

**AUSTRALIAN CRICKET BAT WILLOW PLANTATION MANAGEMENT
SERVICES LIMITED
"Responsible Entity"**

**Each person who is registered as the
holder of an Interest in the Project
"Growers"**

**CONSTITUTION
AUSTRALIAN CRICKET
BAT WILLOW PROJECT**

CONSTITUTION

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B E T W E E N:

AUSTRALIAN CRICKET BAT WILLOW PLANTATION MANAGEMENT SERVICES LIMITED (ACN 081 847 814) of 98 Railway Road, Blackburn in the State of Victoria ("Responsible Entity")

of the one part

A N D

Such additional persons who are registered as holders of an Interest in the Project (each a "Grower")

of the other part

ON THE BASIS THAT:

- A. The Responsible Entity has offered and proposes to make further offers to the public to invest in forestry operations by sub-leasing allotments of land and on which plantations of willow trees are and will be established. The willow trees are to be harvested for use in the manufacture of cricket bats.
- B. The terms and conditions of this Constitution shall be binding on the Responsible Entity and each Grower.

AND THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

- (a) **"Accounts"** means all usual and proper books of account including all records of expenditure, financial transactions and regular cost statements and reports and includes where the context permits profit and loss accounts, balance sheets, statements, reports and notes (other than auditors reports or directors reports) attached to or intended to be read with any of those profit and loss accounts or balance sheets and bank statements;
- (b) **"Applicant"** means a person who has applied to become a Grower;
- (c) **"Application"** means the process of an Applicant applying to become a Grower;
- (d) **"ASIC"** means the Australian Securities and Investments Commission;
- (e) **"Auditor"** means any registered company auditor or firm in which the partner responsible for the audit of the Project shall be a registered company auditor.

- (f) **"Authorised Officer"** means:
- (i) in the case of the Responsible Entity, any of its directors, secretaries or officers; and
 - (ii) in the case of any Grower, any person appointed in writing by that party to act as Authorised Officer under this Constitution;
- (g) **"Balance Date"** means the 30th day of June in each year;
- (h) **"Bank"** means a bank as defined by sub-section 5(1) of the Banking Act 1959 and such other person carrying on business as a bank in any country outside Australia as may be approved by the Representative;
- (i) **"Business Day"** means any day that is not a Saturday or Sunday and on which banks are open for general banking business in Melbourne, Victoria or the place in which the relevant act takes place;
- (j) **"Cash"** includes cheques and bank cheques and deposits in any savings or trading bank account or in any building society registered under the Building Societies Act howsoever called applicable where the investment takes place;
- (k) **"Common Fund"** means a common fund established and operated by the Representative pursuant to the Trustee Companies Act 1984;
- (l) **"Complainant"** means a Grower who has made a complaint to the Responsible Entity as described in Clause 25;
- (m) **"Complaints Handling Officer"** means the person appointed by the Responsible Entity to handle complaints in accordance with Clause 25;
- (n) **"Constitution"** means the Project Deed as modified by this Deed, a consolidated copy of which is set out in the Second Schedule hereto;
- (o) **"Corporation"** has the same meaning ascribed to it under the Corporations Law and includes any references to a company;
- (p) **"Corporations Law"** has the meaning given in Section 13(2) of the Corporations (Victoria) Act 1999;
- (q) **"Effective Date"** means the date the Project is registered as a managed investment scheme;
- (r) **"Dispute Notice"** means a notice given under Clause 26;
- (s) **"External Complaints Resolutions Service"** means the Complaints Resolution Service administered by Financial Industry Complaints Service Ltd or such other external complaints resolution service as is approved by ASIC from time to time and of which the Responsible Entity is a member;
- (t) **"Extraordinary Resolution"** means a resolution passed by a majority consisting of not less than seventy-five percent (75%) of the Growers represented in person or any proxy, duly authorised representative or attorney at a duly convened meeting of Growers;

- (u) **"Financial Year"** means the period of twelve (12) months ending on the Balance Date in each year PROVIDED THAT the first Financial Year shall be deemed to be the period commencing on the date of the Trust Deed and ending on the next succeeding Balance Date and the last Financial Period shall be deemed to be the period ending on the date of termination of this Project commencing from the day after the preceding Balance Date;
- (v) **"Grower"** means a person who holds and whose name is entered in the Register of Growers as the holder of an interest in the Project;
- (w) **"Growers Contributions"** means all amounts contributed by the Growers at the time of investing in the Project pursuant to a Prospectus;
- (x) **"GST"** means a tax on the supply of goods and services;
- (y) **"Harvest Income"** means all moneys received by the Responsible Entity arising out of the harvesting of timber from a Plantation and includes all moneys received on account of the sale of timber from thinnings and clear fall harvest of a Plantation;
- (z) **"Independent Expert"** means:
 - (i) in the case of a dispute relating to forestry matters, including management of the Plantation, an independent forestry expert agreed between the parties or, when such agreement is not reached within 2 Business Days of the parties each having submitted to the other names of potential candidates, a person appointed by the President of the Association of Consulting Foresters of Australia; or
 - (ii) in the case of a dispute relating to the management of the Project or the legal interpretation of this Constitution or any Project Agreement, an independent lawyer agreed between the parties or where no agreement is reached within 2 Business Days of the parties each having submitted to the other names of potential candidates, a person appointed by the President of the Law Institute of Victoria; or
 - (iii) in the case of a dispute relating to any financial or accounting aspect of the Project, an independent chartered accountant agreed between the parties or where no agreement is reached within 2 Business Days of the parties each having submitted to the other names of potential candidates, a person appointed by the President of the Institute of Chartered Accountants of Victoria;
- (aa) **"Independent Person"** means:
 - (i) in the case of a dispute relating to forestry matters, including management of the Plantation, an independent forestry expert

- agreed between the parties or, when such agreement is reached within 2 Business Days of the parties each having submitted to the other names of potential candidates, a person appointed by the President of the Association of Consulting Foresters of Australia; or
- (ii) in the case of a dispute relating to the management of the Project or the legal interpretation of this Constitution or any Project Agreement, an independent lawyer agreed between the parties or where no agreement is reached within 2 Business Days of the parties each having submitted to the other names of potential candidates, a person appointed by the President of the Law Institute of Victoria; or
- (iii) in the case of a dispute relating to any financial or accounting aspect of the Project, an independent chartered accountant agreed between the parties or where no agreement is reached within 2 Business Days of the parties each having submitted to the other names of potential candidates, a person appointed by the President of the Institute of Chartered Accountants of Victoria;
- (bb) **"Indexed"** means adjusted by the percentage increase (if any) in the Consumer Price Index (All Groups), Melbourne, during the 12 months or other period specified preceding the date on which the adjustment is to occur.
- (cc) **"Interest"** means the interest in the Project a Grower acquires by having his Application accepted by the Responsible Entity and includes a Grower's interest in:
- (i) the Lease; and
 - (ii) the Management Agreement;
- relating to the Grower's Plantation Allotment. An Interest also includes:
- (iii) the Grower's business of carrying on the primary production enterprise of planting, growing, maintaining and harvesting Willow Trees from each Plantation Allotment;
 - (iv) the net proceeds which result from the Grower carrying on its business of primary production;
 - (v) the Willow Trees growing on the Grower's Plantation Allotment; and
 - (vi) all improvements made to that Grower's Plantation Allotment including all irrigation and other similar improvements;
- (dd) **"Investment"** means any asset or other property acquired by the Responsible Entity on behalf of the Growers where the Responsible Entity has used Project Property to make the acquisition. However, an Investment does not include the transfer of any amount to the Responsible

- Entity in accordance with any Project Agreement;
- (ee) **"Land"** means the land on which the Project will be conducted as specified in a Prospectus;
 - (ff) **"Lease"** means the lease or sub-lease of the Plantation Allotment made between the Lessor and the Grower the terms of which are summarised in a Prospectus;
 - (gg) **"Lease Rental"** means the amount of the annual rental due to the Lessor by a Grower pursuant to a Lease;
 - (hh) **"Lessor"** means the Lessor pursuant to the Lease being Australian Willow Plantation Pty Ltd (ACN 082 517 217) and its successors in title;
 - (ii) **"Management Agreement"** means the Management Agreement substantially in the form contained in Schedule 1 or an agreement in such other form as the Responsible Entity substitutes prior to the issue of a Prospectus, or if the Project has commenced, as amended in accordance with this Constitution;
 - (jj) **"Management Income"** means the annual payments due to the Responsible Entity by a Grower for the establishment and management of a Plantation pursuant to the provisions of a Project Agreement but excluding the Growers Contributions;
 - (kk) **"New Law"** means the *Corporations Law* in force after the commencement of Chapter 5C on 1 July 1998;
 - (ll) **"Ordinary Resolution"** means a resolution passed by a majority of Growers represented in person or by proxy, duly authorised representative or attorney at a duly convened meeting of Growers;
 - (mm) **"Old Law"** means the *Corporations Law* in force prior to the commencement of Chapter 5C on 1 July 1998;
 - (nn) **"Plantation"** means an allotment or allotments of land leased by a Grower pursuant to a Lease and managed by the Responsible Entity pursuant to a Project Agreement;
 - (oo) **"Plantation Allotment"** means each specified portion of the Land and on which a Grower carries or will carry on the business of primary production by planting and maintaining Willow Trees and harvesting and selling the timber harvested on those trees in accordance with the provisions of the Project Agreements;
 - (pp) **"Power of Attorney"** means any power of attorney contained in a Prospectus granted by the Applicant or Grower in favour of the Responsible Entity;
 - (qq) **"Project"** means the "Australian Cricket Bat Willow Project";
 - (rr) **"Project Trust Account"** has the meaning given in **Clause 5.1**;

- (ss) **"Project Agreements"** means the Leases, the Management Agreements and the Timber Sale Agreements;
- (tt) **"Project Property"** means all cash and other property held on trust for the Growers by the Trustee;
- (uu) **"Prospectus"** means a Prospectus in relation to the Project registered in accordance with the relevant provisions of the Corporations Law;
- (vv) **"Register"** means the register of Growers established and maintained in accordance with the provisions of Clause 10 hereof;
- (ww) **"Representative"** means the representative for the time being of the Project whether original additional or substituted and from the Effective Date will be the Responsible Entity;
- (xx) **"Responsible Entity"** has the meaning given in S.9 of the *Corporations Law*;;
- (yy) **"Supplemental Deeds"** means the Supplemental Deed to the Trust Deed dated 17th June 1999
- (zz) **"Trust Deed"** means the trust deed dated 15 June 1998 between the Responsible Entity and Sandhurst Trustees Limited as amended from time to time which constituted the Project;
- (aaa) **"Trustee"** means Sandhurst Trustees Limited as Trustee of the Project pursuant to the Project Deed
- (bbb) **"Unavoidable Event"** means an act of God, strike, lock out or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition intervention, direction, or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, or any other similar cause which is beyond the reasonable control of the person relying on the Unavoidable Event;
- (ccc) **"Value"** in respect of any Interest of a Grower under this Constitution means the amount of that Grower's Growers Contribution;
- (ddd) **"Valuer"** means a registered valuer who in the opinion of the Responsible Entity has the relevant qualifications and experience to make an accurate valuation and who shall be independent of the Responsible Entity;
- (eee) **"Willow trees"** means willow trees of *salix alba var. caeruleae* variety.

1.2 Interpretation

In this Deed unless the contrary intention appears:

- (a) a reference to a person includes a reference to a corporation firm association or other entity, and vice versa;

- (b) the singular includes the plural and vice versa;
- (c) a reference to any gender includes a reference to all other genders;
- (d) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- (e) an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally; and
- (f) an agreement, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally.

1.3 **Headings**

Headings are inserted for convenience only and do not affect the interpretation of this Constitution.

1.4 **Weekends and Holidays**

Where any act is required by this Constitution to be done on a given day and that day is not a Business Day then the act is required to be done on the next following Business Day.

1.5 **Corporations Law**

References to sections of the Corporations Law are current as at the date of this Constitution and should be interpreted to mean the relevant provision of the Corporations Law as amended from time to time.

2. APPOINTMENT OF REPRESENTATIVE

- 2.1 The Representative agrees to act, and is appointed, as Representative of the Growers subject to the terms and conditions of this Constitution.
- 2.2 The Growers Contributions will on the date of the Trust Deed vest in and be held by the Representative upon the trusts declared, and subject to the terms and conditions contained, in this Constitution.

3. APPLICATION PRICE

- 3.1 In order to acquire an Interest in the Project, an Applicant must pay to the Responsible Entity the amount specified in a Prospectus which is current at the date of lodging the relevant Application.

4. PROJECT PROPERTY

4.1 **Obligation to Hold Property**

Subject to Clause 4.2 all Project Property will be held by the Responsible Entity on trust for the Growers for the term of the Project.

4.2 **Appointment of Custodian**

The Responsible Entity may appoint an agent or custodian to hold Project Property separately from any other property. The terms of the appointment will be determined by the Responsible Entity and the agent, however the terms must be consistent with the provisions of this Constitution.

5. **GROWERS CONTRIBUTIONS**

5.1 The Responsible Entity will maintain an account with a Bank or with a Common Fund which shall be designated the Australian Cricket Bat Willow Project Trust Account ("the Project Trust Account") into which the Responsible Entity shall deposit all Growers Contributions.

5.2 Provided that the Growers Contributions shall have totalled more than the minimum subscription amount (if any) set out in a Prospectus the Responsible Entity shall on 30 June next occurring after the date of the Prospectus distribute the funds then standing to the credit of the Project Trust Account as follows:

- (a) to the Lessor that part (if any) representing Lease Rental;
- (b) to the Responsible Entity, the balance.

6. **MANAGEMENT INCOME**

6.1 All Management Income payable by Growers to the Responsible Entity pursuant to the Project Agreements shall be paid to the Responsible Entity and shall be deposited by the Responsible Entity into a Management Trust Account established for that purpose. The Responsible Entity shall establish and maintain sufficient Accounts and records to identify the Grower by whom each amount paid into the Management Trust Account has been paid and the Plantation in respect of which such Management Income is paid. The Management Trust Account shall be audited by the Auditor on the Balance Date each year or at such other intervals as the Responsible Entity may determine. Provided that the Responsible Entity is entitled to the Management Income under the terms of the Project Agreements, the Responsible Entity may from time to time distribute the balance of the Management Trust Account to the Responsible Entity for services provided or to be provided in the maintenance of Plantations pursuant to the relevant Project Agreements.

7. **LEASE RENTAL**

7.1 All Lease Rental shall be payable by the Growers directly to the Lessor in accordance with the terms of the Lease. In the event that any Lease Rental is paid to or received by the Responsible Entity, it shall forthwith be paid by the Responsible Entity to the Lessor.

8. DISTRIBUTIONS OF INCOME

8.1 Harvest Income

All Harvest Income due to Growers ("the Harvest Income") shall payable to the Responsible Entity and shall be deposited by the Responsible Entity into a Harvest Trust Account ("the Harvest Trust Account") established for that purpose. Within twenty-one (21) days of payment of any amounts into the Harvest Trust Account (or such other period determined by the Responsible Entity), the Responsible Entity shall distribute such Harvest Income as follows:

- (a) first, the Responsible Entity shall be reimbursed for all costs, expenses and outgoings properly incurred by the Responsible Entity in carrying out the thinnings or clear fall of timber on the relevant Plantations including but without limiting the generality of the foregoing, the costs of upgrading roads, marking trees, supervising the extraction of timber from the Plantations and any general administrative expenses directly incurred in relation to the sale of such timber;
- (b) secondly, the Responsible Entity shall be paid the Management Fee specified in Part 4 of the Schedule to the Management Agreement;
- (c) subject to Clause 8.2, the balance of the Harvest Income shall be distributed to the Growers in respect of whose Plantations the Harvest Income was derived ("relevant Growers") in the same proportion that each relevant Grower's Plantation Allotment bears to the total of all Plantation Allotments leased to all relevant Growers.

8.2 Deductions

Notwithstanding the provisions of Clause 8.1, the Responsible Entity shall deduct from the Harvest Income to be distributed to a Grower:

- (a) any amount outstanding to the Responsible Entity in respect of insurance premiums paid by the Responsible Entity pursuant to the provisions of a Project Agreement, which sum shall forthwith be reimbursed to the Responsible Entity;
- (b) any Lease Rental owing by the Grower to the Lessor up to the date of harvesting, which amount shall forthwith be paid by the Responsible Entity to the Lessor; and
- (c) any Management Income or any other amounts owing by the Grower to the Responsible Entity which amount shall forthwith be paid to the Responsible Entity.

8.3 **Income Entitlement**

Subject to the provisions hereof, each Grower shall be presently entitled to the balance of Harvest Income following deduction of those amounts referred to in sub-clauses 8.1(a) to 8.1(c) inclusive.

9. **RESPONSIBLE ENTITY'S REMUNERATION**

9.1 The Responsible Entity shall be entitled to receive and shall be paid the following amounts by way of remuneration:

- (a) the amount payable to the Responsible Entity from the Project Trust Account pursuant to Clause 5.2(b);
- (b) all Management Income payable by the Growers to the Responsible Entity pursuant to the terms of the Project Agreements.

9.2 The parties acknowledge that unless specified otherwise, all payments to the Responsible Entity are exclusive of GST, and the Responsible Entity is entitled to adjust all such payments and invoices for payments as necessary to accommodate any requirements or obligations imposed on the Responsible Entity as a result of the introduction of GST.

10. **REGISTER OF GROWERS**

10.1 **Responsible Entity to Maintain Register**

An up to date Register of the Growers will be kept and maintained by the Responsible Entity at its registered office and there shall be entered in the Register-

- (a) the names and addresses of the Growers;
- (b) a description of the Plantation Allotment leased by the Grower sufficient to identify it;
- (c) the date at which the name of each Grower was entered in the Register; and
- (d) the date on which any person ceased to be a Grower.

10.2 **Audit of Register**

The Register shall be audited by the Auditor at intervals of not more than twelve (12) months.

10.3 **Change of Address**

Any change of name or address of any Grower shall be promptly notified by the Grower to the Responsible Entity who shall alter the Register accordingly.

10.4 **Inspection of Register**

The Auditor and the Responsible Entity shall be entitled at all reasonable times to inspect the Register and any Grower shall be entitled at any time when the Responsible Entity's office is required by the Corporations Law to be open and accessible to the public to inspect the Register free of charge.

10.5 **Recognition of Trusts**

Subject to the provisions of the Corporations Law, the Responsible Entity shall not be bound to recognise any trust express implied or constructive even if the Responsible Entity in its absolute discretion determines to enter any such trust upon the Register in relation to any Interest and the Responsible Entity shall not be liable to any beneficiary of any such trust.

10.6 **Issue of Documents**

Within two (2) months of execution by any Grower of a Lease and a Project Agreement, the Responsible Entity shall issue and deliver to that Grower a copy of such Lease and Project Agreement. The Responsible Entity shall not issue any Certificate or other statement or certification evidencing a Grower's Interest in the Project.

11. **ASSIGNMENT OF INTERESTS**

11.1 Subject to this Deed and to the terms and conditions of the relevant Lease and Project Agreement, each Grower may freely assign its rights and privileges under this Constitution, the Project Agreement or the Lease. Every assignment of such interests shall be effected by transfer in writing in such form as the Responsible Entity may require (hereinafter called "the Assignment") and shall be executed by the assigning Grower and by the Assignee and delivered to the Responsible Entity and the Responsible Entity shall recognise each such Assignment as follows:

- (a) the assigning Grower shall be deemed to remain the proprietor of the Interest assigned until the name of the Assignee is entered in the Register in respect thereof;
- (b) the Responsible Entity may refuse to recognise any Assignment unless duly stamped and accompanied by such other material as the Responsible Entity may reasonably require to evidence the right of the assigning Grower to make the Assignment and the Responsible Entity shall notify the assigning Grower of any such refusal within two (2) months of the date of receipt of the Assignment;
- (c) subject to sub-clause (b) hereof, the Responsible Entity shall within twenty-eight (28) days of receipt of an Assignment remove the name of the Grower and enter the name of the Assignee on the Register in its stead and on and from the date of entry in the Register the Assignee shall stand in place of the assigning Grower for all purposes under this Deed;
- (d) subject to sub-clause (b) hereof within one (1) month after an Assignment or transmission is lodged with the Responsible Entity, the Responsible Entity shall complete and have ready for delivery to the Assignee an acknowledgment of the Assignment or transmission and shall unless

otherwise instructed by the Assignee deliver that acknowledgment to the Assignee.

12. POWERS OF INVESTMENT

12.1 General Power of Investment

The Responsible Entity has all the powers of a natural person to invest in and deal with any investments which are authorised by law for the investment of trust funds. Such investments may include assets described in a Prospectus or other disclosure document issued by the Responsible Entity in respect of the Project pursuant to the Corporations Law.

12.2 Investment by Custodian

If the Responsible Entity has engaged a custodian to hold Project Property then the Responsible Entity must direct the custodian to invest and deal with Project Property in accordance with this Constitution.

13. POWER TO BORROW

13.1 Borrowings for the Project

The Responsible Entity may borrow for the purposes of the Project and it may pledge the Project Property as security for the borrowings. The Responsible Entity has all the powers a natural person would have when exercising its power to borrow.

13.2 Security for Borrowings

The Responsible Entity has no right to pledge any assets of the Growers which are not Project Property in respect of any borrowings, unless the Responsible Entity has the express consent of the Growers concerned.

14. INDEMNITY AND LIABILITY

14.1 Indemnity of Responsible Entity

The Responsible Entity has a right of indemnity on a full indemnity basis out of the Project Property in respect of:

- (a) any liability incurred by the Responsible Entity in the performance of its duties in respect of the Project; and
- (b) all fees payable and costs recoverable by the Responsible Entity under this Constitution and any Project Agreement.

This indemnity continues in force after the Responsible Entity ceases to be the responsible entity for the Project for any reason whatsoever, but this indemnity does not apply where there has been any negligence, fraud, breach of duty or breach of trust on the part of the Responsible Entity.

14.2 **Reliance Upon Documents**

The Responsible Entity will not incur any liability in respect of any action taken or any omission by or at the direction of the Responsible Entity in reliance upon any document for so long as the Responsible Entity has reason to believe that the document is genuine or has been approved or signed by the proper parties.

14.3 **Payment of Taxes**

The Responsible Entity is not liable to account to any Grower for any payments made by the Responsible Entity (or at its direction) in good faith to any duly authorised fiscal authority of the Commonwealth of Australia or any State or Territory of Australia for taxes or other charges.

14.4 **Reliance on Professional Advice**

The Responsible Entity may act on the opinion or advice of any professional adviser who the Responsible Entity reasonably believes is an expert in relation to the matters upon which the adviser is consulted. The Responsible Entity is entitled to be indemnified out of Project Property in respect of anything done or suffered by it in good faith in reliance upon such opinion or advice in relation to the Project.

14.5 **No Limitation for Breach**

Nothing in this Constitution limits the liability of the Responsible Entity for negligence, fraud, breach of duty or breach of trust.

14.6 **Liability of Growers**

Save as provided in this Constitution or any Project Agreement, Growers have no liability to the Responsible Entity or any creditor or agent of the Responsible Entity.

14.7 **Compliance Committee**

If any member of a compliance committee established by the Responsible Entity in connection with the Project incurs a liability in that capacity in good faith and in accordance with the provisions of any compliance plan registered for the Project, the compliance committee member is entitled to be indemnified out of the Project Property to the extent permitted by the Law.

15. **GROWERS RIGHTS TO WITHDRAW**

15.1 Once registered as the holder of an Interest, a Grower has no right to withdraw from the Project or to require the Responsible Entity to purchase its Interest.

16. **ADDITIONAL POWERS OF RESPONSIBLE ENTITY**

16.1 **Payment of Money**

The Responsible Entity must not pay any money from the Project Property unless authorised by this Constitution, the Project Agreement, the Corporations Law or where the payment is in respect of:

(a) bank charges and statutory fees ordinarily associated with opening,

operating and closing a bank account;

- (b) any payments which are required to be made in relation to Investments which may be made from the money held in the Fund from time to time (including stamp duty, transaction costs, taxes and other expenses), or
- (c) payments which have been authorised to be made by the Growers following the passing of an ordinary resolution at a meeting of Growers.

16.2 **Other Powers**

In addition to all other powers conferred on the Responsible Entity by this Constitution and the Law, the Responsible Entity has the power to do any act or thing which, in the Responsible Entity's opinion, is necessary for the proper and efficient establishment, management and development of the Project.

16.3 **Conduct of Legal Proceedings**

The Responsible Entity may on its own behalf or on behalf of any Applicant or Grower commence and prosecute legal proceedings of any kind in any court in respect of the Project or any Grower's Interest.

16.4 **Compliance with Project Agreements**

The Responsible Entity covenants with all Growers to act in accordance with all valid and current Project Agreements.

17. **OTHER ACTIVITIES OF RESPONSIBLE ENTITY**

- 17.1 Subject to the Law, nothing in this Constitution restricts the Responsible Entity from:
- (a) establishing, managing, promoting or acting as Responsible Entity for any other projects or managed investment schemes, whether or not those schemes are registered by ASIC;
 - (b) dealing with itself in its capacity as manager, trustee or responsible entity of any other trust or scheme or in any other capacity; or
 - (c) being interested in any contract or transaction with itself in its capacity as manager, trustee or responsible entity of any other trust or managed investment scheme or in any other capacity; or
 - (d) being interested in any contract or transaction with any Grower or retaining for its own benefit profits or benefits derived from any such contract or transaction.

18. **CHANGE OF RESPONSIBLE ENTITY**

- 18.1 The Responsible Entity of the Project may only be changed in accordance with Part 5C.2 Division 2 of the Corporations Law.

19. APPOINTMENT AND REMOVAL OF AUDITOR

19.1 Initial Auditor of the Project

The first Auditor of the Project shall be the firm MADDER SINCOCK, Chartered Accountants of 3rd Floor, 199 Toorak Road, South Yarra in the State of Victoria, (Attention: Russell Sincock), who shall remain as Auditor of the Project until retirement or removal pursuant to the provisions of this Clause or for so long as the partner in that firm responsible for the audit of the Project is a registered company auditor. The reasonable fees of the Auditor shall be payable by the Responsible Entity from the Project Trust Accounts.

19.2 Retirement

Any Auditor of the Project may retire on giving the Responsible Entity six (6) months' notice of its intention to retire as Auditor.

19.3 Removal

The Responsible Entity may remove any Auditor of the Project at any time.

19.4 Appointment of New Auditor

Any vacancy in the office of the Auditor occurring under sub-clause 19.2 or 19.3 shall be filled by the Responsible Entity appointing an auditor to be the Auditor of the Project.

19.5 Removal by Growers

A meeting of Growers may by Ordinary Resolution resolve to have the auditor of the Project removed and a new Auditor appointed in its place and in such event the Responsible Entity shall by notice in writing inform the relevant auditor of its removal and shall appoint the new Auditor proposed by the Growers and failing any new Auditor being proposed by the Growers of the Project the Responsible Entity shall appoint a new auditor of the Project.

19.6 Other Offices Held by Auditor

Any auditor of the Project may also be the auditor of the Responsible Entity and may not be the Auditor of the Compliance Plan appointed pursuant to S.601HG of the *Corporations Law*, although the Auditor of the Compliance Plan may work for the same firm of auditors, or of any trust or fund or fees account or agency account whether of a similar nature to the Project or otherwise, but may not be a director officer or employee (or employee of a director officer or employee) of the Responsible Entity.

20. VALUATIONS

20.1 The Responsible Entity may from time to time appoint a Valuer to carry out a valuation of any Interests to which this Constitution relates, or of any Plantations or of any part or parts of the Trust Fund, if the Responsible Entity is of the opinion that such a valuation is reasonably required for the due administration of the Project, and the reasonable costs of such Valuation shall be paid by the Responsible Entity and reimbursed from the Project Property.

21. MEETINGS OF GROWERS

21.1 Provisions of the Law

The provisions of Part 2G.4 of the Law apply to meetings of Growers in the Project, except as varied specifically by this Clause 21.

21.2 Convening 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 Law.

21.3 Quorum for Meetings

The quorum necessary for a meeting at which an ordinary resolution is to be proposed is 3 Growers present in person or by proxy. At a meeting where a special resolution or an extraordinary resolution is to be proposed the quorum is 10 Growers present in person or by proxy.

21.4 Demanding a Poll

A poll may not be demanded in respect of any resolution concerning:

- (a) the election of the chairman of the meeting; or
- (b) an adjournment of a meeting.

21.5 Appointment of a Proxy

- (a) The Responsible Entity may, in its absolute discretion, accept the appointment of a proxy as valid even though the appointment contains only some of the information required by Section 252Y(1) of the Law.
- (b) For an appointment of a proxy for a meeting of the Growers to be effective, the following documents must be received by the Responsible Entity at least 48 hours (or such lesser time as the Responsible Entity allows) before the meeting:
 - (i) the instrument appointing the proxy;
 - (ii) if the appointment is signed under Power of Attorney, then a certified copy of the Power of Attorney.
- (c) If a meeting of Growers has been adjourned then an appointment and any authority received by the Responsible Entity at least 48 hours (or such lesser time as the Responsible Entity allows) before the resumption of the meeting will be effective for the resumed part of the meeting.

21.6 Instrument Appointing a Proxy

- (a) An instrument appointing a proxy may be in the following form or in any other form which the Responsible Entity approves:

"I,

of

being a Grower of Australian Cricket Bat Willow Project

hereby appoint *[insert name of proxy]*

of *[insert address of proxy]*

or failing him/her *[insert alternative proxy]*

of *[insert address of alternative proxy]*

or failing him/her the chairman of the meeting as my proxy to attend on my behalf at the meeting of the Growers to be held on the day of XXXX and at any adjournment of that meeting.

Signed at by me

this day of XXXX".

- (b) In any case where the business of a meeting of Growers includes the consideration of any resolution referred to in the notice convening the meeting, the instrument of proxy may contain the following additional words or words of like effect:

"The proxy is to vote **for/*against* the resolution(s):

[list the resolutions]

**strike out whichever is not desired. (Unless otherwise instructed the proxy may vote as the proxy thinks fit)."*

21.7 Authority of a Proxy

- (a) If a Grower has appointed a proxy for a meeting and the Grower attends the meeting, then the proxy retains the authority to attend and vote for the Grower at the meeting. However, if the chairman gives a Grower the opportunity to speak and the Grower informs the chairman that the authority of the proxy is revoked then the authority will be revoked.
- (b) If the Grower does revoke the authority of the proxy during a meeting then this does not, invalidate any action validly taken by the proxy leading up to the revocation.
- (c) Nothing in this Clause 21.7 requires the chairman to give any member an opportunity to revoke the authority given to a proxy.

21.8 Growers' Votes

Each Grower, on a poll, has one vote for each Plantation held by that Grower.

21.9 No Vote if Money Outstanding

If there is outstanding money to be paid by a Grower in respect of that Grower's Interest then the Grower will not be entitled to vote at a meeting unless the money is received by the Responsible Entity prior to the meeting.

22. PERIOD OF THE PROJECT

22.1 Subject to the Corporations Law and to the remainder of this Clause 22, the Project commenced upon the date of the Trust Deed 15 June 1998 and shall terminate upon the expiration or termination of all of the Leases issued in relation to the Project or upon the sooner completion of the harvesting of all Plantation Allotments and the distribution of all Harvest Income PROVIDED HOWEVER that the Growers may by extraordinary resolution vote to extend the period of duration of the Project and if the Responsible Entity agrees to such extension then the Project shall extend for such further period as may be determined by the Responsible Entity AND PROVIDED FURTHER THAT the Responsible Entity will ensure that the law against perpetuities applicable to this Deed will not be infringed.

22.2 If at any time there is a requirement or provision by any Commonwealth or State government or under any Commonwealth or State law which in the opinion of the Responsible Entity would or might detrimentally affect the interests of the Growers, the Responsible Entity may terminate the Project or if at any time there is a requirement or provision by any Commonwealth or State government or under any Commonwealth or State law that the Responsible Entity wholly or partially by virtue of its position hereunder, must lodge deposits, securities or bonds or if it appears that the Fund will be prejudiced if the Responsible Entity does not so act or that the assets of the Fund or any part thereof must be invested or deposited otherwise than in accordance with the discretions conferred upon the Responsible Entity by this Deed, the Responsible Entity by notice in writing to the Growers may determine the Project and the Responsible Entity shall take all necessary steps to accord with any such notice.

22.3 Upon termination of the Project, all rights and obligations under the Project Agreements will cease and each Project Agreement will terminate.

23. WINDING UP THE PROJECT**23.1 Circumstances of Winding Up**

The Responsible Entity must wind up the Project or cause the Project to be wound up in any of the following circumstances:

(a) The Project comes to the end of its term as set out in Clause 22.

- (b) The Project is without a Responsible Entity.
- (c) The Growers direct the Responsible Entity to wind up the Project by extraordinary resolution passed at a meeting of Growers duly convened under Part 2G.4 of the Law.
- (d) A court orders the Project be wound up pursuant to Section 601ND of the Law.
- (e) The Growers pass an extraordinary resolution to remove the Responsible Entity but do not, at the same meeting, pass an extraordinary resolution choosing a company to be the new Responsible Entity and that company consents to becoming the Project's Responsible Entity.

23.2 **Process of Winding Up**

Unless otherwise required by Law, the Responsible Entity is responsible for the winding up of the Project and must:

- (a) convert to money all Project Property, deduct all proper costs and then divide the balance amongst the Growers according to each Grower's Interest in the Project. The Responsible Entity may make interim distributions during the winding up process as it sees fit.
- (b) proceed with the winding up of the Project efficiently, diligently and without undue delay. However, if it is in the interests of Growers to do so, then the Responsible Entity may postpone any part of the winding up for such time as it thinks desirable.

23.3 **Withholding Proceeds of Project**

The Responsible Entity may retain from the proceeds of realisation of Project Property sufficient amounts:

- (a) to meet future payment obligations which the Responsible Entity reasonably believes will or may fall due after a distribution is made to Growers; and
- (b) to pay its own remuneration and expenses for work to be done following the realisation of Project Property.

23.4 **Termination of Other Agreements**

During the winding up of the Project, the Responsible Entity may terminate any other agreements or arrangements it has entered into with any Grower which relate to the Project. The Responsible Entity must give notice to the Growers of the termination of those agreements or arrangements.

23.5 **Continuation of Powers**

The powers, duties and rights of the Responsible Entity, including the rights to fees and to any indemnities under this Constitution or the Law, will continue following termination of the Project to the extent to which such continuation is not inconsistent with this Clause 23.

23.6 **Auditor's Certificate**

Once the Responsible Entity believes the winding up is complete, the Responsible Entity must engage a registered company auditor to audit the final accounts of the Project. The Responsible Entity must send a copy of any report made by the auditor to the Growers within 30 days after receiving the report from the auditor.

24. **MODIFICATION OF CONSTITUTION**

24.1 This Constitution may only be modified in accordance with Section 601GC of the Corporations Law.

25. **COMPLAINTS HANDLING**

25.1 **Complaints Handling Officer**

- (a) The Responsible Entity must appoint a person to fulfil the role of Complaints Handling Officer.
- (b) If there is a vacancy in the role of Complaints Handling Officer at any time then the secretary of the Responsible Entity is deemed to be the Complaints Handling Officer until a further appointment is made.
- (c) The Complaints Handling Officer does not need to be a director or secretary of the Responsible Entity.

25.2 **Making a Complaint**

- (a) Any Grower may make a complaint about any aspect of the Project by:
 - (i) writing to the Responsible Entity at any place where the Responsible Entity has an office; or
 - (ii) telephoning the office of the Responsible Entity and speaking to the Complaints Handling Officer of the Responsible Entity.
- (b) The complaint must specify:
 - (i) the name and contact details of the Grower making the complaint; and
 - (ii) the details of the complaint in as much detail as is reasonably required to allow the Responsible Entity to deal with the complaint in accordance with this clause.
- (c) If the complaint does not meet the requirement in Clause 25.2(b) then the Responsible Entity must make reasonable enquiries to try and ascertain the required detail.
- (d) The Responsible Entity must provide reasonable assistance to any Grower who has attempted to make a complaint but has not done so in a manner which allows the Responsible Entity to properly deal with the complaint.

25.3 Acknowledgment of Complaints

- (a) If any Grower makes a complaint then the Responsible Entity must, within 5 Business Days after receiving the complaint, write to the Complainant either to:
 - (i) acknowledge the complaint; or
 - (ii) respond fully to the Complainant in respect of the complaint made.
- (b) The Responsible Entity must include in its written response to the complaint:
 - (i) the name, title and contact details of the present Complaints Handling Officer;
 - (ii) details of how the Complaints Handling Officer proposes to deal with the complaint; and
 - (iii) if the complaint is not fully dealt with in the letter then an estimate of the time the Responsible Entity believes it will take for the Responsible Entity to respond to the complaint.

25.4 Consideration of Complaints

- (a) The Responsible Entity must treat all complaints seriously and deal with them in a timely manner, having regard to the nature of the complaint.
- (b) The Responsible Entity must attempt to respond fully to each complaint within 21 days after receiving the complaint.
- (c) In any event, the Responsible Entity (through the Complaints Handling Officer) must contact the complainant at least once in each calendar month until the complaint is fully resolved.

25.5 Resolution of Complaints

- (a) The Responsible Entity must act reasonably in attempting to resolve a complaint, however nothing in this Clause 25 compels the Responsible Entity to resolve a complaint in favour of the Grower making the complaint.
- (b) If the Responsible Entity believes it has either resolved the complaint, or it has not resolved the complaint but can do nothing more to satisfy the complainant then the Responsible Entity must:
 - (i) inform the complainant of the view the Responsible Entity has reached, setting out clear and concise reasons; and
 - (ii) inform the complainant of the avenues open to the complainant if the complainant is not satisfied with the response of the Responsible Entity.

25.6 Further Avenues of Complaint

If a complaint cannot be resolved to the satisfaction of a complainant then the complainant may:

- (a) proceed under the dispute resolution procedures set out at Clause 26 of

this Constitution; and

- (b) take what ever other action is open to the Complainant under the general law.

25.7 Recording Complaints

The Responsible Entity must maintain a record of complaints relating to the Project.

The record must include:

- (a) the identity of the Grower who made the complaint;
- (b) the nature of the complaint;
- (c) the time taken to respond to and to resolve the complaint;
- (d) the identity of the person who handled the complaint;
- (e) the resolution of the complaint; and
- (f) any other information the Responsible Entity believes relevant.

The Responsible Entity must review the record of complaints at least annually to determine whether or not any corrective steps need to be taken in respect of how it manages the Project.

25.8 Disclosure in Prospectuses

The Responsible Entity must disclose the existence of the complaints handling procedure together with a summary of the procedure in all Prospectuses.

26. DISPUTE RESOLUTION

26.1 Dispute Notice

Any party asserting a dispute in relation to the Project, including a dispute under any Project Agreement, must give the other party to the dispute a Dispute Notice.

The Dispute Notice must state:

- (a) what is in dispute;
- (b) the arguments of the party giving the Dispute Notice; and
- (c) what should be done to rectify the dispute.

26.2 Response to Dispute Notice

The party receiving the Dispute Notice must respond in writing within five Business Days of receiving the Dispute Notice.

26.3 Settlement Conference

If the dispute is not resolved within 21 days after service of a Dispute Notice, then:

- (a) the parties must attend a settlement conference in the presence of an Independent Person to attempt to resolve the dispute; and
- (b) the settlement conference must be held within 21 days (or at a later time to meet the convenience of the Independent Person) from a notice convening the conference being sent by one of the parties.

26.4 Negotiations without Prejudice

Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in subsequent proceedings.

26.5 Continued Performance

During the dispute resolution process the parties must continue to perform their obligations under the Constitution, the Management Agreement and the Lease.

26.6 Expert's Determination

If the parties are unable to resolve the dispute within 7 days after attending a settlement conference with the Independent Person, then either party may require the dispute to be submitted to and settled by an Independent Expert. The Independent Expert may be the same person as the Independent Person. The decision of the Independent Expert will be final and binding on the parties. The Independent Expert must also determine which party or parties pays the costs of and incidental to the resolution of the dispute.

26.7 ###

Notwithstanding anything to the contrary herein contained, where the dispute is one which the External Complaints Resolution Service is able to deal with, the dispute must be referred to the Service Provide to be dealt with in accordance with the rules of the External Complaints Resolution Service.

27. NOTICES

27.1 Any notice given under this Agreement must be in writing and must be signed by the party giving the notice or any Authorised Officer of that party.

27.2 Unless and until a party provides notice of a different address or facsimile number to the other parties to this Agreement, its address for service of notices shall be:

(a) if it is the Responsible Entity:

1st Floor, 8 Boronia Road, Vermont, Victoria, 3133

Attention: Eddie Murphy

Facsimile No.: 9873 5773

(b) if it is a Grower:

the address of that Grower noted in the Register.

27.3 Unless a later time is specified in a notice, the notice takes effect from the time it is received.

27.4 A notice is taken to be received:

(a) in the case of a notice delivered by hand, when so delivered;

(b) in the case of a notice sent by pre-paid post, on the second clear Business Day after the date of posting;

(c) in the case of a notice sent by facsimile, upon the receipt by the sender of a transmission report from the despatching facsimile machine which confirms

that all of the pages comprised in the notice have been successfully sent to the receiving party's facsimile number.

28. GOVERNING LAW AND JURISDICTION

- 28.1 This Agreement shall be construed in accordance with and shall be governed by the laws in force in the State of Victoria.
- 28.2 Each of the parties irrevocably submits to and accepts the exclusive jurisdiction of any of the Courts of the State of Victoria or the Commonwealth of Australia and any courts of appeal from these courts.

29. MISCELLANEOUS

29.1 Payment to Growers

Any monies payable to any Grower under the provisions of this Constitution may be paid by crossed "not negotiable" cheque made payable to the Grower or bearer and sent through the post to the address of the Grower noted in the Register. Payment of every such cheque if duly presented and paid shall be full satisfaction of the monies payable and shall be a good discharge to the Responsible Entity.

29.2 Inspection of Documents

Applications, Leases, Notices of Assignment and other similar instruments shall be retained by the Responsible Entity and shall be available for inspection by the Growers at any time during normal business hours, but on the expiration of seven (7) years from termination of the Project the same may in the absolute discretion of the Responsible Entity be destroyed.

29.3 Inspection of Constitution

A copy of this Constitution shall at all times during the usual business hours be made available by the Responsible Entity at its registered office, for the inspection of Growers who shall be entitled to receive from the Responsible Entity a copy of this Constitution and any supplemental deeds on payment to the Responsible Entity of its expenses incurred in this regard.

29.4 Payments

Any money payable by the Responsible Entity to an Applicant or Grower under the provisions of this Constitution may be paid by:

- (a) cheque and sent by mail to the address shown in the Register; or
- (b) electronic funds transfer facility provided by a financial institution nominated by the Applicant or Grower in writing to the Responsible Entity.

29.5 Discharge of Responsible Entity

The Responsible Entity will receive a good discharge on:

- (a) payment of every cheque if duly presented and paid; or
- (b) in the case of money credited to any account with a financial institution, the

receipt of the financial institution of the amount paid.

29.6 Changes to the Law

If there is any change to the Law whereby the Responsible Entity is required to alter the structure of the Project or amend this Constitution then the costs of the Responsible Entity in complying with these charges will be recoverable out of the Project Property.

29.7 Unavoidable Events

To the extent permitted by Law, if the Responsible Entity is prevented from performing its duties under this Constitution or the Law due to the occurrence of an Unavoidable Event then the Responsible Entity is not liable to the Growers and nor is the Responsible Entity is not liable for any loss or decrease in value of Project Property.

29.8 No Waiver or Variation

A provision of or a right created under this Constitution may not be waived or varied except in writing signed by the party or parties to be bound by the waiver or variation.

29.9 Partial Exercise of Rights

No single or partial exercise by any party of any right, power or remedy under this Constitution shall preclude any other or further exercise of that or any other right, power or remedy.

29.10 No Exclusion of Rights

The rights, powers or remedies provided in this Constitution are cumulative with and not exclusive of any rights, powers or remedies provided independently of this Constitution.

29.11 Severance

If any provision of this Constitution is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Constitution to the intent that the invalid or unenforceable provision will be treated as severed from this Constitution.

29.12 Application of Legislation

Unless application is mandatory by law, no legislation, proclamation, order, regulation or moratorium whether present or future shall apply to this Constitution so as to extinguish, impair, delay or otherwise alter the rights, powers or remedies of any of the parties.

29.13 Indemnity

Each indemnity under this Constitution is a continuing indemnity and shall constitute a separate and independent obligation of the party giving the indemnity from its other obligations under this Constitution and shall survive the execution, delivery, completion and termination of this Constitution.

29.14 Powers of Attorney

In the event that this Constitution is executed under power of attorney, each of the Attorneys executing this Constitution hereby warrants that he has at the time of executing this Constitution no notice of revocation of the power of attorney under the authority of which he executes this Constitution.

29.15 Recitals

The parties acknowledge that the Recitals are true and correct and shall form part of this Constitution.

30. RELATIONSHIP BETWEEN THE PARTIES

30.1 Nothing in this Constitution shall constitute or shall be deemed to constitute the relationship of principal and agent between the Responsible Entity and the Growers nor the relationship of partners as between the Responsible Entity and the Growers or as between Growers inter se nor to give rise to any association of whatever nature between the Growers inter se. All income payable in accordance with the provisions of this Constitution to Growers shall be payable to them separately and no income received by the Responsible Entity shall be received or be construed as received by or on behalf of the Growers jointly or severally.