

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

S CI 2011

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469) AND TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
(ACN 092 311 469) IN ITS CAPACITY AS RESPONSIBLE
ENTITY OF THE MANAGED INVESTMENT
SCHEME LISTED IN SCHEDULE 1 AND ORS
ACCORDING TO THE SCHEDULE**

First Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 17 February 2011
Filed on behalf of: the Plaintiffs

Prepared by:

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

Level 21

333 Collins Street

MELBOURNE 3000

Solicitor's Code: 54

DX 38455 Melbourne

Tel: 9229 9999

Fax: 9229 9900

Ref: 011551197

(Bridget Slocum - bslocum@ab.com.au)

This is the exhibit marked "MAK-1" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 17 February 2011.

MEAGAN LOUISE GROSE

Arnold Bloch Leibler

Level 21, 333 Collins Street

Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Before me: 

Exhibit "MAK-1"

**Constitution (and amendment deeds) of the 1999
Timbercorp Eucalypts Project (ARSN 085 827 872)**

Filed on behalf of the Plaintiffs

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

Level 21

333 Collins Street

Melbourne 3000

ABL/1383024v1

DX 38455 Melbourne

Tel: 9229 9999

Fax: 9229 9900

Ref: 011551197

(Bridget Slocum)

MAK-1

PARTIES

TIMBERCORP EUCALYPTS LIMITED
A.C.N. 055 185 067

AND

EACH SEVERAL GROWER

CONSTITUTION OF THE 1999 PROJECT

(Original)

CORNWALL STODART
Lawyers
Level 10, 114 William Street
MELBOURNE VIC 3000
Tel: 9608 2000
Fax: 9608 2200
Ref: NMT:PKN:81413
com/PKN/D/814130012

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THIS DEED is made on

11 January

1998.

PARTIES:

1. **TIMBERCORP EUCALYPTS LIMITED** (ACN 055 185 067) of 5th Floor, 95 Queen Street, Melbourne, Victoria
("Responsible Entity")
2. **EACH SEVERAL GROWER**
("Grower")

RECITALS

- A** The Responsible Entity is the holder of Dealer's Licence No. 16158, issued by the Commission, which authorises it to operate The 1999 Project.
- B** The Responsible Entity proposes to issue the Prospectus which will:
- (i) invite several persons to apply to become a Grower under this Deed; and
 - (ii) invite that person or those persons to contribute Subscription Money to pay for treefarming operations on the relevant Woodlots.
- C** Under the Sub-lease, the Grower will be granted a sub-lease with a view to growing, tending and removing timber from the relevant Woodlots in consideration of a promise on the part of the Grower to pay rent.
- D** Under the Management Agreement, the Grower will commission the Responsible Entity to carry out Plantation Services in relation to the relevant Woodlots.
- E** Under the Wood Purchase Agreement, the Grower will agree to sell to the Purchaser Wood from the relevant Woodlots.

- F** The Subscription Money paid by the Grower will be held by the Responsible Entity to be used as provided in this Deed including use for any payments required under the Sub-lease and the Management Agreement.
- G** Each Grower agrees to pay an annual contribution towards the ongoing expenses in relation to The 1999 Project.
- H** Proceeds from the sale of Wood under the Wood Purchase Agreement and from any other sources are to be distributed to the Grower, subject to the directions of the Responsible Entity regarding payment of certain costs and expenses, and the Grower is to receive that purchase price, being the Prescribed Proportion of the aggregate sale price of all Wood on all Woodlots the subject of The 1999 Project.
- I** This Deed comprises the Constitution of The 1999 Project, as required under Part 5C.3 of Chapter 5C of the Corporations Law, and is made with the intent that it be legally enforceable as between the Responsible Entity and each several Grower.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 Definitions

In this Deed, these words and phrases have this meaning unless the contrary intention appears:

"Agency Account"

means the agency account kept by the Responsible Entity in accordance with section 12.

"Agreements"

means the Sub-lease, Management Agreement and Wood Purchase Agreement entered into by or on behalf of a Grower in relation to The 1999 Project, or any further agreement entered into by the Grower as a

result of an option granted to the Grower to participate in a second Harvest as specified in the Prospectus and under the Wood Purchase Agreement.

"Applicant"

means any person who has completed and delivered to the Responsible Entity or to any licensed dealers, brokers or representatives of the Responsible Entity (authorised under the Corporations Law) an Application to become a Grower and made a payment as required in clause 5.3, except to the extent to which the Application has been refused or the Application has been accepted.

"Application"

means an application pursuant to clause 5.3.

"Assets"

means:

- (a) the Subscription Money standing for the time being in any bank account of the Agency Account; and
- (b) the Proceeds,

relating to The 1999 Project.

"Auditor"

means the auditor or auditors for the time being of The 1999 Project duly appointed under the Corporations Law.

"Authorised Investments"

means:

- (a) money;

- (b) interest bearing deposits at call or for a term not exceeding three (3) months with or without security with any Financial Institution;
- (c) negotiable certificates of deposit issued by or bills of exchange drawn, accepted or endorsed by any Bank;
- (d) any deposit in the short term money market with any company that has been approved by the Reserve Bank of Australia, or by the Commission (pursuant to Section 65(1)(a) of the Corporations Law), as an authorised dealer in that market; and
- (e) any Trustee Investment;

in each case subject to the restrictions in this Deed and the Corporations Law.

"Bank"

means a bank licensed to carry on the business of banking in Australia under the Banking Act 1959 (Commonwealth) or otherwise lawfully carrying on the business of banking in Australia or any of its States or Territories.

"Business Day"

means a day that is not a Saturday, a Sunday or a public holiday or a bank holiday in Victoria.

"Carbon Credits"

means the Grower's entitlement to any tradeable credits or rights associated with the Trees resulting from the ability of the Trees to absorb greenhouse gases.

"Commission"

means the Australian Securities and Investments Commission.

"Corporations Law"

means the Corporations Law, as that term is defined in subsection 13(2) of the Corporations (Victoria) Act.

"Custodian"

means Permanent Trustee Company Limited (ACN 000 000 993) of 294-296 Collins Street, Melbourne, Victoria, and its successors and assigns, or any other person duly appointed by the Responsible Entity to provide custodial services in relation to The 1999 Project.

"Deed"

means this document including the Schedules to this document and such other deed or other instruments as may be in force for the time being amending or being supplemental to or collateral with this document or any of the foregoing components of this document.

"Establishment and Maintenance Plan"

means the plan for the establishment and maintenance of the Plantations which plan is annexed to the Management Agreement.

"Financial Institution"

has the meaning given to it by section 111AZA(1) of the Corporations Law.

"Grower"

means each several person (or in the case of joint applicants or successors or permitted assigns, each of those persons) who becomes a party to this Deed (as a Grower) as a result of either:

- (a) the allotment of Woodlots pursuant to an Application in the Prospectus; or

- (b) a transmission, transfer, mortgage, assignment or other disposal pursuant to section 18 of this Deed,

and who remains registered under this Deed as the holder for the time being of any Woodlots; and the expression "all Growers" means all persons who have so become a party to this Deed as a Grower and remain the registered holder for the time being of relevant Woodlots.

"Harvest"

means the cutting down or logging of the Trees on the relevant Woodlots and the extraction or removal of the Trees so logged to a loading point either on or adjacent to the Plantation, whether conducted as one operation or more than one operation, and "Harvested" and "Harvesting" have a similar meaning.

"Indexed"

means adjusted on the date on which the relevant payment is due (or the date upon which the relevant calculation is made, whichever is applicable) ("**the Date**"), by the aggregate percentage change in the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) for the previous four (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date (or if in the relevant clause a date is provided from which the adjustment is to be made then prior to that date) (or if in the opinion of the Responsible Entity that method of calculation is no longer appropriate, such other index number as is recommended by the Auditor as fairly and reasonably taking into account inflation or deflation).

"Law"

includes any statute, enactment, code, ordinance, rule, regulation or by-law and any decree, order or judgment of any competent court whether in Australia or elsewhere

"Management Agreement"

means an agreement for the carrying out of the Plantation Services in relation to the relevant Woodlots for the Grower (whether also in relation to any other Woodlots or other Growers or otherwise) and (until varied, replaced or cancelled) being in the form or substantially in the form set out under the heading "Management Agreement" in the Second Schedule to this Deed but with the Schedule thereto completed by the Responsible Entity in such manner as it sees fit, as may be permitted by the Grower, and any agreement which varies or replaces that agreement.

"Minimum Subscription"

means the minimum number of Woodlots stated in the Prospectus that, in the opinion of the directors of the Responsible Entity, must be applied for to make The 1999 Project commercially viable.

"Mortgagee"

means any mortgagee of the Woodlots, the name and status of which as such mortgagee appears for the time being in the Register.

"Ordinary Resolution"

means a resolution passed at a meeting of Growers concerned, duly convened and held in accordance with the provisions of section 20 of this Deed, by a majority of the persons voting at that meeting upon a show of hands and if a poll is demanded then by a majority of the votes given on such a poll. Any resolution which may be put pursuant to this Deed is an Ordinary Resolution unless otherwise provided.

"Person"

includes company, firm or body of persons.

"Plantation"

means any of the areas of land which are to be divided into Woodlots and which are the subject of the Prospectus (whether such Plantation is described in the Prospectus or is otherwise to be identified as provided in the Prospectus).

"Plantation Services"

means the services and duties which the Grower is required to perform or carry out under the Sub-lease, but does not include the obligation to pay any rent under the Sub-lease.

"Prescribed Proportion"

means, in relation to each Grower holding relevant Woodlots, the following fraction:

$$\frac{R}{T}$$

where:-

- R is the number of relevant Woodlots registered in the name of the Grower; and
- T is the total number of Woodlots on issue.

"Proceeds"

means:

- (a) any moneys payable to a Grower under any policy of insurance in relation to the relevant Woodlots;
- (b) proceeds from any sale of Wood pursuant to the Sub-lease;
- (c) any purchase price payable to a Grower pursuant to the Wood Purchase Agreement; and

- (d) any other moneys payable to a Grower pursuant to the sale of Wood from the relevant Woodlots.

"Prospectus"

means the written notice or other instrument inviting applications or offers to subscribe for Woodlots in The 1999 Project or offering those Woodlots for subscription and lodged by the Responsible Entity for the purposes of sections 1018 or 1024 of the Corporations Law and registered (if so required) under section 1020A of the Corporations Law.

"Purchase Price"

means the price payable by the Purchaser to the Grower for the Wood from the relevant Woodlots under the Wood Purchase Agreement.

"Purchaser"

means BUNNINGS TREEFARMS PTY LTD (ACN 009 378 607) of 2-10 Adams Drive, Welshpool, Western Australia, and any other person to whom Wood is being sold under the Wood Purchase Agreement.

"Register"

means the register of Growers set up and established by the Responsible Entity under clause 10.3 of this Deed.

"Responsible Entity"

means the Responsible Entity for the time being under this Deed whether original or substituted.

"Special Resolution"

has the meaning given to it in section 9 of the Corporations Law.

"Sub-lease"

means an agreement under which a sub-lease in relation to a Woodlot is granted by the Responsible Entity to the Grower (whether also granting rights in relation to any other Woodlots to other Growers or otherwise) on condition that the Grower carries out Plantation Services in relation to the Woodlot and (until varied, replaced or cancelled) being in the form or substantially in the form set out under the heading "Sub-Lease" in the Third Schedule to this Deed and any agreement which varies or replaces that agreement.

"Subscription Money"

has the meaning set out in paragraph 5.3(c).

"The 1999 Project"

means the 1999 Timbercorp Eucalypts Project, being the entire undertaking, scheme, enterprise or arrangement to which the Growers and the Growers' corresponding Woodlots relate, Woodlots in which will be first offered in the financial year ending 30 June 1999.

"Trustee Investments"

means any form of investment for the time being authorised under Part 1 of the Trustee Act 1958 of Victoria.

"Trees"

means the crop of trees the subject to the Establishment and Maintenance Plan farmed or to be farmed on the Woodlots, or on the Plantation, whichever is applicable, for commercial timber production.

"Wood"

means any saleable wood derived from Trees grown pursuant to the Agreements on the Woodlots, or on the Plantation, whichever is applicable, and includes Carbon Credits.

"Wood Purchase Agreement"

means an agreement for the sale of Wood of the Grower from the relevant Woodlots (whether also selling Wood in relation to any other Woodlots of the Grower or of other Growers or otherwise) and until varied, replaced or cancelled being either:

- (a) in the form or substantially in the form set out under the heading "Wood Purchase Agreement" in the Fourth Schedule to this Deed and any agreement which varies or replaces that agreement; or
- (b) subject to the terms and conditions of this Deed, the Agreements or the Prospectus, in any other form acceptable to the Responsible Entity.

"Woodlot"

means a parcel of land with a net plantable area of approximately one hectare and being the whole of or one or more portions of the Plantation.

"relevant Woodlots"

means the Woodlots to which a particular Grower is entitled under the provisions of the Sub-lease and which were allotted pursuant to the Prospectus or transmitted, transferred, mortgaged, assigned or otherwise disposed of from a predecessor in title, which predecessor in title or some earlier predecessor in title was allotted the Woodlots pursuant to the Prospectus and, where applicable, includes any rights, interests, powers, privileges, obligations and liabilities held by the Grower under this Deed and under each of the Agreements including without limitation:

- (a) any Subscription Money held on behalf of the Grower;
- (b) any Proceeds to which the Grower is entitled or which are held on behalf of the Grower in the Agency Account; and
- (c) any other rights, powers, authorities to which the Grower is entitled under this Deed or otherwise.

"Woodlot Statement"

means the notice which the Responsible Entity is required to issue under clause 10.1 of this Deed.

1.2 Construction

(a) Singular and plural

Words importing the singular number include the plural and vice versa.

(b) Gender

Words importing a gender include any gender.

(c) Headings

Marginal notes and headings are for ease of reference only and do not affect the construction of this Deed.

(d) Definitions

Where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase unless the context otherwise requires has a corresponding meaning.

(e) References to statute

A reference to a statute, ordinance, code or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof.

(f) Conversion of foreign currency to Australian currency

Whenever it is necessary for the calculation of any cost, value, price or any other amount under this Deed to convert a foreign currency into Australian currency, the Australian currency equivalent of the foreign currency will be determined at the spot telegraphic transfer buying rate of that foreign currency quoted by the Financial Institution that the

Responsible Entity may at any time and from time to time nominate on the date of the calculation or, where the nominated Financial Institution is closed for business, on the date of calculation on the next day on which the nominated Financial Institution was open for business, or by such other method as the Responsible Entity considers prudent.

(g) Deed includes Schedules

A reference to this Deed includes a reference to an applicable Schedule.

(h) Currency

A reference to 'dollars' or '\$' is a reference to the lawful currency of Australia.

(i) Commission Instruments

If relief from the provisions of the Corporations Law granted by a Commission instrument requires that this Deed contain certain provisions, then those provisions are taken to be incorporated into this Deed at all times at which they are required to be included and prevail over any other provisions of this Deed to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to The 1999 Project) then the Commission instrument (and the provisions it requires) will only be taken to be incorporated if the Responsible Entity declares in writing that this is the case.

(j) Deed Binds Responsible Entity and Growers

This Deed as amended from time to time binds the Responsible Entity and each Grower.

2 PROSPECTUS

The Responsible Entity will issue the Prospectus inviting or offering for subscription Woodlots in The 1999 Project at the price set out in the First Schedule for each Woodlot and on the terms and conditions set out in the Prospectus.

3 APPOINTMENT OF RESPONSIBLE ENTITY

Each Grower irrevocably appoints the Responsible Entity as its agent, representative and attorney in relation to The 1999 Project with the powers, rights, duties and indemnities set out in this Deed and the Responsible Entity accepts such appointment.

4 BARE TRUST

4.1 Bare Trust

Until the Minimum Subscription is reached under the Prospectus, the Responsible Entity must hold all Subscription Money and any income earned on it as a bare trustee for the Applicant.

4.2 Special Trust Account

Any amounts paid by any Applicant in accordance with clauses 5.3 and 5.4 must be accounted for by the Responsible Entity in a special trust account and such amounts must be placed in one or more bank accounts kept solely for the purpose of depositing Subscription Money in relation to the Prospectus.

4.3 Pooling of Amounts

Any amounts paid by any Applicant may be pooled with any amounts paid by any other Applicant.

4.4 Interest

Subject to clauses 6.3 and 7.2, interest (if any) earned from Subscription Money of any special trust account provided for in clause 4.2 will, upon the Applicant becoming a Grower, be paid to the Responsible Entity as fees.

5 APPLICATION PROCEDURE

5.1 Oversubscriptions

The Responsible Entity reserves the right to accept Applications for Woodlots in excess of that number of Woodlots for which subscription or purchase or invitations to subscribe or apply for are sought under the Prospectus.

5.2 Receipt of Application

The Responsible Entity may itself or by its duly authorised agents or by any dealers licensed for the purpose receive Applications under the Prospectus.

5.3 How to Apply

Every Applicant must deliver to the Responsible Entity or to the duly authorised lawful agents of the Responsible Entity at the place set out in the Prospectus or any other place or places as the Responsible Entity may from time to time determine the following:-

- (a) an Application for Woodlots, incorporating an offer to become a Grower under this Deed, being in the form attached to the Prospectus, and signed or executed by the Applicant;
- (b) a Power of Attorney, being in the form attached to the Prospectus, signed or executed by the Applicant, appointing the Custodian or the Responsible Entity (whichever is so authorised) to be the Applicant's attorney and, on the Applicant's behalf, to execute the Sub-lease, the Management Agreement and any other documents which are ancillary or related to the Sub-lease or Management Agreement, or contemplated by the provisions of the Sub-lease or Management Agreement; and
- (c) subject to clauses 5.4 and 5.5, a cheque, as required by the Prospectus, on account of the Woodlots applied for as payment of the Subscription Money for each Woodlot for which application is made.

5.4 Payment in Full or by Instalments

- 5.4.1** Subject to clause 5.5 and subject to the Responsible Entity electing to make available to Applicants a facility to pay by instalments, at the option of any Applicant, the Subscription Money for each Woodlot may be payable in full at the time of application or may be payable by instalments. If the Applicant elects to pay the Subscription Money by instalments, the Applicant must pay at the time of delivering of the Application the amount shown in the application as the "DEPOSIT", and the balance of the Subscription Money must be paid by the Applicant (or Grower, if that Applicant has become a Grower in accordance with the provisions of this Deed), to the Responsible Entity by the date specified in the Application, provided that in its absolute discretion, the Responsible Entity may extend that date to such later day as the Responsible Entity determines.
- 5.4.2** If an Applicant, or Grower, whichever is the case, fails to pay the amount shown in the Application against the words "BALANCE" (or any part of it) by the day specified in the Application for payment of it, the Responsible Entity is authorised to exercise all or any of the following remedies (in addition to and without prejudice to any rights at law or in equity or pursuant to this Deed), the Responsible Entity is entitled to recover from the Applicant (or Grower, whichever is the case) the balance together with interest on the balance outstanding at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) as at the date specified in the Application for payment, from the day so specified in the Application until payment; and either
- (i) the Responsible Entity may sue the Applicant (or Grower, whichever is the case) for specific performance of its agreement; or
 - (ii) the Responsible Entity may terminate all the right, title and interest of the Applicant (or Grower, whichever is the case) pursuant to the provisions of this Deed and any Agreement and the Applicant (or Grower, whichever is the case) must forfeit the deposit money paid, provided the Responsible Entity has first given the Applicant (or Grower, whichever is

the case) a notice in writing informing the Applicant (or Grower, whichever is the case) of the default and giving the Applicant (or Grower, whichever is the case) a period of TEN (10) days from the date of posting of the notice to remedy the breach.

5.4.3 If the Responsible Entity exercises its right under paragraph 5.4.2(ii), then within fourteen (14) days of exercising that right, the Responsible Entity must make an appropriate notation in the Register.

5.5 Condition as to Finance

If an amount is shown in an Application against the words "LESS amount subject to finance" (if those words appear in the Application), the Application will only be accepted by the Responsible Entity on condition that a person (which person may include the Responsible Entity) agrees to lend that amount to the Applicant. The Responsible Entity does not warrant, undertake, covenant or agree that such finance will be provided or procured.

6 REFUSAL OF APPLICATIONS

6.1 Refusal of Application

The Responsible Entity may in its absolute discretion, but only within five (5) Business Days after receipt of an Application, give notice in writing to any Applicant to the effect that its Application has been refused.

6.2 Notice of Refusal

The notice provided for in clause 6.1 may specify that the Application has been refused:

- (a) wholly in relation to the Application; or
- (b) partly, that is, with respect to a proportion of the Subscription Money contributed with the Application;

without giving any reasons for the refusal.

6.3 Repayment to Applicant

Upon the Responsible Entity having given notice to an Applicant that its Application has been refused, the Applicant will be entitled to be repaid the amount paid by the Applicant with respect to the Application so refused with interest (if any) earned in relation to that amount (each Applicant so refused receiving its share of the aggregate interest earned in relation to all relevant Applicants in the proportion that the money of the Applicant bears to the money held on behalf of all relevant Applicants calculated from day to day) and without any deduction except for bank fees and government charges.

6.4 Applicant Ceases to be an Applicant

If any Application is wholly refused then upon repayment of any money payable to the Applicant under clause 6.3, the Applicant will also cease to be an Applicant under this Deed and have no rights or obligations in relation to this Deed in any respect.

7 ACCEPTANCE OF APPLICATIONS

7.1 Applicant to Become Grower on Acceptance

Upon an Application being accepted by the Responsible Entity in whole or part, and the Minimum Subscription being reached, the Applicant will become a Grower.

7.2 Minimum Subscription Not Reached

If Minimum Subscription is not reached within the time specified in the Prospectus, the Responsible Entity must within seven (7) days of the end of such period repay to each Applicant so much of the Subscription Money as has been paid by those Applicants with any interest earned in relation to that Subscription Money (each Applicant receiving its share of the aggregate interest earned in relation to all Applicants in the proportion that the money of the Applicant bears to the money held on behalf of all Applicants calculated from day to day) and without any deduction except for bank fees and government charges.

7.3 No Communication Necessary

Subject to clause 10.1, in no case will it be necessary to communicate the acceptance of an Application under this Deed to any Applicant who becomes a Grower and becomes bound to this Deed on the acceptance by the Responsible Entity of the Application.

7.4 Deemed Acceptance

An Application received pursuant to the Prospectus, and not refused under clause 6.1, will be deemed to have been accepted immediately upon receipt, subject to the Subscription Money in respect of that Application being paid and the Minimum Subscription being reached.

7.5 Joint Applicants

In the absence of any express instructions to the contrary in or accompanying any Application, any persons who jointly constitute the Grower hold their Woodlots and enter into the Agreements jointly and severally and as tenants in common.

7.6 Applicant Deemed to Enter this Deed

Upon an Application being accepted by the Responsible Entity in whole or in part, the Applicant is deemed to have contemporaneously become a party to this Deed as a Grower and thereby bound to the covenants and obligations on the part of each individual Grower provided for in this Deed.

7.7 Allocation and Allotment of Woodlots and Entry into Agreements

- (i) In respect of Applications accepted by the Responsible Entity on or before 30 June 1999, then on or before 30 June 1999; and
- (ii) In respect of Applications accepted by the Responsible Entity after 30 June 1999, then at any time,

the Responsible Entity:

- (a) must forthwith allocate and allot a Woodlot or Woodlots to the Grower from the Plantations (of such location or locations within the Plantations

as the Responsible Entity in its absolute discretion thinks fit) and the Responsible Entity must within 21 days thereafter register the name, number or other description of the Woodlot or Woodlots in the appropriate place in the Register in relation to the entry of that Grower;

- (b) will either itself, or procure that the Custodian (which is so appointed), as attorney for and on behalf of the Grower, enter into a Sub-lease and a Management Agreement in relation to the Woodlots allocated to the Grower, and any other documents which are ancillary or related to the Sub-lease or Management Agreement, or contemplated by the provisions of the Sub-lease or Management Agreement; and
- (c) as agent for the Grower, will enter into any form of Wood Purchase Agreement that is permitted to be entered into under the Management Agreement or this Deed.

8 RESPONSIBLE ENTITY TO ENTER INTO SUB-LEASE AND MANAGEMENT AGREEMENT

8.1 Preparation of Sub-lease and Management Agreement

Upon acceptance of an Application, the Responsible Entity will prepare the Sub-lease and Management Agreement. The Sub-lease and Management Agreement:

- (a) must be completed in accordance with the details specified in the Application; and
- (b) will commence from such date as is determined by the Responsible Entity.

8.2 Responsible Entity to be reasonably satisfied

Before release of moneys referred to in clause 8.3, the Responsible Entity must be reasonably satisfied that:

- (a) the Sub-lease and Management Agreement are in the form required by this Deed and have been duly completed and executed by all parties;
- (b) the Responsible Entity has the capacity to grant the Sub-lease;

- (c) all necessary consents to the grant of the Sub-lease and entry into the Sub-lease and Management Agreement have been obtained or will be obtained;
- (d) the property the subject of the Sub-lease is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant and which is not disclosed in the Prospectus;
- (e) any other matter required to be attended to, which is necessary for the creation of the Sub-lease and the effective vesting in the Grower of his Sub-lease and Management Agreement, whether by reason of this Deed or otherwise, has been attended to; and
- (f) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Growers whose Subscription Money is to be allocated pursuant to clause 8.3.

8.3 Release of Subscription Money

8.3.1 Release of Subscription Money

In relation to each Application which is either expressed to be not subject to finance or (if subject to finance) is now unconditional because finance has been approved, the Responsible Entity must within two (2) Business Days of the Responsible Entity being satisfied of the matters specified in clause 8.2, release the Subscription Money and apply it in payment of the fees payable under the Sub-lease and Management Agreement PROVIDED THAT where a deposit has been paid as provided for in clause 5.4, the balance of the Subscription Money must be paid to the Responsible Entity in accordance with the requirements of clause 5.4.

8.3.2 Refund if no release within 12 months

If the Grower's Subscription Money to be released pursuant to sub-clause 8.3.1 is not released within a period of 12 months after the issue of the Prospectus to which it relates (other than by reason of the Applicant's default), then the Responsible Entity must, within 28 days, refund to the Grower the whole of the Subscription Money paid with any interest earned

in relation to that Subscription Money (each Grower receiving its share of the aggregate interest earned in relation to all Growers in the proportion that the money of the Growers bears to the money held on behalf of all Growers calculated from day to day) and without any deduction except for bank fees and government charges.

8.3.3 Extinguishment of Sub-lease and Management Agreement

Upon the refund of the moneys referred to in sub-clause 8.3.2, the Sub-lease and Management Agreement of the Grower will be extinguished and the Responsible Entity will make an entry in the Register noting the extinguishment.

9 RESPONSIBLE ENTITY TO ENTER INTO WOOD PURCHASE AGREEMENT

9.1 Responsible Entity to Exercise Grower's Rights and Powers

Each Grower agrees that the Responsible Entity has the irrevocable power as the agent and attorney of the Grower, and whether in the name of the Grower or the Responsible Entity or both:

- (a) to bind the Grower as a party to a Wood Purchase Agreement in accordance with the provisions of paragraph 7.7(c);
- (b) to enter into any contracts which have the effect of varying, replacing or cancelling the Wood Purchase Agreement;
- (c) to exercise all rights and powers of the Grower under the relevant Wood Purchase Agreement other than the right to payment of the Purchase Price; and
- (d) generally to do any other thing which it is specifically authorised to do by the Grower pursuant to the Management Agreement or otherwise.

9.2 Direction to Pay Purchase Price to Grower

Despite any other provision of this Deed, the Wood Purchase Agreement must contain a direction that the Purchaser pay the Purchase Price to the Responsible Entity on behalf of the Grower.

9.3 Disclosure to Other Parties

In any agreement into which the Responsible Entity enters on behalf of the Grower, the Responsible Entity must disclose to the other parties to the contract that it is contracting as agent for the Grower and that the liability of the Grower is limited to the Subscription Money and Proceeds of the Grower, and that the Grower is under no liability to any other party to the contract or to any of their servants or agents whether in contract or otherwise for any amount which would require the Grower to make any payment beyond Subscription Money and Proceeds.

10 WOODLOT STATEMENTS AND REGISTER

10.1 Issue of Woodlot Statements

Within two (2) months after the acceptance of any Application under the Prospectus, and thereafter, when next accounting to a Grower after any change in the holding of the Grower in the Register, the Responsible Entity must issue to the Grower a Woodlot Statement which must be substantially in the form set out in the Fifth Schedule or such other form as the Responsible Entity determines.

10.2 Woodlot Statements

10.2.1 Each Woodlot Statement must specify such information regarding the Woodlots held by the Grower as set out in the Fifth Schedule.

10.2.2 The Woodlot Statements may be prepared and printed as the Responsible Entity may from time to time determine and may be issued by computer or other mechanical means and must be signed on behalf of the Responsible Entity.

10.2.3 A Woodlot Statement is not a certificate of title to any Woodlot, but is merely a statement from the Responsible Entity as to the state of affairs of the Register (or part of it) as it affects the Grower at a particular time.

10.3 Register of Growers

The Responsible Entity must set up and maintain a Register of Growers in accordance with Chapter 2C of the Corporations Law.

10.4 Mortgagee

Any person may be registered as the Mortgagee of any relevant Woodlots if that person is named as such in the Application in relation to those Woodlots, or a direction to that effect is received from the person registered as the Grower (in the form set out in Item 1 of the Sixth Schedule as varied from time to time by the Responsible Entity), or the Responsible Entity is otherwise satisfied that the relevant Woodlots are subject to a mortgage, provided that in no circumstances will the Responsible Entity be taken to have notice of (or be bound to enquire into) the terms of any mortgage of the relevant Woodlots.

10.5 References to Mortgagees in Register

Upon the written request of a Mortgagee in the form set out in Item 2 of the Sixth Schedule as varied from time to time by the Responsible Entity, the Responsible Entity must strike from the Register all reference to the Mortgagee in relation to the Woodlots referred to in the request.

11 RESPONSIBLE ENTITY'S POWERS

Each Grower agrees that the Responsible Entity has irrevocable power as the agent, representative and attorney of the Grower and whether in the name of the Grower or the Responsible Entity or both:-

- (a) subject to the requirements of the Commission and of the Corporations Law, to receive and hold the Subscription Money;
- (b) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with section 15;

- (c) to use the Subscription Money of the Grower in discharging the Grower's obligations under the Agreements or under this Deed;
- (d) to prepare reports and accounts in relation to the Plantation Services and in relation to the sale of Wood;
- (e) to monitor the performance of the Purchaser's obligations in accordance with the Wood Purchase Agreement;
- (f) to exercise all rights and powers of the Grower under any Agreement;
- (g) to execute any deed, agreement, certificate or other document and to do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in this section 11;
- (h) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Plantation Services on behalf of the Grower;
- (i) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and Purchaser in relation to the Wood from The 1999 Project;
- (j) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and bring legal or arbitration proceedings against the Purchaser or any other person who is a party to any Agreement, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Grower or Growers, and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Grower and relating to any Agreement; and
- (k) to lodge a subject to claim caveat against the certificate of title to the land the subject of the relevant Woodlots and to withdraw it.

12 AGENCY ACCOUNT

12.1 Agency Account

The Responsible Entity must keep or cause to be kept a separate agency account or agency accounts (the "Agency Account") for the purpose of recording the Proceeds and any other money that the Responsible Entity may hold for the Grower, other than Subscription Money and interest on Subscription Money.

12.2 Use of Moneys in Agency Account

Subject to clauses 4.2 and 15.3, the Responsible Entity must hold the moneys standing to the credit of the Grower in the Agency Account for the Grower to be dealt with in accordance with the provisions of this Deed.

12.3 Bank Account May be Interest Earning

The bank account or accounts in which the Responsible Entity deposits moneys standing in any Agency Account may be interest earning. Any interest so earned will be treated as Proceeds.

12.4 Pooling of Moneys

Moneys held by the Responsible Entity for any of the Growers may be pooled in any one or more bank accounts with moneys held on behalf of any other Growers.

13 REMUNERATION OF THE RESPONSIBLE ENTITY

13.1 The Responsible Entity's Fees

The Responsible Entity will receive from The 1999 Project by way of remuneration for its services in carrying on the business and gaining and producing income of The 1999 Project and otherwise managing The 1999 Project and carrying out its duties and obligations under this Deed or the Agreements those fees provided for in this Deed and in the Agreements. The rights of the Responsible Entity to receive the remuneration specified in this clause are available only in relation to the proper performance of the Responsible Entity's duties.

13.2 Further Fees

The Responsible Entity will be entitled to be paid any interest earned on Subscription Money (pursuant to clause 4.4) and to collect, receive, get in and retain all dividends, interest, rents and other income from the Authorised Investments from time to time comprised in or forming part of the Agency Account (pursuant to clause 15.3).

13.3 Payment of Expenses

The Responsible Entity will be responsible for payment of all expenses relating to the operation and administration of The 1999 Project up to the Harvest stage.

14 USE OF MONEYS IN THE AGENCY ACCOUNT

14.1 Authority to Make Payments

Conditional upon Minimum Subscription having been raised, the Responsible Entity must as the agent for each of the Growers pay moneys pursuant to any obligations on the part of the Grower under this Deed or under the provisions of any Agreement.

14.2 Expenditure to be Shared between Growers

Expenditure will be shared between all of the Growers such that each Grower pays the Prescribed Proportion of the aggregate expenditure.

15 INVESTMENT OF MONEYS BY RESPONSIBLE ENTITY

15.1 Power of Investment

The Responsible Entity may apply the whole or part of such moneys as are for the time being standing in any Agency Account in such Authorised Investments in the name of the Responsible Entity as the Responsible Entity sees fit.

15.2 Variation of Investments

Should the Responsible Entity at any time and from time to time consider it desirable in the interests of a Grower or of each of the Growers to sell or otherwise dispose of, exchange, vary, modify or otherwise change any investment made pursuant to clause 15.1, the Responsible Entity may at its absolute discretion do so.

15.3 Application of Income from the Authorised Investments

Any interest or other income earned from Authorised Investments will be paid to the Responsible Entity as part of its fees.

16 ANNUAL AND EXTRAORDINARY EXPENSES OF THE 1999 PROJECT

16.1 Contribution of Further Moneys

Each Grower agrees to contribute further moneys by making payment to the Responsible Entity on the dates, in the amounts and in the manner set out in the Agreements. Except to the extent that any payment comprises Subscription Money, at least ONE (1) month prior to any payment being due under this clause, the Responsible Entity must give written notice to each Grower as to the amount due.

16.2 Failure by Grower to Make Further Contribution

In the event that a Grower fails or neglects to make payment of any sum due under clause 16.1, the Responsible Entity is authorised to exercise all or any of the following remedies (in addition to and without prejudice to any rights at law or in equity or pursuant to the Agreements or this Deed):

16.2.1 The Responsible Entity may sue the Grower for specific performance of its agreement to make payment in accordance with clause 16.1.

16.2.2 (a) The Responsible Entity may give notice to the Grower that the Grower is in default and that the Responsible Entity may exercise its right for and on behalf of the Grower to sell and

assign all of the relevant Woodlots held by the Grower if payment of the sum due under clause 16.1 is not made within 30 days of the notice being so given to the Grower.

- (b) In the event that notice is given as provided in paragraph 16.2.2.(a) and the Grower fails or neglects to remedy the default complained of, the Responsible Entity may for and on behalf of the Grower sell some or all of the relevant Woodlots by public auction to be conducted as far as practicable in accordance with the provisions set out in Sections 254Q to 254R inclusive of the Corporations Law relating to the sale by a company of forfeited shares.
- (c) The time and place of the auction must be (i) publicly advertised, and (ii) notified to all Growers (placing such reserve price on the Woodlots as the Responsible Entity thinks fit).
- (d) If no bid is received at such auction equal to the reserve price on the Woodlots, the Responsible Entity may sell or otherwise dispose of the Woodlots as it thinks fit in which event the Responsible Entity has no liability.
- (e) In the event that the Responsible Entity determines to dispose of the relevant Woodlots by means of issue of a prospectus, the prospectus must disclose the amount and dates of future moneys payable under this subclause and the consequences of failure to pay those moneys.
- (f) The net proceeds of sale by the Responsible Entity of any relevant Woodlots must be applied first in payment of any amounts owing by the Grower to the Responsible Entity under this Deed, under the Management Agreement, or under the Sub-lease; and any residue will be treated as Proceeds.

- 16.2.3** (a) The Responsible Entity may from its own funds pay any person or itself on behalf of the Grower such amount of fees, expenses, rent, costs or other amounts as may for the time

being and at any time thereafter be due by the Grower under the provisions of this Deed or under the provisions of any Agreement.

- (b) In the event that any amount is so paid by the Responsible Entity on behalf of the Grower, or in the event that any other expenses are reasonably and properly incurred (whether under paragraph 16.2.3(a) or otherwise) or are required to be incurred on behalf of the Grower in relation to The 1999 Project by the Responsible Entity, then the Responsible Entity may:
 - (i) require the amount or expenses to be paid from moneys (if any) in the Agency Account; and/or
 - (ii) pay for such expenses itself.
- (c) Subject to clause 22.1, in the event that the Responsible Entity pays for any amounts or expenses in relation to The 1999 Project itself (other than expenses which it has contracted to incur pursuant to the Management Agreement, including without limitation the costs of any alternative quote pursuant to clause 8(b) of the Wood Purchase Agreement), then the Responsible Entity will be entitled to be reimbursed by the Grower or by each of the Growers from the Agency Account in the amount of such expenses plus the rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) from the time of such payment by the Responsible Entity until the date of reimbursement, and in cases where reimbursement is from each of the Growers, each of the Growers must pay the Prescribed Proportion of the aggregate amounts of expenses including interest.

17 GROWER'S WOODLOTS

17.1 Right to Inspect Documents and Express Opinions

Each Grower has the right:

- (a) to inspect and copy any document or other information relevant to the activities of the Responsible Entity on its behalf (except for information which is confidential because its disclosure could in the reasonable opinion of the Responsible Entity assist competitors or otherwise prejudice the interests of all Growers), provided that on each occasion upon which the Grower seeks to exercise its right under this paragraph the Grower will sign a suitable undertaking to keep confidential the document or other information; and
- (b) to express opinions and to give recommendations relating to any matters the subject of the Sub-lease or a proposed Sub-lease and the Responsible Entity will give due consideration to any such opinions or recommendations received in writing.

17.2 Grower's Right regarding the Agency Account

No Grower will have the right to require payment to the Grower of that part of any money comprising the Agency Account to which it is beneficially entitled or entitled at law subject always to the rights of the Grower as expressly provided in this Deed.

17.3 Relationships Between each Grower

- 17.3.1** No Grower will have any relationship with any other Grower except as specifically provided in this Deed; and the relationship between each Grower and each other Grower and between each Grower and the Responsible Entity is not intended to be, will not be deemed to be, and will not be treated as a partnership, limited partnership, joint venture, limited company or association; nor will Growers or any Grower and the Responsible Entity for any purpose be or be deemed to be or be treated as in any way whatsoever liable or responsible under this Deed as partners or joint venturers.

17.3.2 Nothing in this Deed is, or is intended to be, or will be deemed to be a contract between Growers and each Grower will take and enjoy all its Woodlots and will incur all its liabilities and obligations under this Deed severally and independently of each other Grower, and none of the undertakings or conditions in this Deed on the part of any Grower will operate for the benefit of or be enforceable by any other Grower or Growers and no Grower has any right or claims against any other Grower or against any other Growers.

17.3.3 No Grower is, or is intended to be, or will be deemed to be the partner, agent, or legal representative of any other Grower or of the Responsible Entity, whether for the purpose of this Deed or otherwise, nor will any Grower have any authority or power to act for or to undertake any obligation or responsibility or incur any liability on behalf of any other Grower, nor will the Responsible Entity (except where expressly provided) have any authority to act for or to undertake any obligation or responsibility or incur any liability on behalf of any Grower.

17.4 Attorney

17.4.1 A Grower may by written notice to the Responsible Entity appoint a person to act on its behalf under this Deed as a representative or agent (in this subclause called an "**Attorney**") in relation to the relevant Woodlots held by that Grower with power in the name of the Grower to subscribe for, purchase, sell, mortgage, redeem, convert, transfer, transmit or otherwise deal with the Woodlots, and to give directions, authorities, requests and to receive payment in relation to the relevant Woodlots for and on behalf of that Grower.

17.4.2 The notice so appointing the Attorney must be in such form as the Responsible Entity may for the time being require or approve, must be signed or executed by the Grower, and must be delivered to the Responsible Entity prior to any dealing or transaction in respect of which it is to be so used.

17.4.3 A Grower may cancel any appointment of an Attorney by delivering a written notice to the Responsible Entity in such form as the Responsible Entity may for the time being require or approve, signed or executed by the Grower. Such cancellation is not to be effective until the written

notice is in fact received by the Responsible Entity and the Responsible Entity will not be held liable in any way whatsoever with respect to any transactions which are entered into by the Attorney after the appointment of the Attorney has been cancelled but before the written cancellation has been received by the Responsible Entity.

17.4.4 The Responsible Entity may in its absolute discretion accept or refuse the appointment of an Attorney or refuse to accept or give effect to the exercise of any given authority of the Attorney, and the Responsible Entity will not be required to give any reason for such refusal.

17.4.5 Any direction or authority which the Responsible Entity reasonably believes to have been given by any partner or authorised officer of the Attorney is deemed to be a direction or authority validly given by the Attorney.

17.4.6 Despite anything contained in this clause 17.4, the Responsible Entity must send to the Grower, within two (2) months after any transaction or dealing is entered into by an Attorney on behalf of that Grower, details of the transaction or dealing. A Woodlot Statement is sufficient evidence of details of a transaction or dealing in the case of an Application or a partial redemption or a conversion.

18 REGISTRATION OF ASSIGNMENTS AND TRANSMISSIONS

18.1 Assignments

18.1.1 No assignment that is permitted under subclause 18.1.2 may be registered unless a deed of assignment has been delivered to the Responsible Entity.

18.1.2 The deed of assignment of any Woodlots must be in writing in the form set out in the Seventh Schedule and must be duly stamped with the necessary stamp duty applicable to the deed of assignment.

- 18.1.3** The deed of assignment of any Woodlots must be signed both by the assignor and the assignee and until such deed of assignment is registered and the name of the assignee is entered in the Register in respect of the Woodlots assigned the assignee will not be deemed the Grower in respect of such Woodlots.

18.2 Transmission

- 18.2.1** No transmission may be registered unless an instrument of transmission has been delivered to the Responsible Entity.
- 18.2.2** The instrument of transmission of any Woodlots must be in writing as set out in the Eighth Schedule and must be duly stamped with the necessary stamp duty applicable to the instrument of transmission.
- 18.2.3** The instrument of transmission of any Woodlots must be signed by the party to whom the Woodlots are being transmitted and, until such instrument of transmission is registered and the name of the transmittee is entered in the Register in respect of the Woodlots transmitted, the transmittee will not be deemed the Grower (or Mortgagee) in respect of such Woodlots.

18.3 Registration

- 18.3.1** Within one (1) month after the date on which a deed of assignment or transmission with respect to any Woodlots is lodged with the Responsible Entity, the Responsible Entity must:-
- (a) complete and have ready for delivery to the assignee or transmittee a Woodlot Statement in connection with the assignment or transmission; and
 - (b) unless otherwise instructed by the relevant person, send or deliver the completed Woodlot Statement to the relevant person or, where the relevant person has instructed the Responsible Entity in writing to send it to a nominated person, to that person.

18.3.2 In addition, the Responsible Entity, upon receipt of a deed of assignment or transmission of any Woodlots, must enter the assignee or transmittee in the Register as the holder of such Woodlots.

18.3.3 If the Responsible Entity refuses to enter in the Register a deed of assignment or transmission of Woodlots, it must, within two (2) months after the date on which the deed of assignment or transmission was lodged with it, send to the assignee or transmittee notice of the refusal.

19 RESTRICTIONS ON ASSIGNMENT AND TRANSMISSION

19.1 Restrictions on Transfers, Mortgages, Assignments, etc.

Subject to the provisions of this clause, no Grower may transfer, mortgage, assign or otherwise dispose of the whole or part of its Woodlots unless:

- (a) the Grower transfers, mortgages, assigns or otherwise disposes of (whichever is the case) those Woodlots individually;
- (b) the Grower transfers, mortgages, assigns or otherwise disposes of (whichever is the case) those Woodlots to the one person, except where the Grower disposes of no less than three Woodlots and continues to hold no less than three Woodlots after the disposal; and
- (c) the person benefiting from the transfer, mortgage, assignment or other disposal agrees to become a party to this Deed and to each of the Agreements as the Grower in respect of the rights and interests transferred, mortgaged, assigned or otherwise disposed of; and
- (d) the person benefiting from the transfer, mortgage, assignment or other disposal will be deemed to have severally become a party as the Grower to each of the Agreements and to this Deed.

19.2 Death, Liquidation or Bankruptcy of Grower

Subject to the provisions of the Stamps Act 1958 (Vic) or stamp duties legislation of another State or Territory, upon the death, liquidation or bankruptcy of any Grower, or otherwise upon any person becoming entitled in equity to all the Woodlots of a

Grower for any lawful reason, then the Grower will be deemed to have at the same time assigned all its Woodlots to the person who becomes entitled to them to hold unto that person absolutely, conditional upon that person producing evidence to the Responsible Entity of its entitlement in respect of the Woodlots.

19.3 Executors, Administrators and Survivors

The executors or administrators of a deceased Grower will be the only persons recognised as having any title to the Grower's Woodlots, but in the case of death of any one or more Growers who hold their Woodlots as joint tenants, the survivors will be the only persons recognised as holding the Woodlots.

20. MEETINGS OF GROWERS

20.1 Convening of Meetings

The Responsible Entity may at any time convene a meeting of Growers and must convene a meeting of Growers when required to do so by the Corporations Law.

20.2 Calling and Holding Meetings

Meetings of Growers must be called and convened in accordance with Part 2G.4 of the Corporations Law, except that:

- 20.2.1** in relation to section 252R of the Corporations Law, no business will be transacted at any meetings of Growers unless a quorum is present when the meeting proceeds to business. The quorum necessary for a meeting at which an Ordinary Resolution is to be proposed is five (5) persons holding or representing by proxy at least ten per cent (10%) of the aggregate number of relevant Woodlots for the time being issued to the Growers concerned, and for a meeting at which a Special Resolution is to be proposed, is five (5) persons holding or representing by proxy at least twenty-five per cent (25%) of the aggregate number of relevant Woodlots issued to the Growers concerned.

- 20.2.2** in relation to section 252R(3) of the Corporations Law, if an individual is attending a meeting both as a Grower and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual more than once.
- 20.2.3** in relation to section 252R(3) of the Corporations Law, a proxy is entitled to speak and vote for a Grower (to the extent allowed by the appointment) even if the Grower is present at the meeting (but only so long as the Grower does not speak or vote, as the case may be).
- 20.2.4** in relation to section 252Z(5) of the Corporations Law, the Responsible Entity may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any shorter period before the meeting.
- 20.2.5** in relation to section 253K(2) of the Corporations Law, a poll cannot be demanded on any resolution concerning:
- (a) the election of the chair of a meeting; or
 - (b) the adjournment of a meeting.
- 20.2.6** in relation to section 253L(2) of the Corporations Law, at a meeting of Growers, a poll may be demanded by:
- (a) at least one (1) Grower concerned holding or representing by proxy at least ten per cent (10%) of the aggregate number of relevant Woodlots for the time being on issue to the Growers concerned and entitling the holders to vote on the resolution; or
 - (b) the chair.

21 LIABILITIES AND INDEMNITIES OF RESPONSIBLE ENTITY

21.1 Liability of Responsible Entity

21.1.1 The Responsible Entity is not liable for any loss or damage to any person (including any Grower) arising out of any matter unless, in respect of that matter, it acted both:

- (a) otherwise than in accordance with this Deed and its duties; and
- (b) without a belief held in good faith that it was acting in accordance with this Deed and its duties.

21.1.2 In particular, the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (a) to the extent permitted by the Corporations Law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity;
- (b) it acted as required by Law;
- (c) it relied in good faith upon any signature, marking or document; or
- (d) it followed a direction given to it by a resolution passed at a duly convened meeting of Growers.

21.1.3 The Responsible Entity may decide how and when to exercise its powers in its absolute discretion.

21.2 Indemnity of Responsible Entity

21.2.1 In addition to any indemnity under any Law, the Responsible Entity has a right of indemnity out of the Agency Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of its duties.

- 21.2.2 Such right of indemnity in respect of a matter ("**Indemnified Matter**") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of this Deed.
- 21.2.3 The right of indemnity continues to be available after the Responsible Entity retires or is removed as Responsible Entity.
- 21.2.4 The Responsible Entity may pay out of the Agency Account any amount for which the Responsible Entity would be entitled to be indemnified under sub-clause 21.2.1.

22 LIABILITIES AND INDEMNITIES OF GROWERS

22.1 Liability Limited

Except as provided by any express indemnity given by any Grower to the Responsible Entity, and except as provided in clause 25.7, the entire liability of each Grower is limited to the balance of the Subscription Money and Proceeds of the Grower, and no Grower will have any liability to make any further contribution to The 1999 Project or payment to the Responsible Entity in respect of The 1999 Project, other than the payments required under clause 16.1.

22.2 Indemnity of each Grower by Responsible Entity

The Responsible Entity hereby indemnifies each Grower against all debts and liabilities which may be incurred by the Grower at any time in relation to The 1999 Project or otherwise in any way as a result of or arising out of any act, default or omission of the Responsible Entity.

22.3 No Indemnity by any Grower

Despite any other provision of this Deed or provisions deemed to be included in this Deed, no Grower will, by reason of this Deed or by reason of the relationship created under this Deed with the Responsible Entity, be under any obligation personally to indemnify the Responsible Entity in the event of there being any deficiency in relation to The 1999 Project except, in respect of the relevant Woodlots, out of any Subscription Money of the Grower or other moneys held in the Agency Account in relation to the Grower, or the payments required under clause 16.1.

23 DISTRIBUTIONS

23.1 Distributions to Each Grower

Except as provided in this section 23, each Grower will be entitled to receive without deduction any Proceeds to which it is entitled pursuant to the Agreements directly from the Purchaser (or any other person who may be under an obligation to pay Proceeds to the Grower).

23.2 Authority to the Responsible Entity to Make Directions as to the Grower's Distribution

The Responsible Entity will be empowered on behalf of the Grower to direct the Purchaser or any other person who may be under an obligation to pay Proceeds to the Grower as to the precise amounts in which Proceeds are to be paid to the Grower pursuant to the provisions of the relevant Sub-lease and the Wood Purchase Agreement or any other agreement for the sale of Wood, and the Grower hereby irrevocably authorises the Responsible Entity as its agent to make any such direction. The Responsible Entity will be absolved from any responsibility in relation to those Proceeds once it has issued a correct direction to the Purchaser or other person who is under an obligation to pay the Proceeds to the Growers.

23.3 Direction to Make Payment to Responsible Entity

Subject to subclause 23.5.2, the Responsible Entity may direct the Purchaser or any other person who may be under an obligation to pay Proceeds to the Grower to make payment of any portion of the Proceeds to which the Grower is entitled to the Responsible Entity, and the Grower hereby irrevocably authorises the Responsible Entity as its agent to make any such direction.

23.4 Agency Account to be Used

In the event that the Responsible Entity receives any Proceeds as agent for any Grower, whether pursuant to a direction by the Responsible Entity or not, any Proceeds received by the Responsible Entity must be paid by the Responsible Entity into the Agency Account.

23.5 Pooling of Amounts

- 23.5.1** Without in any way limiting the obligation of the Responsible Entity to account separately for any Proceeds received or dealt with on behalf of any of the Growers, any Proceeds received by the Responsible Entity for any of the Growers may be pooled in a bank account with Proceeds received for any of the other Growers.
- 23.5.2** In making any direction to the Purchaser under the provisions of the Wood Purchase Agreement or the Management Agreement, the Responsible Entity may (but only to the extent necessary to enable any outstanding fees, expenses or other moneys to be paid) require Proceeds to be paid by the Purchaser or other person who may be under an obligation to pay Proceeds to the Grower in the following order of priority or alternatively may direct the Purchaser or other person who may be under an obligation to pay Proceeds to the Grower to make payment to the Responsible Entity whereupon the Responsible Entity must make payments as required under this subclause, and in each case, the Grower hereby authorises the Responsible Entity to make any such direction. The manner and priority of making payments out of the Proceeds will be as set out as follows:
- (a) first, to the extent to which they have not been paid, to pay the Responsible Entity any reimbursements or its fees, out-of-pockets and interest as provided in this Deed and the Wood Purchase Agreement; and
 - (b) second, to the extent to which they have not been paid, to pay to the relevant payees any payments due provided in clause 14.1.
- 23.5.3** In the event that as a result of a direction by the Responsible Entity, it appears that the Responsible Entity maintains in the Agency Account more money than is required from the Grower for the purposes set out in this subclause, the Responsible Entity must forthwith pay any excess to the Grower.

23.6 Time and Manner of Directions of Distribution to Each Grower

Should the Responsible Entity receive any Proceeds from the Purchaser as agent for the Grower, all payments, directions and distributions of Proceeds in relation to The 1999 Project must be made within thirty (30) days of the Responsible Entity becoming aware of the Proceeds being available for distribution or of the receipt of the Proceeds from the Purchaser (whichever is the case).

24 COMPLAINTS PROCEDURE

24.1 Procedure

Subject to the guidelines of the external complaints resolution scheme of which the Responsible Entity will become a member under subclause 24.6.1, complaints made by any Grower in relation to The 1999 Project or the Responsible Entity ("complaints") must be dealt with in the manner set out in this section.

24.2 Complaints Officer

24.2.1 The Responsible Entity must appoint an internal complaints officer ("**Complaints Officer**") with authority to review any complaints from Growers.

24.2.2 The roles and responsibilities of the Complaints Officer include:

- (i) to receive and process verbal and written complaints from Growers, at no charge to Growers;
- (ii) to review and properly consider complaints from Growers in a timely and efficient manner;
- (iii) to communicate directly with Growers in relation to complaints;
- (iv) to make readily available to Growers information on how, when, where and to whom to make complaints and any documented policies and procedures for the resolution of complaints;

- (v) to periodically develop and review the Responsible Entity's policies and procedures for the resolution of complaints, in accordance with Australian Standard AS 4269:1995, *Complaints Handling* (as amended from time to time);
- (vi) to provide information relating to the Responsible Entity's complaints handling procedures to employees of the Responsible Entity, in the form of training, brochures and the development of internal guidelines.

24.3 Receipt of Complaint

24.3.1 Upon receipt of a verbal complaint which cannot be resolved verbally, the Complaints Officer may request that the complainant provide:

- (i) a written notice specifying the nature of the complaint, the desired outcome and what action the Grower thinks will settle the complaint; and
- (ii) all relevant material to support the complaint.

24.3.2 Upon receipt of the written notice described in paragraph 24.3.1(a)(i) (or, if a written notice is not required, upon receipt of a verbal complaint) ("**Lodgement Date**"), the Complaints Officer must:

- (i) make a written record of the complaint setting out the following details:
 - (a) the name, address and telephone number of the complainant;
 - (b) the date the complaint was received;
 - (c) the nature of the complaint; and
 - (d) any other information the Complaints Officer deems adequate.

- (ii) provide the complainant with a written acknowledgement of receipt of the complaint and the time-frame in which the complaint will be considered;
- (iii) consider and investigate the circumstances surrounding the complaint;
- (iv) advise the complainant of the criteria and processes applied by the Responsible Entity in dealing with complaints;
- (v) upon request, provide the complainant with any relevant material (not being confidential material) relating to the complaint; and
- (vi) communicate directly with the complainant, with a view to resolving the complaint in a fair and timely manner.

24.4 Notification of Decision

24.4.1 If the complaint is not resolved within 45 days following the Lodgement Date, the Complaints Officer must inform the complainant of the reasons for the delay.

24.4.2 No later than 90 days following the Lodgement Date, the Complaints Officer must:

- (a) notify the complainant, in writing, of the decision of the Responsible Entity in relation to the complaint;
- (b) provide the complainant with written reasons for the decision;
- (c) outline to the complainant the remedies, if any, available to the complainant;
- (d) advise the complainant of any further avenues for complaint and the timeframes involved in those avenues.

24.5 Further Avenues

If the complainant is dissatisfied with the decision of the Responsible Entity in relation to the complaint, the complainant may take the following action:

- (a) if the Responsible Entity is a member of an external complaints resolution scheme approved by the Commission, the complainant may refer the complaint to that external complaints resolution scheme, for determination in accordance with the guidelines of that external complaints resolution scheme; or
- (b) if the Responsible Entity is not a member of an external complaints resolution scheme approved by the Commission, and only in that case, the complainant may take any appropriate lawful action.

24.6 External Complaints Resolution Scheme

- 24.6.1** For the purposes of paragraph 24.5(a), the Responsible Entity will become a member of an external complaints resolution scheme approved by the Commission by 1 July 1999, or a later date announced by the Commission.
- 24.6.2** If the procedure set out in paragraph 24.5(a) is adopted, subject to any right of appeal contained in the guidelines of the relevant external complaints resolution scheme, the complainant and the Responsible Entity agree to accept the determination of the external complaints resolution scheme as final and binding.

25 TERMINATION OF THE 1999 PROJECT

25.1 Completion of Obligations by Grower

The 1999 Project terminates upon the completion by the parties of their obligations under the Agreements and this Deed unless previously terminated under the provisions of this Deed, or of the Sub-lease, or of the Wood Purchase Agreement or of the Management Agreement.

25.2 Extension of The 1999 Project

The 1999 Project may be extended for an additional period not exceeding three (3) years as Growers may by Special Resolution agree.

25.3 Notice of Expiry

At least three (3) months prior to the end of any additional period of extension under the preceding paragraph, each of the Growers must be duly notified by the Responsible Entity of the expiry date and the calling of a meeting of the Growers at which a resolution must be put to the effect that unless otherwise resolved by Special Resolution The 1999 Project will terminate on the expiry date.

25.4 Termination by Special Resolution

At any time in relation to The 1999 Project, a meeting of Growers may by Special Resolution resolve that The 1999 Project be terminated.

25.5 Consequences of Termination of The 1999 Project

On the termination of The 1999 Project, the following provisions apply.

25.5.1 The Responsible Entity must immediately following such termination as agent for the Grower sell, call in, convert and realise all assets for the time being in relation to The 1999 Project after paying all proper costs and disbursements, commissions, brokerage fees, legal fees and other outgoings. The Responsible Entity may but need not have regard to any contingency or outstanding matter and may if it sees fit to do so, settle or discharge any such contingencies as agent for the Grower or retain part or all of the assets by way of indemnity in respect thereof but such retention does not affect the release of the Responsible Entity's obligations under section 601FS of the Corporations Law.

25.5.2 The Responsible Entity must prepare final accounts of The 1999 Project and cause the Auditor to audit and report on those accounts.

25.5.3 The Responsible Entity may postpone the sale, calling in, conversion and realisation of any part of the assets for such time as it thinks it desirable so to do in the interests of the Grower and is not responsible for any loss attributable to such postponement.

25.5.4 The balance obtained after the sale of all assets in relation to The 1999 Project must be distributed by the Responsible Entity as if the balance represented the Proceeds payable under the Wood Purchase Agreement BUT if the aggregate amount to be distributed to all of the Growers in relation to The 1999 Project is less than one thousand dollars (\$1,000), Indexed from 30 June 1999, then at the discretion of the Responsible Entity, the amount will be either distributed to Growers or on behalf of each of the Growers donated to the Salvation Army of Victoria.

25.6 Final Statement

Upon so distributing the Responsible Entity must forward to the Grower a final statement setting out the details of the sale, calling in and conversion of the assets and the balance obtained in relation to The 1999 Project and the distribution and all payments otherwise made or allowed for, whereupon the Responsible Entity will be released from all further duties and obligations incurred under this Deed in relation to the Grower without prejudice to any liability of the Responsible Entity previously incurred under this Deed to the Grower for any breach of its duties imposed by Law or otherwise.

25.7 Release of Grower's Duties

Each of the Growers will be released from all further duties and obligations incurred under this Deed in relation to The 1999 Project, without prejudice to any liability of the Growers incurred under this Deed to any party to this Deed for any breach of its duties imposed by Law or otherwise.

26 MISCELLANEOUS

26.1 Notices

26.1.1 Notices by Post, Facsimile or Other Electronic Means

Subject to the Corporations Law, any notice, report or other communication required

to be given to any party under this Deed will be deemed to have been duly given if it is given in writing and either delivered or sent:

- (a) by post to any Applicant at his address appearing in the Application, to any Grower at its address appearing in the Register, to the Responsible Entity at the registered office for the time being and to any other party at their last known address; or
- (b) by facsimile or other electronic transmission to any Applicant at his facsimile number or electronic address appearing in the Application, to any Grower at its facsimile number or electronic address appearing in the Register and to the Responsible Entity at the facsimile number or electronic address of its registered office and to any other person at their last known facsimile number or electronic address.

26.1.2 Notice to Joint Applicants or Growers

In the case of joint Applicants or Growers a notice, report or other communication given to that joint Applicant or Grower whose name stands first on the Application or Register is sufficient notice to all such joint Applicants or Growers.

26.1.3 Receipt of Notice

- (a) Any notice, report or other communication given by post will be deemed to have been received on the Business Day following the day when it was posted and in proving receipt it will be sufficient to prove that the envelope containing the notice was properly addressed and posted and a statement signed by the sender that it was so posted and when, will be conclusive of that fact.
- (b) Any notice, report or other communication given by facsimile or other electronic transmission will be deemed to have been given on the Business Day after it is sent and the transmission report will be sufficient evidence of receipt.

26.2 Payments to Applicants or Growers

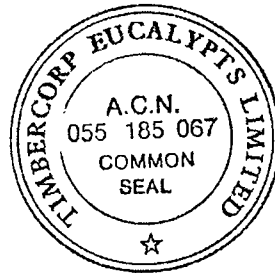
Any money payable to any Applicant or Grower under the provisions of this Deed may be paid by crossed "not negotiable" cheque made payable to the Applicant or Grower or bearer and sent through the post in the case of the Applicants to the address of the Applicant appearing in the Application and in the case of each Grower to the registered address of each such Grower and in the case of joint Applicants or Growers made payable to the joint Applicants or Growers or bearer and sent to the address of that one of the joint Applicants or Growers who is first named on the Application or Register. Payment of every such cheque if duly presented and paid will be in full satisfaction of the money payable and will be a good discharge to the Responsible Entity PROVIDED THAT if the Responsible Entity is directed in writing by any Grower so to do, the Responsible Entity may pay any such money to the credit of an account in any bank and the receipt of such bank shall be a good discharge to the Responsible Entity.

26.3 Copies

A copy of this Deed will at times during the usual business hours be made available by the Responsible Entity at its office (whether registered or principal) in Melbourne for the inspection of each Grower who will be entitled to receive from the Responsible Entity a copy of this Deed and all supplemental Deeds (if any) on payment to the Responsible Entity of the sum of ONE HUNDRED DOLLARS (\$100.00) Indexed from 30 June 1999, or such lesser sum as the Responsible Entity may from time to time prescribe.

Executed as a Deed this 11th day of January 1999.

THE COMMON SEAL of TIMBERCORP
EUCALYPTS LIMITED is affixed in
accordance with its Constitution in the
presence of:



..... *[Signature]* Director

..... *DAVID WILLIAM ANDREW MAIR* Full Name

..... *[Signature]* Director/Secretary

..... *SOL RABINOWICZ* Full Name

FIRST SCHEDULE

ITEM 1: Subscription Money for each Woodlot

**THREE THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS
(\$3,750)**

SECOND SCHEDULE

MANAGEMENT AGREEMENT

First Supplemental Deed

for

**1999 Timbercorp Eucalypts
Project
(ARSN 085 827 872)**

by the responsible entity being

**Timbercorp Securities Limited
(ACN 092 311 469)**

Details of this First Supplemental Deed

Date of the Deed:

This Deed is made on 1 June 2004.

Party to the Deed:

1. Timbercorp Securities Limited
ACN 092 311 469
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

(Responsible Entity)

Background to the Deed

- A. The 1999 Timbercorp Eucalypts Project (ARSN 085 827 872) (**Project**) is governed by a Project Deed dated 11 January 1999 executed by Timbercorp Eucalypts Limited ACN 055 185 067 (subsequently called Timbercorp Limited) as Responsible Entity with the intent that it be legally enforceable as between the Responsible Entity and each Grower (**Project Deed**).
- B. On 4 December 2003, ASIC granted relief to Timbercorp Limited to retire and appoint its wholly owned subsidiary Timbercorp Securities Limited as the new Responsible Entity for the Project. Effective 23 March 2004, Timbercorp Securities Limited (AFSL 235653) was appointed as the new Responsible Entity for the Project.
- C. Section 601GC of the Corporations Act provides that the Responsible Entity may modify the Project Deed if the Responsible Entity reasonably considers that the change will not adversely affect members' rights.
- D. The Responsible Entity wishes to modify the Project Deed to implement practical processes for the administration of the New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST law**). Pursuant to section 153-50 of the GST law, the Grower may appoint the Responsible Entity as its agent for the purpose of collecting and remitting GST in respect of taxable supplies (according to GST law) made by the Grower to any third party purchaser under the Project.
- E. The Responsible Entity has satisfied itself that, the amendments contained in this Deed will not adversely affect the rights of Growers.

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

Words and expressions defined in the Project Deed have the same meanings when used in this Deed, as modified or inserted by the First Schedule to this Deed.

1.2 Construction

In this Deed:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this paragraph 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a paragraph, clause or schedule is a reference to a paragraph and clause of, and schedule to, this Deed and a reference to this Deed includes any schedule;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns; and
- (j) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind.

2. AMENDMENTS

2.1 Deed is Supplemental

This Deed is supplemental to the Project Deed and, except as otherwise provided in this Deed, the Project Deed remains in full force and effect.

2.2 Amendments to the Project Deed

The Responsible Entity modifies, alters, amends and adds to the provisions of the Project Deed as provided in the First Schedule to this Deed.

2.3 Ratification and Confirmation

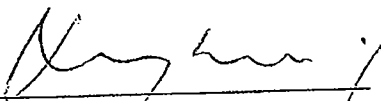
In all other respects, the Responsible Entity confirms and ratifies the terms and conditions of the Project Deed.

2.4 Operative Date

The alterations made by this Deed take effect on and from the date of lodgement of this Deed with the Australian Securities and Investments Commission.

Executed as a Deed

EXECUTED by TIMBERCORP
SECURITIES LIMITED in
accordance with section 127 of
the Corporations Act:



Signature

John Vaughan

Full Name

Director

Position Held



Signature

Sol Rabinowicz

Full Name

Director

Position Held

FIRST SCHEDULE PROJECT DEED AMENDMENTS

1. In the Project Deed in respect of Growers, insert the following **clause 27** after clause 26.3

"27 GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Deed, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- (c) The GST payable under paragraph 27(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Deed, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 27(b).
- (f) If a party has a claim under or in connection with this Deed for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (g) If a party has a claim under or in connection with this Deed and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether the amount is separate or included as part of a larger amount."

2. The following definitions are inserted in **clause 1.1** of the Project Deed in alphabetical order:

GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law.
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

GST Rate:	the rate of GST under the GST Law.
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3. In the **Management Agreement** attached to Project Deed in respect of Growers,
insert the following **clause 25 and clause 25A** after clause 24:

"25 GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- (c) The GST payable under paragraph 25(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 25(b).
- (f) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (g) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether the amount is separate or included as part of a larger amount.

25A GST & Agency

- (a) Where the Grower (as principal) makes taxable supplies (including the supply of Wood and Carbon Credits) to third party Recipients, the Grower appoints the Responsible Entity as its agent for the purpose of collecting and remitting GST. The appointment of the Responsible Entity under this clause is made pursuant to section 153-50 of the GST Law.
- (b) The Responsible Entity will issue to third party Recipients, in the Responsible Entity's own name, all tax invoices and adjustment notes (which comply with the GST Law) relating to each taxable supply made by the Grower to third

party Recipients, and the Grower will not issue any tax invoices and adjustment notes in respect of the taxable supplies.

- (c) The Responsible Entity's appointment as agent takes effect when the Grower is registered for GST and ceases to have effect if the Grower or the Responsible Entity, or both of them, cease to be registered.
- (d) The Grower will notify the Responsible Entity if it ceases to be registered for GST.
- (e) The Responsible Entity acknowledges that it is registered for GST and that it will notify the Grower if it ceases to be registered or if it ceases to satisfy any of the requirements of the GST Law."

4. The following definitions are inserted in **clause 1** of the Management Agreement in alphabetical order:

GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law.
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
GST Rate:	the rate of GST under the GST Law.

[end of Schedule]

**Second Supplemental
Deed**

for

**1999 Timbercorp Eucalypts
Project
(ARSN 085 827 872)**

by the responsible entity being

**Timbercorp Securities Limited
(ACN 092 311 469)**

[EXECUTION COPY]

Details of this Second Supplemental Deed

Date of the Deed:

This Deed is made on 5 May 2005.

Party to the Deed:

1. **Timbercorp Securities Limited**
ACN 092 311 469
Level 5, 95 Queen Street
MELBOURNE VIC 3000

(Responsible Entity)

Background to the Deed

- A. The 1999 Timbercorp Eucalypts Project (ARSN 085 827 872) (**Project**) is governed by a Constitution dated 11 January 1999 executed by the Responsible Entity with the intent that it be legally enforceable as between the Responsible Entity and each Member (**Constitution**).
- B. The Constitution was amended by the First Supplemental Deed made on 1 June 2004.
- C. Section 601GC of the Corporations Act provides that the Responsible Entity may modify the Constitution if the Responsible Entity reasonably considers that the change will not adversely affect members' rights.
- D. The Responsible Entity wishes to modify the Constitution to incorporate appropriate protocols for the distribution of Proceeds to Growers where Proceeds are deposited into the Agency Account close to 30 November in any year, being the date by which distributions of Proceeds must be made to Growers under clause 23.6 of the Constitution.
- E. The Responsible Entity has satisfied itself that the amendments contained in this Deed do not adversely affect any of the Grower's rights.

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

In this Deed, including the background and schedules, unless a contrary intention is implied or expressed, words and expressions defined in the Constitution, as modified or inserted by the First Schedule to this Deed, have the same meanings when used in this Deed.

1.2 Construction

In this Deed:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this paragraph 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a paragraph, clause or schedule is a reference to a paragraph and clause of, and schedule to, this Deed and a reference to this Deed includes any schedule;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns; and
- (j) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind.

2. AMENDMENTS

2.1 Deed is Supplemental

This Deed is supplemental to the Constitution and, except as otherwise provided in this Deed, the Constitution remains in full force and effect.

2.2 Amendments to the Constitution

The Responsible Entity modifies, alters, amends and adds to the provisions of the Constitution as provided in the First Schedule to this Deed.

2.3 Ratification and Confirmation

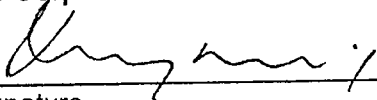
In all other respects, the Responsible Entity confirms and ratifies the terms and conditions of the Constitution.

2.4 Operative Date

The alterations made by this Deed take effect on and from the date of lodgement of this Deed with the Australian Securities and Investments Commission.

Executed as a Deed


EXECUTED by TIMBERCORP)
SECURITIES LIMITED in)
accordance with section 127 of)
the Corporations Act:)



Signature
John Vaughan

Full Name
Director

Position Held



Signature
Mark H Pryn

Full Name
Secretary

Position Held

Second Supplemental Deed

for

**1999 Timbercorp Eucalypts
Project
(ARSN 085 827 872)**

by the responsible entity being

**Timbercorp Securities Limited
(ACN 092 311 469)**

FIRST SCHEDULE CONSTITUTION AMENDMENTS

1. Clause 23.6 of the Constitution is deleted and replaced with the following new clause 23.6:
" 23.6 Should the Responsible Entity receive any Proceeds from the Purchaser, or from any other person who is under an obligation to pay Proceeds to the Grower, as agent for the Grower, all payments, directions and distributions of Proceeds in relation to the Project must be made within 30 days of the Responsible Entity becoming aware of the Proceeds being available for distribution or of the receipt of the Proceeds from the Purchaser or other person (whichever is the case) PROVIDED THAT the Responsible Entity will not be under the obligation to make payments, directions and distributions of Proceeds in relation to the Project under this clause unless and until the amount of Proceeds payable or distributable to the Grower is at least \$200 per Woodlot."

[End of Schedule 1]