together with interest and penalties.

Tax Act: the Income Tax Assessment Act 1936 ("**1936 Act**"), the Income Tax Assessment Act 1997 ("**1997 Act**") or both the 1936 Act and the 1997 Act, as appropriate.

Trees: means Radiata Pine trees, Silky Oak trees and She-oak trees.

WFIM: Willmott Forests Investment Management Pty Limited ABN 50 098 718 837.

Woodlot: an interest in, at the time of issue of the Woodlot, approximately 5,200 square metres of Land and a beneficial interest in the relevant Forestry Right.

Year: in respect of a Pool is a period of 12 months commencing on, or on the anniversary of, the completion of the planting of seedlings in respect of the Pool. For example, "Year 1" is the 12 month period commencing on the day following the end of 36 months after completion of the planting of the seedlings in respect of the relevant Pool. ~~Should this be aligned to the same as year as in PDS? Each Year in respect of a Pool is a period of 12 months commencing on, or on the anniversary of, the completion of planting of seedlings in respect of the Pool. For example, "Year 1" is the 12 month period commencing on the day following completion of the planting of seedlings in respect of the relevant Pool.~~ Typically, planting will not be completed until approximately 15 - 18 months after the end of the income year during which the Grower is issued Woodlots

27.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;

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- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
 - (e) amend includes delete or replace;
 - (f) person includes a firm, a body corporate, an unincorporated association or an authority;
 - (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution; and
 - (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

Other documents

- 27.3 A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

Constitution legally binding²⁵

- 27.4 This constitution binds the Manager and each present and future Grower and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

Governing law

- 27.5 This constitution is governed by the law of Victoria.

Other obligations excluded

- 27.6 Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as manager of the Project arising under any statute.

28 GST

Fees and GST

- 28.1 The fees set out in clauses 10.1(a) to 10.1(d) inclusive are inclusive of GST at the rate of 10%.

GST documentation

- 28.2 If requested by a Grower, the Manager must provide the Grower with documentation in the form and containing the information reasonably required by the Grower to claim a refund or credit of GST payable on the supply by the Manager either under this Constitution or under the Project Documents.

Increases in GST

- 28.3 If the GST rate changes or any additional tax is imposed on any supply of goods or services then, from the date of the change or introduction of that tax, the new GST rate

²⁵ Refer Section 601GB

will apply to any supply under this Constitution or under the Project Documents and all GST or additional taxes will be to the account of the Grower.

Manager to determine basis for reduction

28.4 The Manager will use its reasonable endeavours to determine on a reasonable basis the extent (if any) to which any amount payable by the Grower to the Manager for any supply under this Constitution or under the Project Documents may be reduced as a direct consequence of the duties or statutory charges paid or payable by the Manager (as part of the imposition of GST) which directly relate to the supply by the Manager, and the amount payable by the Grower shall be reduced to the extent of the reduction (if any) as determined by the Manager.

EXECUTED as a deed

EXECUTED by WILLMOTT)
FORESTS LIMITED in accordance)
with section 127(1) of the)
Corporations Act 2001 (Cwlth) by)
authority of its directors:)



.....)
Signature of director)

JAMES HIGGINS)
.....)
Name of director (block letters)



.....)
Signature of director /company)
secretary*)
*delete whichever is not applicable

MARCUS DERHAM)
.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable

EXECUTED by WILLMOTT)
FORESTS INVESTMENT)
MANAGEMENT PTY LIMITED)
in accordance with section 127(1) of)
the Corporations Act 2001 (Cwlth) by)
authority of its directors:)



.....)
Signature of director)

MARCUS DERHAM)
.....)
Name of director (block letters)



.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable

GREG MACMILLAN)
.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable