

# REPLACEMENT SUPPLEMENTARY EXPLANATORY MEMORANDUM

## Growers Meeting

### Great Southern 2008 High Value Timber Project

This Replacement Supplementary Explanatory Memorandum is dated 28 May 2010 replaces the Supplementary Explanatory Memorandum dated 19 May 2010 and should be read in conjunction with the Explanatory Memorandum issued to Growers on 22 March 2010 and the Notice of Meeting dated 3 March 2010 which gives notice of a Growers' meeting at 10am on 15 April 2010 and adjourned until 10am on 3 June 2010 (or at a further adjourned date) at Level 17 Rialto North Tower, 525 Collins Street, Melbourne 3000.

**If you are voting by proxy, proxies must be lodged no later than 10am, 1 June 2010. Late proxies cannot be accepted.**

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Part A

### Important Notices

This Replacement Supplementary Explanatory Memorandum (**RSEM**) relates to the resolutions proposed for the meeting of members ("**Growers**") of the Great Southern 2008 High Value Timber Project ARSN 123 529 233 ("**Project**") held on 15 April 2010 and any date to which it is adjourned ("**Meeting**"). It replaces the Supplementary Explanatory Memorandum dated 19 May 2010 and should be read in conjunction with the Explanatory Memorandum issued to Growers on 22 March 2010 ("**Explanatory Memorandum**").

The meeting was called by members under s252D of the Corporations Act 2001 with the assistance of AMA Teak Pty Ltd ACN 141 122 652 ("**AMAT**"). This RSEM was prepared by AMAT, African Mahogany (Australia) Pty Ltd ACN 125 481 192 ("**AMA**") and Lowell Capital Limited ACN 006 844 588 ("**Lowell Capital**") (together, the "**Preparers**").

#### Accuracy of information

The Preparers of this RSEM have exercised due care and diligence in seeking to ensure and verify the accuracy of its contents as at the date of this document, however there is a risk that the information is incomplete, inaccurate and/or out of date. The Preparers cannot guarantee that there are no misstatements or omissions that are relevant to the decision that Grower members make in voting on these resolutions.

As the Preparers are not in control of the Project, they have faced considerable difficulties in obtaining and verifying the accuracy of all information relevant to the Project. These difficulties were exacerbated by the change of control of the current Responsible Entity, Great Southern Managers Australia Limited ("**GSMAL**"), from the Receivers to the Liquidators on 2 March 2010. Furthermore, the Receivers and Liquidators are restricted by law as to what documents they can release.

The Receivers have provided officers of AMAT with access to many of the Project documents, but do not warrant that they are up to date or include all documents that may affect the rights and liabilities of the Responsible Entity of the Project. The Receivers and Liquidators were not involved in the preparation of this RSEM and are not responsible for its contents. AMAT has also obtained and reviewed publically available information about the Project. Information about associated risks for Growers to consider is set out in section 3 of this document and section 2 of the Explanatory Memorandum.

If Lowell Capital becomes Responsible Entity of the Project it will conduct due diligence on all Project documentation which GSMAL's Liquidators will be required by law to hand over to it. Lowell Capital reserves its rights to amend or not implement any aspect of its Proposal if material information arises after it becomes Responsible Entity of the Project.

If any material information arises between the date of this document and the Meeting, it will be posted on [www.africanmahoganyaustralia.com.au](http://www.africanmahoganyaustralia.com.au)

#### Confidentiality

The use of documents provided by the Receiver is restricted by a Confidentiality Deed. Accordingly, only publically available information has been used to create the information in this RSEM.

#### Procedural Matters

In accordance with the Explanatory Memorandum, this RSEM is being posted on the website [www.africanmahoganyaustralia.com.au](http://www.africanmahoganyaustralia.com.au) as an update to the Explanatory Memorandum.

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Part A

### Overview

#### 1. Meeting

The Notice of Meeting contains five resolutions (“**Resolutions**”) which have been amended as set out in Part B of this RSEM. The purposes of the Resolutions are as follows:

Resolution 1	Approve the Lowell Capital Proposal
Resolutions 2 & 3	Approve amendments to Project documents
Resolutions 4 & 5	Replace GSMAL and appoint Lowell Capital as Responsible Entity of the Project.

#### 2. Why Vote?

Resolutions 4 & 5 require an extraordinary resolution which is very difficult to obtain. It requires at least 50% of votes that can be cast (i.e. votes representing at least 50% of Woodlots). Therefore a Grower that wants the Projects to continue should vote for the Lowell Capital Proposal.

**If all resolutions are passed the Project will continue as amended** under the terms set out in this RSEM and the Explanatory Memorandum subject to any amendments that may be required in order to preserve tax deductibility of Growers’ initial contributions.

**If any resolution is rejected, the Project will almost inevitably be wound up.** This will mean:

- Great uncertainty as to what if any return Growers will receive.
- The Australian Taxation Office may claw back Growers’ deductions (if the Government does not amend the law as it has proposed).

You can vote by completing and returning the Proxy Form attached at Part C for your convenience.

#### 3. Replacement Supplementary Explanatory Memorandum

The RSEM has three parts:

Part A – Changes to the Lowell Capital Proposal set out in the Explanatory Memorandum

Part B – Changes to the proposed Amendments to Project Documents

Part C – Proxy Form

#### Submit your proxy

All valid proxies that have already been lodged will be considered at the meeting. A member who has previously lodged a proxy is not required to lodge a new proxy. To be effective the proxy must be received by no later than 48 hours before the resumed Meeting.

**If you have already submitted a Proxy Form and would like your proxy to stand for the purposes of the Meeting, there is no need to submit a further Proxy Form.**

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Part A

### PART A - LOWELL CAPITAL PROPOSAL

#### RESOLUTION 1 – APPROVAL OF THE LOWELL CAPITAL PROPOSAL

##### 1. Changes to the Proposal

###### 1.1 Background

Following the issue of the Explanatory Memorandum dated 22 March 2010 to accompany the notice of meeting for the Project (**Explanatory Memorandum**) and the meeting of Growers held on 15 April 2010 adjourned to 24 May 2010, a number of growers, including those represented by a group known as the Growers Working Group (**GWG**) have requested amendments to Lowell Capital's proposal for the Projects (**Proposal**).

The Preparers have agreed to make a number of changes to the Proposal, which they believe will make the Proposal more attractive to Growers. This RSEM sets out those changes to enable Growers to make an informed decision about whether to approve the resolutions set out in the Notice of Meeting dated 3 March 2010 (**Notice of Meeting**), as amended in Part B of this RSEM. Growers are asked to consider, and if thought fit, pass the first resolution in the Notice of Meeting to approve the new Lowell Capital Proposal (**New Proposal**). This section describes the changes to the proposed amendments and their effect.

Growers are also asked to consider, and if thought fit, pass the second and third resolutions regarding modifications to the Constitution and the Grower Agreements set out in Part B of this RSEM which include marked up amendments to the modifications contained in Part B of the Explanatory Memorandum.

###### 1.2 Overview of the changes to the Lowell Capital Proposal

Growers have requested and Lowell Capital has agreed to change its Proposal in the following areas:

- (a) increasing the certainty of tax treatment of contributions for Growers;
- (b) clarifying the Responsible Entity's entitlement to fees in the event of resignation or insolvency;
- (c) clarifying that the Annual Fee payable to the Responsible Entity forms part of the RE's Additional Fee;
- (d) removing the Responsible Entity's ability to borrow and grant security against the assets of the Project;
- (e) inserting a governance mechanism involving a Grower Sub-Committee in relation to any Other Income derived from Woodlots in the Projects;
- (f) allowing Growers who make Additional Contributions to share the proceeds of Growers who forfeit their interest in the Project;
- (g) allowing Growers to increase their investment by making further contributions to the Project; and
- (h) creating an opportunity for Growers' to share in proceeds of Commercial Thinnings and any Other Income derived by the Investment Manager above a certain threshold.

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### 1.3 Tax Deductibility

#### 1.3.1 Taxation Determinations

Since the issue of the Explanatory Memorandum, the Australian Taxation Office (**ATO**) has issued a final taxation determination TD 2010/7 that is relevant to the Project.

(a) Change of Responsible Entity (TD 2010/7)

Broadly, the taxation determination provides that:

- (i) where, despite the change of Responsible Entity, the managed investment scheme continues to be implemented in accordance with the relevant product ruling – the commissioner considers that the ruling will continue to apply and may be relied upon by investors; however
- (ii) where the change of the Responsible Entity results in there being a 'material difference' in the implementation of the managed investment scheme – an investor will not be able to rely on the product ruling.

There will be a "material difference" if there is a change in the fees for investors that means that there is an objective expectation that the scheme will now not meet one of the following tests or produce assessable income for an income year in excess of deductions within the commercially viable period:

- (i) assessable income from the business activity is at least \$20,000 (section 35-30 ITAA 1997);
- (ii) for at least 3 of the past 5 income years, the sum of the deductions attributable to that activity is less than assessable income for that activity for the year;
- (iii) total reduced costs bases of real property used on a continuing basis is at least \$500,000; and
- (iv) total value of assets used on a continuing basis to carry out the activity (including leased assets) is at least \$100,000.

The draft taxation determination further provides that if there is a 'material difference' in the implementation of the scheme, then the relevant product ruling will ordinarily be withdrawn with effect from the time the material difference occurred. Where the difference is not material, an addendum to the product ruling will ordinarily be issued to confirm the situation.

In particular, the non-binding explanation in Appendix 1 to the draft taxation determination provides that:

"...where the arrangement commences and subsequently materially changes from the ruled scheme, the withdrawal may take effect from immediately before the time the material difference occurred. This may enable participants to be able to rely on the ruling in relation to deductions already incurred and claimed."

The above suggests that change in Responsible Entity and the increase in the fees payable under the Projects, the product ruling relied upon by Growers at the time of acquiring their interests in the Projects should continue to apply and may be relied upon by Growers.

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- (b) Draft Taxation Determinations TD 2009/D13, TD 2009/D14, TD 2009/D15 and TD 2009/D15

The effect of these draft taxation determinations were set out in section 12 of the Explanatory Memorandum. Growers should note that these draft taxation determinations have not been finalised as at the date of this RSEM.

On 21 October 2009, the Federal Government announced that it intends to amend the current tax legislation to protect investors in forestry managed investment schemes from unintended and adverse tax outcomes which would otherwise arise under current tax legislation as a result of events which occur within four years of the investors first incurring expenditure under the scheme and which are genuinely beyond the control of the investors. The announcement provides, by way of example, that the amendments to the tax legislation should apply to investors affected by the insolvency of a responsible entity of a forestry managed investment scheme.

However, Lowell Capital has not yet sought a tax ruling or confirmation from the ATO on the continued deductibility of Growers' contributions if the Proposal is approved. In particular, the modification to the Project involving forfeiture of growers' interests in the Project upon failure to make Additional Contributions may not be considered to be genuinely beyond the control of investors as envisaged by the Federal Government.

In this situation, you should ensure that you seek your own financial and taxation advice in relation to the tax consequences of not making Additional Contributions.

### 1.3.2 The New Proposal

Under the New Proposal, Lowell Capital will only make the proposed amendments to the Constitution set out in this RSEM after obtaining from the Australian Taxation Office (ATO) a ruling or an addendum to a ruling that preserves deductions received by Growers under Product Ruling 2007/70 (**Product Ruling**) or confirmation that the deductions will be preserved in relation to the Project, and attempting to structure additional contributions in a format that achieves deductibility for Growers where possible.

The appointment of Lowell Capital is not likely to jeopardise the tax deductions that Growers have already received, however, there is a risk that some of the changes that Lowell Capital proposes to make after it is appointed as the Responsible Entity of the Project may do so. Accordingly, under the New Proposal, Lowell Capital agrees to engage with the ATO to ensure that if the New Proposal can be implemented in a manner that will preserve deductions previously received by Growers under the Product Ruling than those modifications to the constitution of the Project (**Constitution**) as set out in Part B of this RSEM (**Proposed Constitutional Changes**) it will make non-material changes to the Proposed Constitutional Modifications prior to implementing such changes.

If material changes are required to the Proposed Constitutional Changes in order to obtain a ruling or an addendum to a ruling from the ATO or a confirmation from the ATO that deductions will be preserved under the Product Ruling, the Responsible Entity will bring those changes to a meeting of Growers to consider, and if thought fit, pass resolutions approving the amended modifications to the Constitution.

Under the New Proposal, the second resolution relating to the Responsible Entity modifying the constitution has been amended to reflect Lowell Capital's new proposed approach to the implementation of its proposed constitutional amendments. See Part B for the revised wording of resolution 2.

In order to facilitate a ruling or confirmation from the ATO in relation to the preservation of deductions under the Product Ruling, Lowell Capital is not proposing to make the changes that were previously set out in the Explanatory Memorandum relating to the derivation of

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Other Income at this point in time. The Proposed Constitutional Changes relating to the derivation of Other Income have been removed in Part B of this RSEM. After Lowell Capital is appointed as Responsible Entity of the Project it will consider how best this outcome can be achieved while preserving Growers' deductions received under the Product Ruling.

Under the New Proposal Additional Contributions will be held on trust for Growers in the Contributions Fund until the Responsible Entity determines that it is able to make appropriate modifications to the Constitution that will not affect deductions already received by Growers who wish to retain interests in the Project. It will notify Growers on making such a determination and at least 5 days before implementing the Proposed Constitutional Changes. If the Responsible Entity determines in good faith after giving Growers 21 days notice of the basis of such a determination and having considered any submissions made by Growers in that time, the Responsible Entity will return Additional Contributions to Growers less the following costs, capped at \$100,000 in total:

- (i) cost of engaging and negotiating with the ATO an appropriate ruling or addendum to a ruling or confirmation regarding the deductibility of contributions received by Growers under the Product Ruling;
- (ii) transactional costs to effect the change of Responsible Entity;
- (iii) legal costs involved in preliminary advice regarding court approval for the implementation of the New Proposal as referred to in section 2.3.9 of the Explanatory Memorandum;
- (iv) legal costs involved in any action taken by the Responsible Entity in relation to the default notices issued by the liquidators appointed to the land owning entity; and
- (v) legal costs involved in preparing the Lowell Capital Proposal to a maximum of \$40,000.

The New Proposal includes an amendment to the provisions in the Constitution relating to the Contributions Fund in clause 3.3 and the Responsible Entity's entitlement to reimbursement in clause 31.4 in Part B of this RSEM.

Growers should note that to the extent that Additional Contributions are used for the purposes set out in paragraphs (i)–(v) above the Additional Contributions will not be deductible contributions for Growers. However, after these costs, the Responsible Entity is intending to use the Additional Contributions to fund the provision of Ongoing Services, and to the extent that the Additional Contributions are used for this purpose, they may be deductible, subject to a ruling from the ATO in this regard.

Lowell Capital has not yet sought a tax ruling or confirmation from the ATO on the deductibility of Growers' Additional Contributions if the Proposal is approved. You should ensure that you seek your own independent financial and tax advice in this regard until such ruling or confirmation is obtained.

### 1.4 Responsible Entity Remuneration

Lowell Capital has agreed that its remuneration will be amended so that it will be entitled to its fees in three stages:

- (i) 20% on appointment as Responsible Entity of the Project;
- (ii) 30% five calendar years after being appointed as Responsible Entity of the Project; and

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- (iii) the remaining 50% accruing on a pro rate basis over the remainder of the Project.

The proposed amendments to clause 27.2 under the Proposal have been amended in accordance with these three stages of remuneration.

In addition, in the event of the Responsible Entity resigning or being voted out by growers, the amendments to clause 27.2(e) provide that if the Responsible Entity voluntarily resigns it will be entitled to its fee pro rata for the years it acted as Responsible Entity, subject to the proper performance of and if the Responsible Entity is replaced by the Growers in relation to the proper performance of its duties as Responsible Entity.

The New Proposal also makes it clear that the Annual Fee of 10% of Additional Contributions or after five years \$40,000 per annum (indexed in line with CPI) payable to the Responsible Entity under clause 27.3 of the Constitution will form part of and will not be in addition to the increased remuneration the Responsible Entity is entitled to under clause 27.2 of the Constitution.

### 1.5 Investment and Borrowings

Under the New Proposal, the Responsible Entity's right to borrow money and grant security over the assets of the Project under clause 12.2 of the Constitution has been removed along with any reference to borrowed monies in the Grower Agreements.

### 1.6 The Manager's Other Income

Under the Proposal, the Manager would have been entitled to raise Other Income through hay production and sale, agistment of land, lease and sublease of land, growing and sale of sugarcane and any other type of income the Responsible Entity deems appropriate. This will assist in funding the Ongoing Services after the exhaustion of the Contributions Fund. The Responsible Entity would not have been able to grant any sub-lease to the Manager to derive Other Income unless it determined that it would not be adverse to Growers' interests to do so.

In response to queries by Growers in relation to the governance of the Responsible Entity's potential future discretion to grant a sub-lease (under power of attorney granted by the Grower) to the Manager, Lowell Capital and the Manager have agreed under the New Proposal to the appointment of a Grower's Review Committee (GRC), consisting of five growers (or more should the committee later decide) to be appointed at a meeting of Growers convened within three months of the appointment of Lowell Capital as Responsible Entity, for a term of three years. At the end of each three year term, a further meeting will be held to appoint a new GRC, until the termination of the project. The GRC will be consulted by the Manager from time to time concerning the conduct of the Project, and the Manager will meet with the GRC at least twice a year for that purpose. The reasonable costs (including any reimbursed costs paid to Growers) of convening and holding meetings of Growers and holding the consultation meetings will be paid for by the Responsibility Entity as a cost of the scheme. For the avoidance of doubt, in relation to failed land, the following matters will be the subject of consultation:

- the choice of an independent forester to provide an opinion to the Manager as to whether the land has failed; and
- the contents of the forester's report, which will be provided to the GRC.

The above consultation must occur before the Responsible Entity will be permitted to grant a sub-lease to the Manager for the purposes of deriving Other Income.

In addition, Lowell Capital has agreed that further changes will be made to the Lease and Forest Right Agreement so that Growers and the Responsible Entity would split equally any proceeds from Other Income (from both the 2007 and 2008 Projects) above \$400,000 per annum after taking into account any shortfall of budgeted expenses for which the Responsible

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Entity is entitled to reimbursement and reasonable future operation costs relating to the derivation of Other Income. The proceeds of Other Income would be assessed in 5, 10, 15 years and at the end of the Project to determine whether any the Other Income derived averaged across the preceding five years is above \$400,000 (indexed in line with CPI).

However, Lowell Capital has determined that to facilitate the Responsible Entity obtaining from the ATO a ruling or an addendum to a ruling or a confirmation that Growers' contributions for which they have already received a deduction under the Product Ruling will be preserved, it will not seek to make the Proposed Constitutional Modifications relating to the derivation of Other Income at this point in time. The Proposed Constitutional Modifications relating to the derivation of Other Income have therefore been removed in Part B of this RSEM. After Lowell Capital is appointed as Responsible Entity of the Project it will consider how best the outcome set out in the preceding paragraphs can be achieved.

### 1.7 Commercial Thinnings

In the Proposal the Manager will also be entitled to retain the proceeds of Commercial Thinnings (via the Responsible Entity) in consideration for providing and funding the Ongoing Services until harvest. However, the New Proposal provides a potential benefit for Growers because Lowell Capital has agreed to share any surplus net proceeds from Commercial Thinnings equally with Growers after providing for the following:

- (i) any remaining obligations under any lien held by the Receivers or Liquidators;
- (ii) provision for "reasonable" future operational costs of the Responsible Entity;
- (iii) any expenditure by the Responsible Entity for which it is entitled to be reimbursed;
- (iv) any residual obligations associated with the underwriting of Additional Contributions;
- (v) \$1 million in 2017 and \$4 million in 2021 for the Responsible Entity (in aggregate including 2007 and 2008 Projects).

The amendments to clause 31.1 of the Constitution have been marked up to reflect this arrangement.

### 1.8 Forfeiture of Grower Entitlements

Growers will be requested to make out of pocket contributions of \$100 per Woodlot per year for the first five years after Lowell Capital's appointment as Responsible Entity of the Project. Under the Proposal, in any year that a Grower did not make such a contribution, the Grower surrendered 20% of their entitlement to Net Harvest Proceeds as a Non-Contribution Additional Fee for each Woodlot in respect of which a Grower Contribution is not made. Under the New Proposal, the percentage of the grower's interest that is forfeited as a Non-Contribution Additional Fee is 20% for the first year that the grower fails to make Additional Contributions, 20% the second year and 60% the third year.

If a Grower makes no contributions in respect of any Woodlots over a 3 year period (previously 5), the Grower will surrender 100% of their entitlements as a Non-Contribution Additional Fee and will cease to be a member of the Project.

If the sum of Additional Contributions and Increased Contributions retained by the Responsible Entity is equal to or greater than 40% of the Contribution Cap, the Responsible Entity will hold for the benefit of all Growers who remain in the Project at the time of final

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harvest, 50% of the Non-Contribution Additional Fees, in respect of which no Grower has an entitlement as a result of making Increased Contributions (see below).

This amendment to the proposal has been reflected in the marked up amendments to clause 44(j) of the Constitution in Part B of this RSEM.

Lowell Capital has not yet sought a tax ruling from the Australian Tax Office (**ATO**) in respect of the tax deductibility of Additional Contributions. The Responsible Entity will engage the ATO in relation to the deductibility of Additional Contributions prior to implementing the modifications set out in Part B of this RSEM. You should ensure that you seek your own independent financial and tax advice in this regard.

### 1.9 Opportunity for Growers to make increased contributions

Lowell Capital have agreed that if some Growers fail to make their required Additional Contributions, other growers who wish to remain in the Project can make further contributions in \$100 lots. The Responsible Entity will have the discretion to accept such increased contributions to the extent that growers have forfeited their interest or not made their Additional Contributions. Growers who choose to make these increased contributions will be entitled to Non-Contribution Additional Fees in respect of the forfeited entitlement to the value of 20% of the Net Proceeds of Sale relating to the Woodlot. If increased contributions are made in lots of \$400, growers will receive a 20% discount and obtain 5 forfeited entitlements of 20% of the Net Proceeds of Sale relating to a Woodlot.

If there is an oversubscription by growers for these increased contributions, the Responsible Entity will return the money to the growers in proportion to the other growers that made increased contributions.

The marked up amendments to reflect this arrangement can be found in clause 44(h) and (i) of Part B of this RSEM.

## 2. Updated information

### Receivers' Lien

On 23 March 2010, Lowell Capital received notice from the Receivers that estimate value of their Lien up until 30 December is \$580,000 for the 2007 Project and \$430,000 for the 2008 Project.

### Default Notices

The Liquidators of the land owning companies have refused to withdraw the default notices issued by them on 25 February 2010 but have advised Lowell Capital that they do not propose to do so before the Growers' meeting. However, the Liquidators have not indicated whether they would terminate the leases after the meeting and have reserved the right to do so. Lowell Capital believes that if the Liquidators were to terminate the leases, it would have a strong case for relief against forfeiture and have advised the Liquidators of its view in this regard.

## 3. Risks

It is important that Growers read the risk disclosure included in section 4 of the Explanatory Memorandum carefully as there are considerable risks associated with agricultural managed investment schemes and the restructure of schemes after the insolvency of the Responsible Entity and the length of time until harvest.

In addition to those risks Growers should also be aware that there is a risk that the information in this RSEM is incomplete or inaccurate because the Preparers' access to relevant information is limited as described on page 2 under the heading "Important Information".

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Further, there is a risk that the Proposed Constitutional Amendments will require amendment prior to implementation in order to preserve the deductions obtained by growers under the Product Ruling. If material changes are required to the Proposed Constitutional Amendments to achieve this, the Responsible Entity will be required to call a further meeting of Growers to consider the further modifications. There is a risk that the modifications may not be approved by Growers and Additional Contributions will be returned to Growers after accounting for the legal and transactional costs of the Proposal set out in paragraphs (i)-(v) of section 1.3.2 of the RSEM.

Growers are also referred to the issue of the Default Notices in the section above. There is a risk that the Liquidators will terminate the leases in which case Lowell Capital will have to consider making an application for relief against forfeiture through the courts which may or may not be successful. If the leases are terminated and remain so, the Projects are likely to be wound up.

### 4. Disadvantages

The resolutions involving amendments to the Project documents are special resolutions because elements of them are adverse to the existing rights of Growers under the Project. The law requires that such amendments are made by a special resolution of members of a scheme.

The key aspects of the Proposal that affect Growers adversely are:

- (i) a requirement to make additional Grower Contributions;
- (ii) the reduction in and possibly full surrender of entitlements to the benefits produced by the Project if a Grower does not make the additional Grower Contributions;
- (iii) an increase in remuneration required to be paid by Growers to the Responsible Entity out of Net Proceeds of Sale; and
- (iv) an increase in the scope of the Responsible Entity's right to be indemnified out of the Proceeds Fund.

Details of each of these adverse effects are described in the Explanatory Memorandum.

### 5. What to do next to support the Proposal

You should carefully consider the New Proposal and seek independent financial and taxation advice in relation to your situation.

If you would like the New Proposal to proceed, you should vote in favour of all of the resolutions by:

- (a) submitting your Proxy Form and voting in favour of all of the resolutions; or
- (b) attending the Meeting and voting in favour of all of the resolutions.

**If you have already submitted a Proxy Form that Proxy Form will remain valid and you will not be required to submit a further Proxy Form unless you submit a replacement Proxy Form.**

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### PART B – RESOLUTIONS FOR THE LOWELL CAPITAL PROPOSAL

The business of the Meeting includes consideration of the proposal of Lowell Capital Limited and AMA Teak Pty Ltd (**Lowell Capital Proposal**) in relation to the Great Southern 2008 High Value Timber Project ARSN 123 529 233.

Growers are asked to consider and, if thought fit, pass the following resolutions for the Lowell Capital Proposal as marked up from the resolutions proposed in the Explanatory Memorandum.

#### Resolution 1 – Approval of the Lowell Capital Limited Proposal

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

*"That, subject to Resolutions 2, 3, 4 and 5 being passed, the Growers approve the Lowell Capital Limited proposal described in the Explanatory Memorandum [and the Replacement Supplementary Explanatory Memorandum](#) to be given to Growers prior to the Meeting ([Explanatory Memorandum](#)).*

#### Resolution 2 – Amendments to the Constitution to implement the Lowell Capital Proposal

To consider and, if thought fit, pass the following resolution as a special resolution:

*"That, subject to Resolutions 1, 3, 4 and 5 being passed, the [responsible entity constitution](#) of the Great Southern 2008 High Value Timber Project ARSN 123 529 233 ([Scheme](#)) [modifies the constitution of the Scheme](#) ~~be amended by Lowell Capital Limited immediately following its appointment as the responsible entity~~ under section 601FJ of the Corporations Act in accordance with the amendments set out in the Explanatory Memorandum [and the Replacement Supplementary Explanatory Memorandum](#) but not before obtaining from the Australian Tax Office (ATO) a ruling or an addendum to a ruling regarding the preservation of deductions already claimed by members under the Product Ruling 2007/70 relating to the [Scheme \(Product Ruling\)](#) and, if material changes to those amendments are required to obtain such a ruling, such changes are approved by Growers at a meeting of Growers."*

#### Resolution 3 – Amendments to the Grower Agreements to implement the Lowell Capital Proposal

To consider and, if thought fit, pass the following resolution as an ordinary resolution:

*"Subject to Resolutions 1, 2, 4 and 5 being passed, that the Growers approve the amendment of the Growers' Agreements in the manner set out in the Explanatory Memorandum and [the Replacement Supplementary Memorandum](#) and acknowledge the right of Lowell Capital Limited acting as the responsible entity of Great Southern 2008 High Value Timber Project ARSN 123 529 233 (the **Scheme**) to make those amendments using the rights of the responsible entity under any powers of attorney granted by Growers in relation to the Scheme, including the powers of attorney granted by Growers pursuant to Resolution 2, and the powers of attorney granted by Growers in their application forms submitted at the time of applying for interests in the Scheme (including as a prescribed interest undertaking prior to the Scheme's registration under the Corporations Act).*

#### Resolution 4 – Removal of GSMAL as Responsible Entity of the Scheme

To consider and, if thought fit, pass the following resolution as an extraordinary resolution:

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*"That, subject to and conditional upon resolutions 1, 2, 3 and 5 being passed and all of the resolutions contained in the Notices of Meeting (dated on or about the date of this notice of meeting) for the "Great Southern 2007 High Value Timber Project ARSN 123 528 950" (the **Other Scheme**) being passed, or if the resolutions for the Other Project are not passed and Lowell Capital Limited agrees to be appointed as RE of the Scheme no later than 10 business days after the day of the Meeting, GSMAL be removed as responsible entity of the Scheme in accordance with section 601FM of the Corporations Act."*

### **Resolution 5 - Appointment of Lowell Capital Limited as Responsible Entity of the Scheme**

To consider and, if thought fit, pass the following resolution as an extraordinary resolution:

*"That, subject to and conditional upon resolutions 1, 2, 3 and 4 being passed and all of the resolutions contained in the Notices of Meeting of the Other Project being passed, or if the resolutions for the Other Scheme are not passed and Lowell Capital Limited agrees to be appointed as RE of the Scheme no later than 10 business days after the day of the Meeting, Lowell Capital Limited be appointed the responsible entity of the Scheme on the retirement of GSMAL in accordance with section 601FM of the Corporations Act."*

Resolutions 1 - 5 are interdependent and interdependent on all resolutions for the Lowell Capital Proposal in the Great Southern 2007 High Value Timber Project ARSN 123 528 950 (**Other Scheme**). However, if all resolutions for the Other Scheme are not passed Lowell Capital Limited may agree to be appointed as the RE of the Scheme no later than 10 business days after the day of the Meeting. If all resolutions are not passed the current responsible entity will remain and the Scheme will be wound up.

Growers should note that the resolutions for the Other Scheme are identical to those above apart from the references to the 2007 High Value Timber Project or 2008 High Value Timber Project where appropriate.

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### SECTION 1: CHANGES TO THE CONSTITUTION

The full text of the changes to the Constitution under Resolution 2 is set out in this Section 1.

In this Section, the definitions referred to in clause 1 below have been used. Other terms, which are capitalised, refer to terms, which already have a defined meaning in the Constitution or Grower Agreements.

#### 1. Definitions

Insert the following new definitions into clause 1.1 of the Constitution:

“**Additional Contribution** means a contribution payable by each Grower in accordance with clause 44.”

“**Additional Fee** means the fee payable by each Grower in accordance with clause 27.2 or clause 44(e).”

**Annual Fee** means the fee payable in accordance with clause 27.3”

[“ATO means the Australian Taxation Office.”](#)

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“**Contribution Fund** means a fund created and operated by the Responsible Entity in accordance with clause 3.”

“**Explanatory Memorandum** means the Explanatory Memorandum (as amended) given to Growers in relation to the Notice of Meeting dated 3 March 2010.

“**Five Year Period** means the first five years after Lowell Capital becomes responsible entity of the Project during which the RE will issue invoices for Additional Contributions pursuant to clause 44(a).”

“**Insolvency Event** means where a party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act.”

“**Lowell Capital** means Lowell Capital Limited ACN 006 844 588”

“**Net Proceeds of Sale** has the meaning given to it in the Land and Management Agreement.”

“**Ongoing Services** has the meaning given to it in the Land and Management Agreement.”

“**Responsible Entity Fee** means the fee payable from the Contributions Fund in accordance with clause 27.3.”

“**Woodlot** has the meaning given to it in the Land and Management Agreement.”

The definition of “Power of Attorney” in clause 1.1 of the Constitution is deleted and replaced with the following new definition of “Power of Attorney”:

“**Power of Attorney** means any power of attorney granted by the Applicant or Grower in favour of the Responsible Entity, including:

- (i) any existing power of attorney granted by each Applicant and Grower to the Responsible Entity or a former responsible entity;

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- (ii) any power of attorney granted by each assignee or successor of an Applicant or Grower; and
- (iii) the power of attorney contained or to be contained in clause 13.2 of the Constitution.”

### 2. Grower's appointment of Attorney

Amend clause 13.2 of the Constitution by deleting clause 13.2 and replacing it with the following:

“13.2. Powers

(a) The Responsible Entity has:

- (1) all the powers of a natural person and all powers that are reasonably necessary for it to carry out its functions and duties under this Constitution including the power to fetter future discretions, such as by the granting of options; and
  - (2) to the maximum extent permitted by law, an irrevocable power as the agent, representative and attorney of the Grower and, whether in the name of the Grower or the Responsible Entity, to:
    - (i) amend an Agreement in a manner required to effect the proposal described in the Explanatory Memorandum, and
    - (ii) take any action (including Court action) necessary or desirable to protect or preserve the Grower's right to use, occupy or access land to grow their trees under the Project, should that right be threatened, challenged or compromised, or otherwise if thought fit by the Responsible Entity.
- (b) Each Grower, subject to paragraph (c), to the maximum extent permitted by law irrevocably appoints the Responsible Entity from time to time, and each Director and Company Secretary of the Responsible Entity to be the agent and attorney of the Grower, in the Grower's name, on the Grower's behalf and as the Grower's act and deed, to exercise the powers and do anything and take any action set out in Schedule 8 to this Constitution on the terms set out below and in that Schedule.
- (c) The Responsible Entity from time to time, may recover all costs properly incurred in exercising its powers under paragraphs 13.2(a)(2) or 13.2(b) (including, without limitation, all legal and litigation costs and costs associated with the preparation of any reports for the purposes of taking the action) first from the Contribution Fund and then from the Net Proceeds of Sale (as defined in the Land and Management Agreement). The Responsible Entity's right of indemnity under this clause applies only in relation to the proper performance of its duties.
- (d) The Grower undertakes to ratify all that the attorney lawfully does or causes to be done under paragraphs 13.2(a)(2) or 13.2(b).
- (e) The powers granted by paragraphs 13.2(a)(2) and 13.2(b) are without prejudice to any power of attorney given to Great Southern Managers Australia Limited ACN 083 825 405 (In Liquidation) (Receivers and Managers Appointed) by a Grower upon submitting an application for interests in the Project or upon becoming a Grower as an assignee or member by succession (**Original Power**) and the acts and things which the Responsible Entity may do and take under the powers granted in paragraphs 13.2(a)(2) and 13.2(b) are in addition to the acts and things which the Responsible Entity from time to time is empowered to do or take pursuant to the Original Power.

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- (f) The Grower acknowledges and agrees that the Original Power is a right of the Responsible Entity in relation to the Project for the purposes of section 601FS(1) of the Corporations Act.
- (g) Each Grower acknowledges that where an Original Power continues in effect, the Responsible Entity may act under either or both the Original Power and the powers granted by paragraphs 13.2(a)(2) or 13.2(b), in a manner required to effect the proposal described in the Explanatory Memorandum including in amending an Agreement in the manner provided in the Explanatory Memorandum.

Insert the following as new Schedule 8 to the Constitution:

### Power of Attorney

1. The Responsible Entity from time to time and each Director and Company Secretary of the Responsible Entity is appointed by each Grower jointly and severally to be attorney for the Grower, in the Grower's name, on the Grower's behalf and as the Grower's act and deed on the terms specified below and in clause 13.2(b) and to do the following things and take the following actions:
  - (a) to vary an Agreement in the manner provided in the Explanatory Memorandum and make, execute and deliver and submit for registration all deeds, agreements and other instruments as to the attorney seem necessary or desirable for making such variations;
  - (b) to vary the provisions of an Agreement from time to time, provided that the variation:
    - (i) in the opinion of the Responsible Entity is not likely to be to the detriment of the Grower's interests in the Agreement;
    - (ii) will in the opinion of the attorney enable the Agreement to be better administered and managed in the interests of the Project;
    - (iii) is in the opinion of the Responsible Entity required as a matter of continuing compliance with relevant statutory requirements;
    - (iv) is in the opinion of the Responsible Entity required to correct a factual error in the documents; or
    - (v) is agreed between the Grower and the Responsible Entity;
  - (c) to take any action (including Court action) necessary or desirable to protect or preserve the Grower's right to use, occupy or access land to grow their trees under the Project, should that right be threatened, challenged or compromised, or otherwise if thought fit by the Responsible Entity;
  - (d) to enter into and execute on the Grower's behalf a sub-lease or forest right agreement for the benefit of a third party under the Lease or Forest Right Agreement in accordance with that Lease or Forest Right Agreement in consideration for the third party providing the Ongoing Services;
  - (e) to enter into and execute on the Grower's behalf, an agreement to sell the timber produce on such terms as the Responsible Entity considers appropriate, which agreement will be ineffective if the Grower elects to take their own produce;
  - (f) to date the agreement to sell and complete the blank spaces in the schedule to that agreement;
  - (g) to make and initial necessary alterations to the agreement to sell which are not prejudicial to the Grower's interests in the considered opinion of the attorney;
  - (h) to make, do and sign all such acts, deed and things as may be necessary to procure the stamping of the agreement to sell with power to instruct the

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- attorney's solicitors to assist them in this regard;
- (i) to vary the provision of the agreement to sell the timber produce provided that the variation:
- (i) will, in the opinion of the attorney, enable the agreement to sell to be better administered and managed in the interests of the Project;
  - (ii) is, in the opinion of the Responsible Entity, required as a matter of continuing compliance with relevant statutory requirements;
  - (iii) is, in the opinion of the Responsible Entity, required to correct a factual error in the document; or
  - (iv) is agreed between the Grower and the Responsible Entity.
2. In the case of any variation to be effected to an Agreement which, in the opinion of the Responsible Entity, may adversely affect the Grower's interests, such variation may only be effected if it has been approved by an ordinary resolution at a formal meeting of Growers of the Project.
3. This Power of Attorney will be governed by and construed in accordance with the laws of Victoria.

### 3. Additional Contributions by Growers

Amend the Constitution by inserting the following wording as a new clause 44:

#### "44. Additional Contribution

- (a) The Responsible Entity will issue to each Grower an invoice for an Additional Contribution of \$100 per Woodlot held by the Grower each year of the Five Year Period.
- (b) The Additional Contribution is payable by the Grower to the Responsible Entity under the terms of an invoice issued by the Responsible Entity pursuant to clause 44(a).
- (c) The Responsible Entity shall place the Additional Contributions into the Contributions Fund.
- (d) Notwithstanding clause 44(e), a Grower may pay \$400 per Woodlot in satisfaction of all Additional Contributions for the Five Year Period if such an amount is paid under the terms of the first invoice issued by the Responsible Entity pursuant to clause 44(a).
- (e) For any Woodlot in respect of which a Grower does not pay the Additional Contribution in any ~~three particular years~~ of the Five Year Period, the Grower will be required to pay an Additional Fee (**Non-Contribution Additional Fee**) to the Responsible Entity representing ~~the following 20% of the~~ portions of the Net Proceeds of Sale ~~that relating~~es to that Woodlot:
- (1) first year - 20%;
  - (2) second year - 20%; and
  - (3) third year - 60%.
- (f) Woodlots in respect of which a Grower is required to pay 100% of the portion of the Net Proceeds of Sale that relates to that Woodlot as Non-Contribution Additional Fees, in accordance with clause 44(e), will be deleted from that Grower's Agreements assigned to the Responsible Entity at the end of the Five Year Period, ~~notwithstanding clause 21.1, if this occurs in relation to all of a Grower's Woodlots, and, at that time, the Responsible Entity may terminate that~~

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Grower's Agreements and remove the Grower from the Register. ~~will cease to be a Grower and will have no interest in the Project.~~

(g) A Grower may choose to make further contributions in addition to their Additional Contributions in \$100 lots or \$400 lots in relation to which they will receive a discount in accordance with clause 44(i) (Increased Contributions).

(h) The Responsible Entity may accept Increased Contributions to the extent that the sum of the total Increased Contributions (excluding advance payments made under clause 44(d)) and the total Additional Contributions received by the Responsible Entity from all Growers does not exceed the amount invoiced to Growers under clause 44(a) in any one year (Contribution Cap). To the extent that the Responsible Entity receives contributions in excess of the Contribution Cap in any year, the Responsible Entity will return to Growers that have made Increased Contributions, an equal proportion of the excess in respect of which an Increased Contribution was made.

(i) If no Increased Contributions are returned to Growers under clause 44(h), then the contributing Grower will have an entitlement to Non-Contribution Additional Fees to the value of 20% of the Net Proceeds of Sale relating to each Woodlot in respect of which an Increased Contribution was made. To the extent that Increased Contributions are returned to Growers under clause 44(h), the Grower's entitlement to Non-Contribution Additional Fees is reduced from 20% in proportion to the reduction of the Increased Contribution retained by the Responsible Entity of the \$100 Increased Contribution made by the Grower.

Note: for the avoidance of doubt, if the Responsible Entity retains only \$50 of each \$100 Increased Contribution, the Grower's entitlement to Non-Contribution Additional Fees is 10%.

(j) Growers who choose to make an Increased Contribution in \$400 lots will be entitled to an entitlement to Non-Contribution Additional Fees in relation to five forfeited Woodlots.

(k) If the sum of Additional Contributions and Increased Contributions retained by the Responsible Entity is equal to or greater than 40% of the Contribution Cap, the Responsible Entity will hold for the benefit of all Growers, as at the distribution of Proceeds under clause 32.1, 50% of the Non-Contribution Additional Fees paid under clause 44(e) in respect of which no Grower has an entitlement under clause 44(i) :

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Amend clause 3.3 of the Constitution by deleting clause 3.3(a) and inserting a new clause 3.3(a) with the following wording:

“(a) The Responsible Entity shall create 3 separate funds in relation to the Project in accordance with this clause, being the Application Fund, the Contributions Fund and the Proceeds Fund.”

Amend clause 3.3 of the Constitution by inserting a new clause 3.3(d) at the end of the clause with the following wording:

“(d) To form a Contributions Fund under this Constitution, the Responsible Entity shall lodge or cause to be lodged in a trust Bank account the moneys received by the Responsible Entity in respect of the Additional Contributions made by Growers under this Constitution. The moneys in the Contributions Fund, after the Responsible Entity's entitlement to be reimbursed in accordance with clause 31.4 is accounted for, will be returnable to Growers in the event that the Responsible Entity is unable to obtain a ruling or an addendum to a ruling from the ATO with respect to the Project or confirmation from the ATO that Growers' deductions received under the

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[product ruling with respect to the project will be preserved and Growers pass an ordinary resolution to that effect at a meeting of Growers to be called by the Responsible Entity within 28 days of receiving notice from the ATO that the confirmation, ruling or an addendum to a ruling will not be given.](#)

Insert a new clause 31.4 in the Constitution with the following wording:

### **“31.4 Reimbursement from the Contributions Fund**

The Responsible Entity shall as part of its remuneration and in addition to the remuneration referred to in clause 27 be reimbursed from the Contributions Fund for the following:

- (a) costs and liabilities associated with the provision of the Ongoing Services [including any reasonable future operational costs](#);
- (b) costs and liabilities, including but not limited to legal fees [capped at \\$100,000 in total](#) associated with the development of the proposal set out in the Explanatory Memorandum, [transactional costs to effect the change of Responsible Entity, fees associated with obtaining a ruling or an addendum to a ruling or confirmation from the ATO in relation to Growers' deductions, and any costs associated with any action taken by the Responsible Entity in relation to the default notices issued by the liquidators appointed to the land owning entity](#); and
- (c) notwithstanding clause 31.3, any costs or liabilities incurred by the Responsible Entity in performing its duties and acting in accordance with this Constitution and the Agreements in connection with any liabilities incurred by a prior responsible entity which are assumed by the Responsible Entity or for which it becomes responsible, all legal and litigation costs incurred in dealing with any legal action that relates to the Project including relating to the actions of any prior responsible entity,

Where the Responsible Entity is entitled to recover any amount pursuant to this clause and the total amount relates to more than one scheme for which the Responsible Entity is the responsible entity, the Responsible Entity may apportion the amount between the Project and other schemes in a manner as the Responsible Entity considers in its absolute discretion to be fair and appropriate in the circumstances.”

## **4. Remuneration of the Responsible Entity**

Amend clause 27 of the Constitution by inserting the following clause numbering and heading immediately above the existing paragraph 27(a):

### **“27.1 Remuneration”**

Amend clause 27 of the Constitution by inserting the following clauses immediately below the existing paragraph 27(c):

### **“27.2 Additional Fee**

- (a) On and from the date on which Lowell Capital Limited becomes responsible entity of the Project, the Responsible Entity is entitled to receive, in addition to the remuneration set out or referred to in clauses 27.1 and 27.2, an additional fee of an amount equal to 31.7% plus GST of the Net Proceeds of Sale in further consideration of the performance of the Ongoing Services (as defined in the Land and Management Agreement) (“**Additional Fee**”), with its entitlement to the Additional Fee arising and accruing in the following manner:

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- (1) on the date on which Lowell Capital Limited is appointed as the responsible entity of the Project and that appointment is recorded by ASIC, an amount equal to ~~20%~~50% of the Additional Fee;
- ~~(4)~~(2) five calendar years after the date on which Lowell Capital Limited is appointed as the responsible entity of the Project, an amount equal to 30% of the Additional Fee; and
- ~~(2)~~ the remaining 50% of the Additional fee accrues on a pro rata basis over the period commencing five calendar years after the date on which Lowell Capital is appointed as the responsible entity and ending on the date on which the Responsible Entity commences harvesting of the forest produce (as defined in the Agreement), on the date on which the Responsible Entity commences harvesting of the forest produce (as defined in the Agreement), an amount per annum equal totalling 50% of the Additional Fee.
- (b) To the extent of any inconsistency or repetition between this clause 27.2 and any clause of the Agreement which would result in the obligation to pay the Additional Fee under the Agreement when it has already been paid under this Constitution, this clause 27.2 applies or prevails to the absolute exclusion of the relevant clause of the Agreement.
- (c) The rights of the Responsible Entity to receive the additional remuneration specified in paragraphs (a) and (b) are only available in relation to the proper performance of the Responsible Entity's duties.
- (d) In the event of an Insolvency Event in respect of Lowell Capital Limited whilst Lowell Capital Limited is Responsible entity for the Project or in the event that the Growers choose to replace Lowell Capital as Responsible Entity, Lowell Capital Limited's entitlement to the proportion of the Additional Fee which is to arise and accrue under clause 27.2(a)(1) will be the lesser of the total actual costs and expenses incurred by Lowell Capital Limited in being appointed and acting as Responsible Entity for the Project or ~~5~~20% of the Additional Fee. All amounts recoverable under this paragraph (d) are to be deducted from the Net Proceeds of Sale.
- (e) In the event that Lowell Capital voluntarily resigns as Responsible Entity for the Project, Lowell Capital's entitlement to the proportion of the Additional Fee which has accrued at the date of the termination of Lowell Capital's appointment as Responsible Entity of the Project under clause 27.2(a) will be pro rata for the period for which it acted as Responsible Entity of the Project.

For the avoidance of doubt, ~~this paragraphs~~ (d) and (e) will have no impact on any entitlement Lowell Capital Limited has to the proportion of the Additional Fee which is to arise and accrue under clause 27.2(a)(~~2~~3)."

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### 27.3 Annual Fee

- (a) ~~On and from the date on which Lowell Capital Limited ACN 006 844 588 becomes responsible entity for the Project, the Responsible Entity~~ is entitled to receive an Annual Fee, ~~in addition to the fees set out or referred to in clause 27.1, and 27.2, a separate fee in further consideration of the performance of the Ongoing Services an Annual Fee (such fee being a drawdown of, and not in additional to the Additional Fee provided in clause 27.2) once it becomes Responsible Entity~~ equal to:

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- (1) 10% plus GST of the Additional Contributions with the fee accruing at the time that the Additional Contributions are actually received by the Responsible Entity from the Grower; and
- (2) on and from the date of the end of the Five Year Period, \$40,000 plus GST indexed in line with the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics from time to time for Perth from the date on which Lowell Capital Limited becomes responsible entity of the Project.

(b) For the avoidance of doubt, the Annual Fee is a drawdown of the Additional Fee provided in clause 27.2 and the Responsible Entity's entitlement under this clause 27.3 will reduce the Responsible Entity's entitlement under clause 27.2.

(c) To the extent of any inconsistency or repetition between this clause 27.3 and any clause of the Agreements which would result in the obligation to pay the Additional Fee under the Agreements when it has already been paid under this Constitution, this clause 27.3 applies or prevails to the absolute exclusion of the relevant clause of the Agreements.

~~(e)~~(d) — The rights of the Responsible Entity to receive the Annual Fee are only available in relation to the proper performance of the Responsible Entity's duties.

### 27.4 Non-Contribution Additional Fee

a) The Responsible Entity becomes entitled to receive the Non-Contribution Additional Fee at the conclusion of the Five Year Period.

b) The entitlement in paragraph (a) is preserved by way of it being treated as a Woodlot held by a Grower, or a percentage thereof, for the purpose the definitions of Net Proceeds of Sale, Grower's Proportional Interest and Grower's Proportional Share in the Land and Management Agreement.

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## 5. Limitation of liability of the Responsible entity

Amend clause 38 of the Constitution by adding the following sentence immediately below clause 38 (c):

"In any case, subject to the Corporations Act, the liability of the Responsible Entity in relation to the Project is limited to the Scheme Property, from which the RE is entitled to be, and is in fact, indemnified."

## 6. Electronic Communications to Growers

Amend clause 42.1 of the Constitution by inserting the following paragraph at the end of that clause:

"The Responsible Entity may send or deliver any document required to be sent or delivered to a Grower (or Growers as a whole) under this Constitution (including, for the avoidance of doubt the Forester's Report under clause 19), other than a document where the process or method for sending that document is regulated by the Corporations Act by:

- (a) sending it:
  - (i) by fax to the fax number; or
  - (ii) by other electronic means (including providing a URL link to any

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document or attachment) to an electronic address, that the Grower has supplied to the company for giving notices; or

- (b) making that document available on the website of the Responsible Entity instead, commencing on the date the document is, apart from this clause, required to be sent or delivered to a Grower and ending no earlier than 12 months later.”

### 7. Responsible Entity Indemnity

Amend clause 39 (a) of the Constitution by adding after the words “clause 31.2” the words:

“notwithstanding clause 31.3, any costs or liabilities incurred by the Responsible Entity in performing its duties and acting in accordance with this Constitution and the Agreements in connection with any liabilities incurred by a prior responsible entity which are assumed by the Responsible Entity or for which it becomes responsible, all legal and litigation costs incurred in dealing with any legal action that relates to the Project including relating to the actions of any prior responsible entity not already indemnified or reimbursed under clause 31.4. Where the Responsible Entity is entitled to recover any amount pursuant to this clause and the total amount relates to more than one scheme for which the Responsible Entity is the responsible entity, the Responsible Entity may apportion the amount between the Project and other schemes in a manner as the Responsible Entity considers in its absolute discretion to be fair and appropriate in the circumstances.

### 8. Appointment of Agents

Amend clause 17 of the Constitution by deleting clause 17 and replacing it with the following wording:

#### “17. Appointment of Agents (s601FB(2))

- 17.1 The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any asset, perform any act or exercise any discretion within the Responsible Entity’s power, including the power to appoint its own agent or delegate.
- 17.2 The Responsible Entity will be taken to have done (or failed to do) anything that any person appointed by the Responsible Entity has done (or failed to do) because of that appointment.
- 17.3 The agent or delegate may be an associate of the Responsible Entity.
- 17.4 The Responsible Entity shall appoint AMA Teak Pty Ltd as the forest Manager to manage the plantations on the Responsible Entity’s behalf for the duration of the Project.
- 17.5 Fees payable to any person appointed under clause 17.1 will be payable by the Responsible Entity out of its own monies but may include monies received as remuneration of by way of indemnity or reimbursement under the Constitution.”

### 9. Provision of information to Growers

Amend clause 19.2 of the Constitution by inserting the following clause immediately below the existing paragraph 19.2(c):

- “(d) a review and verification of annual cashflows for the Project.”

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### ~~(e) Investment and borrowings~~

~~Amend clause 12.2 of the Constitution by deleting clause 12.2 and replacing it with the following:~~

#### ~~“12.2 Borrowings (s601GA(3))~~

~~The Responsible Entity may, for the purposes of the Project:~~

- ~~(a) borrow, and repay such borrowing and pay interest and costs in relation to such borrowing from the Gross Proceeds of Sale; and~~
- ~~(b) grant security over assets of the Project.~~

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## 10. Growers' Acknowledgements

Insert the following as new clause 45 in the Constitution:

### “45. Growers' Acknowledgements

- (a) Notwithstanding any representations or statements which the Responsible Entity or other person may have made prior to the adoption of this provision in this Constitution or any agreement, arrangement or understanding, Lowell Capital Limited ABN 60 006 844 588 is not under any obligation to:
  - (1) acquire or hold any additional forest produce or hardwood plantations (collectively **Additional Hardwood Plantations**) for the benefit of the Growers, contribute Additional Hardwood Plantations to any pool which may be created in respect of the Project or subsidise any sales revenues which might be generated from the sale of Additional Hardwood Plantations derived from the Project, including for the purposes of enhancing the productivity of the Project save for any Additional Hardwood Plantations acquired by Great Southern Managers Australia Limited (or any members of the Great Southern Group) for this purpose and transferred to Lowell Capital Limited pursuant to section 601FS of the Corporations Act and then only to the extent that Lowell Capital Limited in its absolute discretion acting reasonably and fairly allocates such Additional Hardwood Plantations for the benefit specifically of the Project; or
  - (2) make any offer to, or accept any application from, a Grower upon the harvesting of Forest Produce (as defined in the Land and Management Agreement) to participate in any further coppice programme or other plantation or forestry opportunity and each Grower foregoes any right to participate in any further coppice programme or other plantation or forestry opportunity.
- (b) To the extent of any inconsistency between this clause and the Land and Management Agreement, this clause prevails.”

## 11. Responsible Entity to Collect Income

Amend clause 31.1 of the Constitution by adding the following after the words “sale of timber produce”:

“excluding 50% of the proceeds of Commercial Thinning (as this term is defined in the Land and ~~Management Agreement~~) after accounting for any remaining obligations under any lien to which any receiver or liquidator of a former responsible entity is entitled, reasonable future operational costs of the Responsible Entity, any

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expenditure by the Responsible Entity for which it is entitled to be reimbursed, and any residual obligations associated with any underwriting by the Responsible Entity or any related party of the Responsible Entity of Additional Contributions”

### 12. Reimbursement

Amend clause 31.2(a) of the Constitution by deleting the following words:

“Costs of Commercial Thinning,”

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### SECTION 2 CHANGES TO THE AGREEMENTS

#### A. Changes to the Land and Management Agreement

##### 1. Definitions

Amend clause 1.1 of the Land and Management Agreement by inserting the following wording after the words “marking costs” in the definition of “**Costs of Non-Commercial Thinning**”:

“and Costs of Sale,”

Amend clause 1.1 of the Land and Management Agreement by inserting the following wording after the words “sale of timber produce” in the definition of “**Gross Proceeds of Sale**”:

“(excluding Commercial Thinning),”

~~and inserting the following wording at the end of the definition of “**Gross Proceeds of Sale**”:~~

~~“(d) borrowed monies (if any) in accordance with clause 12.2(a) of the Constitution”.~~

~~Amend clause 1.1 of the Land and Management Agreement by inserting the following wording after the word “Pruning” in the definition of “**Net Proceeds of Sale**”:~~

~~“; monies borrowed (if any) in accordance with clause 12.2(a) of the Constitution”.~~

Amend clause 1.1 of the Land and Management Agreement by deleting the following wording from the definition of “**timber produce**”:

“Commercial Thinning and,”

and inserting the following wording after the words “not include”:

“timber cut from the trees during Commercial Thinning,”

##### 2. Commercial Thinning, Costs of Non-Commercial Thinning and Costs of Pruning

Amend clause 8 of the Land and Management Agreement by deleting the words of clause 8.5 and replacing them with the following:

“8.5 For the avoidance of doubt, the Responsible Entity is entitled to the proceeds of sale of log timber or other timber cut from the trees during Commercial Thinning”.

Amend clause 8.6 of the Land and Management Agreement by deleting the following wording from the last paragraph:

“Commercial Thinning operation(s) or”

##### 3. Proceeds of Sale

Amend clause 11.1 of the Land and Management Agreement by deleting the words “Costs of Commercial Thinning.”

~~and inserting the following wording at the end of the clause:~~

~~“and repay any monies borrowed in accordance with the Constitution in the following order:~~

~~6. loan facility interest;~~

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- ~~7. facility commitment fee; and~~
- ~~8. loan facility principal”.~~

#### 4. Remuneration for Ongoing Services

Amend clause 13 of the Land and Management Agreement by inserting after clause 13.2, [the following](#) a new clauses 13.3, [13.4 and 13.5 as follows](#) ~~with the following wording:~~

- 13.3 On and from the date on which Lowell Capital Limited becomes responsible entity for the Project, the Responsible Entity is entitled to receive, in addition to the remuneration set out or referred to in clause 13.1, an additional fee equal to 31.7% plus GST of the Net Proceeds of Sale (“**Additional Fee**”).
- 13.4 On and from the date on which Lowell Capital Limited becomes responsible entity for the Project, the Responsible Entity is entitled to receive, in addition to the remuneration set out or referred to in clause 13.1 and [forming part of the remuneration set out or referred to in](#) 13.3 an additional fee equal to 10% of the Additional Contributions ~~pay~~<sup>ied</sup> in the Five Year Period, and on and from the date of the end of the Five Year Period an amount equal to \$40,000 plus GST indexed in line with the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics from time to time for Perth from the date that Lowell Capital Limited becomes responsible entity for the Project (“**Annual Fee**”).
- 13.5 The rights of the Responsible Entity to receive the additional remuneration specified in clauses 13.3 and 13.4 are only available in relation to the proper performance of the Responsible Entity’s duties.

#### 5. [Termination for non-payment of Additional Contributions](#)

[Amend the Land and Management Agreement by inserting after clause 22.1\(c\) the following new clause 22.1\(d\) as follows:](#)

[“22.1\(d\) if the Grower is required to pay 100% of the portion of the Net Proceeds of Sale that relates to any Woodlot as Non-Contribution Additional Fees. in accordance with clause 44\(e\) of the Constitution, then that Woodlot is taken to be deleted from Item 2 of the Schedule. If, as a result of this clause, all Woodlots are deleted from Item 2 of the Schedule then the Landholder may terminate this Document.”](#)

#### ~~5.6~~ Growers’ Acknowledgements

Amend the Land and Management Agreement by inserting the following wording as a new clause 31:

##### “31. Growers’ Acknowledgements

- (a) Notwithstanding any representations or statements which the Responsible Entity or other person may have made prior to the adoption of this provision in this Constitution or any agreement, arrangement or understanding, Lowell Capital Limited ACN 006 844 588 is not under any obligation to:
- (1) acquire or hold any additional forest produce or hardwood plantations (collectively “**Additional Hardwood Plantations**”) for the benefit of the Growers, contribute Additional Hardwood Plantations to any pool which may be created in respect of the Project or subsidise any sales revenues which might be generated from the sale of Additional Hardwood Plantations derived from the Project, including for the purposes of enhancing the productivity of

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the Project save for any Additional Hardwood Plantations acquired by Great Southern Managers Australia Limited (or any members of the Great Southern Group) for this purpose and transferred to Lowell Capital Limited pursuant to section 601FS of the Corporations Act and then only to the extent that Lowell Capital Limited in its absolute discretion acting reasonably and fairly allocates such Additional Hardwood Plantations for the benefit specifically of the Scheme; or

- (2) make any offer to, or accept any application from, a Grower upon the harvesting of Forest Produce (as defined in the Land and Management Agreement) to participate in any further coppice programme or other plantation or forestry opportunity and each Grower foregoes any right to participate in any further coppice programme or other plantation or forestry opportunity."

### B. Changes to the Lease

Amend clause 12.1 of the Lease by replacing the words "use its reasonable endeavours" in the first line with the words "make enquiries" and replacing the words "used its reasonable endeavours" in the tenth line with the words "made enquiries".

[Insert new clause 9.3 of the Lease as follows:](#)

"9.3 If the Grower is required to pay 100% of the portion of the Net Proceeds of Sale that relates to any Woodlot as Non-Contribution Additional Fees (as those terms are defined in the Constitution or Land and Management Agreement), in accordance with clause 44(e) of the Constitution, then the land corresponding to that Woodlot is taken to no longer form part of the Grower's Land Area and be deleted from Item 2 and 3 of the Schedule. If this clause affects all of the Grower's Land Area then the Landholder may terminate this Deed."

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### C. Changes to the Forest Right Agreement

~~Amend clause 1.1 of the Forest Right Agreement by inserting a new definition for "Other Income" with the following wording:~~

~~"Other Income means income derived from the agistment of land, leasing and sub-leasing of land, production and sale of hay, sugarcane, and any other type of income produced from anything other than commercial silviculture the Responsible Entity deems appropriate for the Grower's Land Area."~~

~~Amend clause 3 of the Forest Right Agreement by inserting at the end of clause 3.1 the following wording:~~

~~"The Responsible Entity may, at its absolute discretion, determine the amount by which the Fee payable on behalf of the Grower out of the Net Proceeds of Sale might be reduced having regard to any reduction in rental of land used for the purposes of the Project."~~

~~Amend clause 5.1 of the Forest Right Agreement by inserting the following wording after the words "commercial silviculture":~~

~~"or to derive Other Income"~~

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~~Amend clause 5.2 of the Forest Right Agreement by inserting the following wording after the words “commercial silviculture”:~~

~~“or to derive Other Income”~~

~~Amend clause 7 of the Forest Right Agreement by deleting the following wording from the heading of clause 7.1:~~

~~“Restrictions on”~~

~~Amend clause 7.1 of the Forest Right Agreement by deleting clause 7.1 and inserting a new clause 7.1 with the following wording:~~

~~“(a) If the Responsible Entity reasonably deems the Grower’s Land Area to have failed, the Grower may during the Term, and with the express permission of the Responsible Entity, assign, sub-let, part with possession of or grant a licence affecting the Grower’s Land Area or the Fixtures to a third party for the purposes of producing Other Income.~~

~~(b) Subject to clause 7.1(a) and 7.2, the Grower must not during the Term assign, sub-let or part with possession of or grant any licence affecting the Grower’s Land Area or the Fixtures or by any act or deed procure any of the foregoing.”~~

~~Amend clause 7.3 of the Forest Right Agreement by inserting immediately after the words “this Deed” the following wording:~~

~~“permitted under clause 7.1 or”~~

Insert new clause 9.3 of the Forest Right Agreement as follows:

“9.3 If the Grower is required to pay 100% of the portion of the Net Proceeds of Sale that relates to any Woodlot as Non-Contribution Additional Fees (as those terms are defined in the Constitution or Land and Management Agreement), in accordance with clause 44(e) of the Constitution, then the land corresponding to that Woodlot is taken to no longer form part of the Grower’s Land Area and be deleted from Item 2 and 3 of the Schedule. If this clause affects all of the Grower’s Land Area then the Landholder may terminate this Deed.”

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Amend clause 12.1 of the Forest Right Agreement by replacing the words “use its reasonable endeavours” in the first line with the words “make enquiries” and replacing the words “used its reasonable endeavours” in the ninth line with the words “made enquiries”.



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### PROXY NOTES

- 1 **All valid proxies that have already been lodged will be considered at the meeting. A member who has previously lodged a proxy is not required to lodge a new proxy.**
- 2 A member who has not already lodged a proxy form, or wishes to change their earlier voting instructions or proxy appointment, may complete and lodge a new proxy form. Please find enclosed a new proxy form in respect of the resolutions to be put to the meeting. **To be effective the proxy must be received by no later than 10.30am (AEST) on 13 April March 2010, or 48 hours before the time of any adjournment.**
- 3 A member entitled to attend and cast 2 or more votes at the meeting is entitled to appoint 2 proxies. If a member does not specify the proportion or number of votes each proxy may exercise, each proxy may exercise half of the votes.
- 4 A proxy need not be a member of the Scheme.
- 5 **Unless a member specifically directs the proxy how to vote, the proxy may vote as he or she thinks fit or abstain from voting.**
- 6 In the case of an individual, a proxy must be under the hand of the individual or his or her attorney duly authorised in writing and, in the case of a corporation, a proxy must be under either the common seal of that corporation or under the hand of its duly authorised officer/s or attorney.
- 7 If a meeting of the Scheme's members has been adjourned, an appointment of any authority received by the members calling the meeting at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 8 Proxies and powers of attorney granted by members must be received by Michael Ramsden at least 48 hours prior to the Meeting or the adjourned meeting:
  - (a) at the office of Terrain Capital – 8 Chapel Street, Richmond Victoria 3121;  
**or**
  - (b) by fax to the office of Terrain Capital – fax number (03) 9665 2455 (within Australia) and +61 3 9665 2455 (outside Australia); **or**
  - (c) by email to [mramsdn@terraincapital.com](mailto:mramsdn@terraincapital.com)