

Constitution

relating to the 2007 Macgrove Project

Maccacorp Limited ACN 116 486 527 (**Responsible Entity**)
& each **Grower**

MinterEllison

L A W Y E R S

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Constitution

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Details

Date

Parties

Name	Maccacorp Limited ACN 116 486 527
Short form name	Responsible Entity
Details	Suite 19 Chatswood Village 47 Neridah Street Chatswood NSW 2057 Attention: Don Ross Facsimile: (02) 9410 2588

and each person who is registered as the holder of an interest in the Project (**Grower**)

Background

- A This Constitution establishes a managed investment scheme to be known as the 2007 Macgrove Project (**Project**).
- B The Project will be a registered managed investment scheme under the Corporations Act.
- C The Responsible Entity is responsible entity of the Project.
- D Each person who acquires an Interest in the Project will be bound by the terms of this Constitution.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Affected Grower has the meaning given in clause 25.4(b).

Applicant means a person who has applied for an Interest in the Project but whose Application has not yet been accepted.

Application means the application form attached to or accompanying a PDS.

Application Fund means the application fund established pursuant to clause 12.2(a).

Application Money means the money paid into the Application Fund by Applicants.

ASIC means the Australian Securities and Investments Commission.

Business Day means any day other than a Saturday, Sunday or public holiday in Brisbane.

Complainant means a Grower who has made a complaint to the Responsible Entity as described in clause 27.2.

Complaints Handling Officer means the person appointed by the Responsible Entity to handle complaints in accordance with clause 27.

Constitution means this Constitution as it may be amended and in force from time to time.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the Consumer Price Index (All Groups) Brisbane as published by the Australian Bureau of Statistics or if it is no longer published, such other Index as is used from time to time by the Reserve Bank of Australia as the measure of inflation in Australia.

Crop means the Macadamia Nuts harvested from the Trees grown on a Grower's Macgrove or the Orchard (as the case may be).

Defaulting Joint Venturer means a Joint Venturer in default of its obligations set out in clause 35 or otherwise under the Constitution.

Disclosure Document means a disclosure document in relation to the offer of Interests in the Project including a PDS.

Dispute Notice means a notice given under clause 28.

Early Grower means a person whose Application is accepted on or before 15 June 2007.

Financial Year means:

- (a) in the case of the first Financial Year, the period commencing on the date of registration of the Project by ASIC until the following 30 June;
- (b) in any year other than the first Financial Year and the last Financial Year, a period of 12 months ending on 30 June; and
- (c) in the case of the last Financial Year, the period ending on the termination of the Project and commencing on the preceding 1 July.

First Joint Venturer means the First Joint Venturer as described in the application.

Fund means the Application Fund, the Proceeds Fund and any separate fund established under clause 25.4 together.

Grower means a person who has acquired an Interest in the Project.

Grower's Expenses has the meaning given in the Management Agreement.

Grower's Proportion means the proportion that the area of the Grower's Macgroves bears to the total area of all Macgroves registered to Growers in that Financial Year

GST has the meaning given to it in the GST Act.

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

Head Lease means the lease of the Land from the Land Owner to the Responsible Entity as in force from time to time.

Improvements means all fixtures and other property installed or acquired for installation on the Land by or on behalf of the Land Owner (other than the Trees and the Macadamia Nuts) including all irrigation and similar improvements.

Independent Expert means:

- (a) in the case of a dispute relating to agricultural matters, including management of the Orchard, an independent agricultural expert 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 Australian Macadamia Society Limited ACN 010 689 415; or
- (b) 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 Society of Queensland; or
- (c) 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 Queensland.

Independent Person means:

- (a) in the case of a dispute relating to agricultural matters, including management of the Orchard, an independent agricultural expert 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 Australian Macadamia Society Limited ACN 010 689 415; or
- (b) 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 Society of Queensland; or
- (c) 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 Queensland.

Innocent Joint Venturer means a Joint Venturer who is not a Defaulting Joint Venturer at the relevant time.

Interest means the interest in the Project a person acquires by having an Application made by the person accepted by the Responsible Entity and includes the person's interest in:

- (a) the Sublease;
- (b) the Management Agreement; and
- (c) the Sale Agreement (if any),

relating to the person's Macgroves. An Interest also includes:

- (d) the person's business of carrying on the primary production enterprise of growing, maintaining and harvesting Macadamia Nuts from the person's Macgroves;
- (e) the net proceeds which result from the person carrying on its business of primary production; and
- (f) all Macadamia Nuts growing on the Trees on the person's Macgroves,

but does not include the Trees or the Improvements.

Investment means an 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 or payment of any amount to the Responsible Entity in accordance with any Project Agreement.

Joint Venture means the joint venture between the Joint Venturers constituted by clause 35 in respect of the Joint Venture Operations.

Joint Venture Assets means:

- a) all of the right title and interest of Joint Venture in and to the Joint Venture Macgrove and any other asset which the Joint Venture may acquire from time to time, and all agreements entered into, in respect to Joint Venture;
- b) all Macadamia Nuts, Crop and other products produced by the Joint Venture; and
- c) the Joint Venture Proceeds.

Joint Venture Macgrove means the Macgrove of the Joint Venture.

Joint Venture Operations means the growing maintenance and cultivation of Trees on, and management of, a Macgrove for the production of Macadamia Nuts for commercial gain that are attributable to a Grower that is a Joint Venture.

Joint Venture Proceeds means the First and Second Joint Venturers.

Joint Venturers means the registered proprietor for the time being of the Land. At the date of this Constitution the land owner is Maccland Pty Ltd ACN 116 208 970.

Land means the land on which the Project will be conducted as specified in the PDS.

Land Owner means the registered proprietor for the time being of the Land. At the date of this Constitution the land owner is Maccland Pty Ltd ACN 116 208 970.

Late Grower means a person whose Application is accepted on or after 1 July 2007.

Macadamia Nuts means the macadamia nuts grown on each Macgrove, or the Orchard (as the case may be), and whether or not harvested.

Macgrove means a specified portion of Land on which a Grower carries or will carry on the business or primary production by maintaining and cultivating Trees and harvesting and selling the Macadamia Nuts grown on those Trees in accordance with the provisions of the Project Agreements.

Management Agreement means the Management Agreement substantially in the form contained in Annexure A or an agreement in such other form as the Responsible Entity substitutes prior to the issue of a PDS, or if the Project has commenced, as amended in accordance with this Constitution.

Management Fees has the meaning given in the Management Agreement.

Orchard means the total area of the Macgroves.

Orchard Services has the meaning given in the Management Agreement.

PDS means a product disclosure statement (as defined in section 761A of the Corporations Act) in relation to the Project.

Power of Attorney means any power of attorney contained in a PDS granted by the Applicant or Grower in favour of the Responsible Entity.

Prescribed Proportion means the proportionate interest of the First and Second Joint Venturers respectively in the Joint Venture Assets as set out in clause 35.4.

Proceeds Fund means the proceeds fund established in accordance with clause 12.2(b).

Project means the 2007 Macgrove Project established by this Constitution.

Project Agreements means the Sublease, the Management Agreement and the Sale Agreement (if any).

Project Property means the Fund, all Investments, assets and any other property acquired throughout the term of the Project using the money or property contributed by Growers, but excluding:

- (a) any assets or other property vested directly in the Growers;
- (b) the Trees; and
- (c) the Improvements.

Register means the register of Growers required to be kept in accordance with Chapter 2C of the Corporations Act and referred to in clause 14 of this Constitution.

Responsible Entity means Maccacorp Limited (ACN 116 486 527) or such other corporation as is appointed as responsible entity for the Project in accordance with this Constitution.

Sale Agreement means an agreement between a processor of Macadamia Nuts and the Responsible Entity on behalf of each Grower, in relation to the purchase and sale of the Crop.

Second Joint Venturer means the second Joint Venturer as described in the Application.

Sublease means any sublease from time to time of a Macgrover entered into between the Responsible Entity and the Grower which is current as the time and which is in the form annexed to this Constitution or as amended in accordance with this Constitution.

Taxes means all taxes, including without limitation income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits,

withholding, GST and wealth taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

Trees means the trees planted on that Grower's Macgroves by, or on behalf of, the Land Owner.

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.

2009 Grower means a person whose Application is accepted after 1 July 2008 and on or before 15 June 2009.

1.2 Interpretation

In this Constitution 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;
- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (h) 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; and
- (i) if an act required to be done under this Constitution on or by a given day is done after 6:00 pm on that day, it is taken to be done on the following day.

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.

2. Establishment of the Project

2.1 The Constitution

This Constitution establishes the 2007 Macgrove Project and is binding on the Responsible Entity and the Growers.

2.2 Name of the Project

The Project will be known as the 2007 Macgrove Project. However, the Responsible Entity may designate another name at any time in its absolute discretion.

2.3 Purpose of the Project

The Project is established for the purpose of:

- (a) inviting persons to become the proprietor of their own Macgroves and commencing a primary production business of growing, harvesting and selling Macadamia Nuts; and
- (b) enabling a person to become a Grower by:
 - (i) applying for and being issued an Interest;
 - (ii) entering into a Management Agreement which appoints the Responsible Entity to manage the person's business;
 - (iii) entering into a Sublease; and
 - (iv) agreeing to be bound by this Constitution.

3. Application

3.1 Application to become a Grower

In order to become a Grower in the Project, an Applicant must lodge an Application and pay to the Responsible Entity the amount of \$11,000 (inclusive of GST) in respect of each Macgrove and on the terms and conditions specified in a Disclosure Document which is current at the date of lodging the relevant Application, and the Application must be accepted by the Responsible Entity. That amount comprises the fee payable for the Orchard Services in the first Financial Year to be provided in respect of each Macgrove pursuant to the Management Agreement.

3.2 Minimum Subscription

The Responsible Entity must not accept an Application for a Macgrove unless, on or before 15 June 2007, the Responsible entity has received Applications in accordance with clause 3.1 in respect of not less than 100 Macgroves. For the purposes of this clause and without limiting any other means by which an amount may be paid, unless the Responsible Entity otherwise determines, an amount will be paid on or before 15 June 2007 if the Responsible Entity receives a cheque for that amount on or before that date and before, on or after that date the cheque is honoured on first presentation.

4. Project Property

4.1 Obligation to Hold Property

Subject to clause 4.2 and 25.4, 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. Powers of investment

5.1 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 PDS or other disclosure document issued by the Responsible Entity in respect of the Project pursuant to the Corporations Act.

5.2 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.

6. Power to borrow

6.1 Borrowings for the Project

The Responsible Entity may borrow or raise money for the purposes of the Project and it may pledge or provide all or any of the Project Property as security for the money borrowed or raised.

The Responsible Entity has all the powers a natural person would have when exercising its power to borrow or raise money or to provide security.

6.2 Security for borrowings

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

7. Fees and expenses

7.1 Responsible Entity's fees

The Responsible Entity is entitled to be paid fees out of the Fund of the amount and in the manner set out in Schedule 1.

7.2 Fees under Management Agreement

The Responsible Entity is entitled to be paid the fees set out in the Management Agreement as specified in the Management Agreement.

7.3 Limitation

The Responsible Entity's rights under clause 7.1 in relation to the performance of the Responsible Entity's duties in respect of the Project are available only in relation to the proper performance of these duties.

8. Indemnity and liability

8.1 Indemnity of Responsible Entity

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

- (a) any liability incurred by the Responsible Entity in the performance of its duties or the exercise of its powers 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 to any liability incurred or fees payable and costs incurred as a result of any negligence, fraud, breach of duty or breach of trust on the part of the Responsible Entity or in the case of any liability incurred by the Responsible Entity in the performance of its duties in respect of the Project otherwise than in the proper performance of those duties.

8.2 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.

8.3 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, including GST.

8.4 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.

8.5 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.

8.6 No liability of Growers

Save as expressly 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.

8.7 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 Fund to the extent permitted by the Corporations Act.

9. Growers have no rights to withdraw

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.

10. Term of the Project

10.1 Term of Project

The Project is established immediately upon ASIC registering the Project pursuant to Part 5C.1 of the Corporations Act and commences upon achievement of minimum subscription (as set out in the Disclosure Document). The term of the Project ends upon the earliest of:

- (a) the termination or expiry of the last of the Growers' Interests;
- (b) the termination of the Head Lease in circumstances where no satisfactory ongoing arrangement is made to ensure the Land remains available for the purpose of the Project;
- (c) the Project being wound up in accordance with clause 11 and the Corporations Act; and
- (d) the expiry of the period of 80 years from the date of this Constitution.

10.2 Termination of Project Agreements

Upon the termination of the Project all of the rights and obligations under the Project Agreements will cease and each Project Agreement will be automatically terminated.

11. Winding up the Project

11.1 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 10;
- (b) 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 Corporations Act;
- (c) a court orders the Project be wound up pursuant to Section 601ND of the Corporations Act; or
- (d) 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 authorised by its Australian financial services licence to operate a registered managed investment scheme to be the new Responsible Entity and that company consents to becoming the Project's Responsible Entity.

11.2 Process of winding up

Unless otherwise required by Corporations Act, 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; and
- (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.

11.3 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.

11.4 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.

11.5 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 Corporations Act, will continue following termination of the Project to the extent to which such continuation is not inconsistent with this clause 11.

11.6 Auditor's certificate

Once the Responsible Entity believes the winding up is complete, the Responsible Entity must engage a registered company auditor or authorised audit company 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.

12. Application money

12.1 Cheques for application money

All cheques or payment orders attached to or accompanying Applications for Interests must be drawn in favour of the Responsible Entity (or, if the Responsible Entity has appointed an agent or custodian for the purpose, then in favour of that agent or custodian) on account of the Project and the Applicant.

12.2 Project Bank accounts

The Responsible Entity must open, or cause to be opened, 2 Project accounts with an Australian bank or other financial institution regulated by the Australian Prudential Regulation Authority. The accounts will be designated:

- (a) Application Fund - into which will be deposited all money received from Applicants and accrued interest;
- (b) Proceeds Fund - into which will be deposited all money generated from the Project or the Growers from the Project, excluding the Application Money.

If practicable, the Responsible Entity need only cause one account to be opened for both the Application Fund and Proceeds Fund, but only if the Responsible Entity can separately identify money which is attributable to the process of receiving and dealing with applications on the one hand and the proceeds generated from the Project on the other.

12.3 Interest on Application Money

- (a) Any interest earned on Application Money will be retained by the Responsible Entity unless otherwise required by Corporations Act.
- (b) However, if any Application Money is refunded to the Applicant for whatever reason then any interest on that Application Money must be refunded to that Applicant as well. In calculating any such refund, the Responsible Entity must have regard to when the money was paid and may deduct a proportion of bank fees and statutory charges levied on the Application Fund from the interest refunded.
- (c) The payment of interest to a Grower must be made no later than the time the Application Money is refunded to that Grower.

12.4 Refunds of Application Money

If any Application Money remains in the Application Fund for 12 months after it was received by the Responsible Entity then that money must be refunded to the Applicant who paid in the money unless the Applicant directs the Responsible Entity in writing to hold the money for a longer time.

13. Applications for interests

13.1 Form of Applications

Each Application for an Interest must:

- (a) be in the form included in or accompanying the Disclosure Document issued by the Responsible Entity and current at the time of lodgement of the Application;
- (b) be signed by or on behalf of the Applicant and lodged at the registered office of the Responsible Entity or such other place as the Responsible Entity nominates; and
- (c) be accompanied by such other information or evidence as the Responsible Entity may require.

13.2 Acceptance of Applications

The Responsible Entity may accept Applications where:

- (a) the Application contains all of the material required under clause 13.1; and
- (b) the amount referred to in clause 3 of this Constitution has been paid.

13.3 Refusal of Applications

- (a) The Responsible Entity may, in its absolute discretion, accept or refuse any Application in whole or in part and it is not bound to give any reasons for refusal.
- (b) If any Application is refused then the Responsible Entity must refund any Application Money to the Applicant concerned within 5 Business Days after the refusal.

13.4 Issue of Interests

The Responsible Entity is taken to have issued an Interest to an Applicant when:

- (a) the Responsible Entity has accepted the Applicant's Application; and
- (b) the Project Agreements in respect of the Interest applied for are entered into by the Responsible Entity and the Applicant.

13.5 Joint Applications

In no case will the Responsible Entity be required to accept Applications from more than two

persons for any one Grower's Interest.

14. Register of Growers

14.1 Allocation of Growers' Interests

Upon accepting an Application, the Responsible Entity will allocate to the Applicant that number of Macgroves in respect of which the Application has been accepted by the Responsible Entity.

14.2 Growers register

The Responsible Entity must establish and maintain a register of Growers throughout the term of the Project. The register must contain any information required by the Corporations Act and such other information as the Responsible Entity may elect to include.

14.3 Reliance on register

The Responsible Entity is entitled to rely upon the Register as conclusive proof of who is a Grower at any given time.

14.4 Change of details

A Grower must notify the Responsible Entity in writing of any change of name or address as soon as reasonably possible after the change occurs. The Responsible Entity must update the Register accordingly.

14.5 Noting an encumbrance

- (a) The Responsible Entity may note an encumbrance on the Register in respect of any Grower's Interest at the request of:
 - (i) the Grower; or
 - (ii) the person who claims to have the benefit of the encumbrance if that person can produce evidence satisfactory to the Responsible Entity that the Grower has granted the encumbrance over the Grower's Interest to that person.
- (b) If the Responsible Entity makes note of an encumbrance on the Register then the Responsible Entity must record sufficient details so that any person inspecting the Register will be put on notice as to:
 - (i) the existence and general nature of the encumbrance;
 - (ii) the name of the person who holds the encumbrance;
 - (iii) the date on which the encumbrance was created; and
 - (iv) the date on which the encumbrance was recorded in the Register.

15. Transfer of money from Application Fund

15.1 Transfers of Application money

The Responsible Entity may transfer money paid by an Applicant from the Application Fund to the Responsible Entity or to its nominee for the purposes of the Project where the Responsible Entity has issued an Interest to the Applicant.

15.2 Transfers of interest

The Responsible Entity may transfer to itself for its own use and benefit the interest accrued on Application Money from the Application Fund at the same time or after the transfer of the

relevant Application Money pursuant to clause 15.1.

16. Interests of Applicants and Growers

16.1 The Application Fund

Each Applicant has an interest in the Application Fund equal to the proportional interest that Applicant's Application Money bears to the total Application Money paid by all Applicants. However, an Applicant does not have any interest in any particular part of the Application Fund or in any Investment.

16.2 The Proceeds Fund

- (a) Subject to clause 25.4, each Grower has an interest in the Proceeds Fund equal to the Grower's Proportion. A Grower does not have any interest in any particular part of the Proceeds Fund, the Crop or in any Investment and a Grower will only be entitled to payments from the Proceeds Fund in accordance with the provisions of clauses 24 and 25.

16.3 Grower's Interest

Each Grower directly owns that Grower's Interest, including:

- (a) the Grower's business of carrying on the primary production enterprise of, growing, and maintaining Trees on, and harvesting Macadamia Nuts from, each of its Macgroves;
- (b) a share of any Crop equal to the Grower's Proportion; and
- (c) the net proceeds which result from the sale of Macadamia Nuts by the Grower carrying on its business of primary production.

For the avoidance of doubt, the Grower's Interest does not include the Trees or any of the Improvements which will at all times remain the property of the Land Owner.

16.4 The Land

The Land is vested in the Land Owner and leased to the Responsible Entity under the Head Lease. The Responsible Entity must ensure the Land, the Trees and the Improvements are available for the purposes of the Project.

17. Project Agreements

17.1 Legally binding

By making an application for an Interest the Applicant agrees to be bound by the Project Agreements and authorises the Responsible Entity to execute the Project Agreements on the Applicant's behalf and in the case of the Sale Agreement to negotiate and agree such terms, including sale price, that the Responsible Entity considers are the most commercial that are reasonably attainable in the circumstances.

17.2 Status of Agreements

The Project Agreements entered into between the Responsible Entity and each of the Growers must be read subject to the terms of this Constitution.

17.3 Retention of documents

The Responsible Entity will arrange for the Project Agreements to be stamped and registered, if required, and then retain each in safe custody until the end of the Project. A Grower may obtain a copy of its Project Agreements by written request to the Responsible Entity.

17.4 Cancellation of Agreements

If the Application of any Applicant is rejected or not accepted by the Responsible Entity, then Project Agreements entered into by the relevant Applicant must be cancelled and, as far as practicable, the parties must be returned to the position they were in prior to the Application being made.

17.5 Termination of Agreements

Following the termination of any Project Agreements for any reason, the Responsible Entity will retain rights in respect of all Macgroves for the duration of the Project, including those Macgroves in respect of which Project Agreements have been terminated. The Responsible Entity will be entitled to exercise such rights only for the purpose of properly carrying out its duties to Growers under any Project Agreements which have not been terminated. The rights of the Responsible Entity in such circumstances include:

- (a) rights of access to control pests, weeds, undergrowth or similar material;
- (b) rights to continue to fertilise and irrigate Macgroves;
- (c) rights of access to harvest the Macadamia Nuts from other Macgroves;
- (d) rights of access to prune other Macgroves;
- (e) rights to enter the Macgroves to inspect their condition and the condition of the Trees growing on the Macgroves; and
- (f) any other rights which the Responsible Entity must reasonably exercise to fulfil its obligations under this clause, and its obligations under current Project Agreements.

If, in exercising any of its rights under this clause 17.5, the Responsible Entity causes damage to any Grower's Macgrove then the Responsible Entity must make good that damage. If any Grower's actions cause damage to any Macgrove and the performance of the Project then the relevant Grower must make good that damage. The Grower's obligations in this respect are owed to the Responsible Entity.

The provisions of this clause 17.5 will survive the termination of any Project Agreement with any Grower.

17.6 Consequences of termination

- (a) If a Grower has its Interest terminated due to a breach of any Project Agreement or this Constitution and the breach entitles the Interest to be terminated then the procedure set out in this clause 17.6 applies.
- (b) The Responsible Entity may give notice to the defaulting Grower stating that the Responsible Entity intends to sell the Grower's Interest.
- (c) If the Responsible Entity gives a notice under clause 17.6(b) then the Responsible Entity will use reasonable endeavours to sell the defaulting Grower's Interest as attorney for the Grower for the best terms reasonably obtainable by the Responsible Entity. The Responsible Entity is not liable in any way if it is not able to sell the defaulting Grower's Interest. The inability to sell the defaulting Grower's Interest does not affect the Grower's liability for any amounts owing to the Responsible Entity.
- (d) If the Responsible Entity is able to sell the defaulting Grower's Interest then after completion of the sale, the Responsible Entity must ensure the proceeds of the sale are held separately from the other assets of the Project. The Responsible Entity is entitled to deduct from the proceeds of that sale the amount of any fees payable to the Responsible Entity as well as any other liabilities and costs for which the defaulting Grower may be

responsible under this Constitution, any Project Agreement or to any other third party who the Responsible Entity is directed to pay. The Responsible Entity may also deduct reasonable costs and expenses incurred by the Responsible Entity in connection with the default. The balance of any money held on behalf of the defaulting Grower after the Responsible Entity has paid all amounts owing must be paid to the Grower.

- (e) If there is insufficient money remaining from the proceeds of the sale of the Grower's Interest to pay all of the outstanding costs and liabilities then the Grower must make good that difference. The difference constitutes a debt owing by the defaulting Grower to the Responsible Entity.
- (f) If the Responsible Entity cannot sell the defaulting Grower's Interest after 3 months from the date the Responsible Entity first offers the Grower's Interest for sale then the following provisions apply:
 - (i) If the Responsible Entity requires then the defaulting Grower must transfer to the Responsible Entity the Grower's Interest. The Responsible Entity must pay the Grower the sum of \$10.00 (exclusive of GST) for the Grower's Interest.
 - (ii) The Responsible Entity must continue to manage the defaulting Grower's Interest in accordance with the terms of this Constitution and the Project Agreements.
 - (iii) Any proceeds of sale of Macadamia Nuts attributable to the defaulting Grower's Interest will be applied in the following order of priority:
 - (A) first, in the payment of any costs and expenses incurred by the Responsible Entity in connection with the transfer of the defaulting Grower's Interest to the Responsible Entity;
 - (B) second, in the payment of any costs and expenses incurred by the Responsible Entity in enforcing its rights against the defaulting Grower;
 - (C) third, in the payment of any amounts due but unpaid by the defaulting Grower to the Responsible Entity under this Constitution and any Project Agreement;
 - (D) fourth, in the payment of fees under the defaulting Grower's Project Agreements which accrue after the assignment of the defaulting Grower's Interest;
 - (E) fifth, in the payment of any other amounts outstanding which are attributable to the defaulting Grower's Interest and which are recoverable by the Responsible Entity under this Constitution, any Project Agreement or any other agreement or arrangement entered into by the defaulting Grower with the Responsible Entity; and
 - (F) any amount of the gross income attributable to the defaulting Grower's Interest remaining after payment of the amounts referred to in the above sub-clauses must be distributed pro-rata to the non-defaulting Growers.
 - (iv) The Responsible Entity is not liable to any other party for any liability accruing in relation to the defaulting Grower's Interest. All Growers release the Responsible Entity from any such liability.

18. Transfer of Grower's Interest

18.1 Right of assignment

A Grower may sell or assign the Grower's Interest in accordance with the provisions of this clause 18 and the terms and conditions of the Project Agreements.

18.2 Form of assignment

Any instrument of assignment must:

- (a) be in a form acceptable to the Responsible Entity;
- (b) be signed by the assignor and the assignee;
- (c) state that the assignee agrees to be bound by this Constitution; and
- (d) require the assignor to remain the holder of the Grower's Interest until the name of the assignee is entered in the Register.

18.3 Refusal to register

The Responsible Entity must decline to register an instrument of assignment unless:

- (a) the instrument complies with the requirements in clause 18.2;
- (b) the assignment is of the whole of the assignor's Grower's Interest, including each of the assignor's Project Agreements;
- (c) if the assignor's Grower's Interest is encumbered then the encumbrance is released or otherwise dealt with to the satisfaction of the person in whose favour the encumbrance is granted;
- (d) the instrument is duly stamped and is accompanied by:
 - (i) the Project Agreements to which it relates; and
 - (ii) any evidence the Responsible Entity may reasonably require to show the right of the assignor to make the assignment;
- (e) all fees which are due and payable in respect of the Grower's Interest have been paid to the persons who are owed the fees; and
- (f) the Responsible Entity approves of the assignee having regard to the capacity of the assignee to meet the obligations under the relevant Project Agreements (although such approval must not be unreasonably withheld).

18.4 Registration of assignment

Upon being satisfied the provisions of this clause 18 have been complied with, the Responsible Entity will make the appropriate entry of the assignment in the Register. The Grower remains the owner of the Grower's Interest until the name of the assignee is included in the Register in accordance with clause 14.2.

18.5 Retention of document

Every instrument of assignment will be retained by the Responsible Entity until the end of the Project.

18.6 Assignee to be bound

Any assignee of a Grower's Interest is deemed to have agreed to be bound by the provisions of this Constitution from the date of entry of the assignment in the Register.

18.7 Notice of refusal

If the Responsible Entity declines to register any assignment it must send the assignee a notice of the refusal. This notice must be sent within 2 months after the instrument of assignment is lodged with the Responsible Entity.

18.8 Suspension of assignments

The Responsible Entity may decline to register any assignment of a Grower's Interest during the 14 Business Days immediately preceding 1 July in any year.

19. Transmission Of Grower's Interest

19.1 Right of survivorship between Joint Growers

In case of the death of any one of joint holders of a Grower's Interest the survivor or survivors will be the only person recognised by the Responsible Entity as having any title to or interest in the Grower's Interest.

19.2 Right of survivorship for other Growers

The executor or administrator of the estate of a deceased Grower where there is no joint holder of the deceased Grower's Interest will be the only person recognised by the Responsible Entity as having any title to or interest in the Grower's Interest.

19.3 Application for transmission

- (a) Any person becoming entitled to any Grower's Interest in consequence of the death, bankruptcy or mental incapacity of a Grower has the right to:
 - (i) be registered as the holder of such Grower's Interest; or
 - (ii) assign such Grower's Interest in the same way as the Grower would have been able to do before the death, bankruptcy or mental incapacity.
- (b) The person seeking to be registered as holder of a Grower's Interest under clause 19.3(a) must deliver to the Responsible Entity:
 - (i) the Project Agreements relating to that Grower's Interest;
 - (ii) any declarations the Responsible Entity may require; and
 - (iii) evidence satisfactory to the Responsible Entity of the event which occurred giving rise to the person applying to become a Grower.

19.4 Rights prior to registration

A person becoming entitled to a Grower's Interest in consequence of the death, bankruptcy or mental incapacity of a Grower is entitled to receive or may give a discharge for all money payable in respect of the Grower's Interest. That person is not entitled to receive notices of or attend or vote at any meetings held pursuant to this Constitution until the person has become registered as a Grower and holder of the relevant Interest.

20. Additional powers of Responsible Entity

20.1 Payment of money

The Responsible Entity must not pay any money from the Funds unless authorised by this Constitution, the Project Agreements, the Corporations Act 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.

20.2 Other powers

In addition to all other powers conferred on the Responsible Entity by this Constitution and the Corporations Act, 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.

20.3 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.

20.4 Compliance with Project Agreements

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

21. Other activities of Responsible Entity

Subject to the Corporations Act, 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.

22. Restrictions on Growers

A Grower may not:

- (a) require the transfer to the Grower of any Project Property unless that transfer is made in accordance with the terms of this Constitution; or
- (b) interfere with or question the exercise or non-exercise by the Responsible Entity of any of the powers, authorities or discretions conferred on it by this Constitution in respect of the Project Property, other than in accordance with the provisions of clauses 27 and 28.

23. Meetings of Growers

23.1 Provisions of the Corporations Act

The provisions of Part 2G4 of the Corporations Act apply to meetings of Growers in the Project, except as varied specifically by this clause 23.

23.2 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 Corporations Act.

23.3 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.

23.4 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.

23.5 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 Corporations Act.
- (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.

23.6 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 in the 2007 Macgrove 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]*

Signed at _____ by me _____
this _____ day of _____ 20____.

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

fees payable to any agents or custodian appointed by the Responsible Entity or costs and expenses incurred in relation to convening and holding meetings of Growers and all costs and expenses in relation to establishing, promoting and administering the Project including obtaining and maintaining all necessary consents and licences and preparing, amending and modifying all necessary Project documents, but not including taxes referred to in clause 26, will be paid by the Responsible Entity from the Management Fees or from the Responsible Entity's own assets.

25. Distributions to Growers

25.1 Harvest of Orchard and sale of Crop

- (a) The Responsible Entity must harvest all of the Macadamia Nuts grown on Trees in each Grower's Macgrove in accordance with the Management Agreements.
- (b) The Responsible Entity may store, market and sell the Crop harvested in accordance with the terms of any Sale Agreement.

25.2 Payment into the Proceeds Fund

The Responsible Entity must pay into the Proceeds Fund:

- (a) proceeds from the sale of all Macadamia Nuts harvested from the Orchard;
- (b) except as provided in clauses 25.4(b) and 25.4(c), the proceeds of any insurance policy accruing to the Growers; and
- (c) any other amount properly related to the proceeds of the Growers' Interests.

25.3 Distributions to Growers

- (a) Subject to clause 25.4(b) below, each Financial Year during the term of the Project, a Grower is entitled to the Grower's Proportion of the money in the Proceeds Fund calculated in accordance with clause 16.2, less:
 - (i) all amounts outstanding under the Grower's Management Agreement, including outstanding Management Fees and Grower's Expenses;
 - (ii) all amounts outstanding by the Grower under the Sublease; and
 - (iii) any other amounts outstanding by the Grower under this Constitution and the Grower's Project Agreements.
- (b) The Grower authorises the Responsible Entity to make the deductions set out in clause 25.3(a) and pay the deducted amounts to the persons entitled to them including to the Responsible Entity itself. The Responsible Entity may make these payments within 14 days of receiving the money into the Proceeds Fund in respect of the relevant Grower.
- (c) If there is insufficient money to make all of the required payments then the deductions to be made under clause 25.3(a) must be made in the priority in which they are listed.
- (d) The surplus available for each Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to that Grower by 30 October each year during the term of the Project.
- (e) If there are any accruals of amounts to be paid in any of the categories listed in clauses 25.3(a)(i) to (iii) then the accrual must be paid in the same order of preference as the items are listed in clause 25.3(a).

25.4 Proceeds from insurance

- (a) Subject to clause 25.4(b), the proceeds of any insurance policies paid in respect of all Macgroves will be paid into and form part of the Proceeds Fund and the proceeds of any insurance policy will be deemed to be attributable to all Growers' Interests.
- (b) Where an event occurs to which any insurance policies respond and which affects some but not all the Growers' Macgroves, the proceeds of the insurance policies paid in respect of that event will be paid into and form a separate fund, and each Grower with a Macgrove affected by the event (**Affected Grower**) has an interest in the separate fund calculated as provided in clause 25.4(c). An Affected Grower does not have any interest in any part of the separate fund and is only entitled to payment out of the separate fund in accordance with this clause 25.
- (c) Where there is a separate fund as provided in clause 25.4(b) at any time during a Financial Year:
 - (i) each Affected Grower has an interest in the separate fund equal to the proportion that the area of the Affected Grower's Macgroves affected by the event (**Affected Area**) bears to the total Affected Area of all Affected Growers' Macgroves;
 - (ii) for the purposes of calculating an Affected Grower's entitlement to money in the Proceeds Fund in accordance with clause 25.3, but for no other purpose, the Grower's Proportion (**GP_{PA}**) is the proportion calculated by the following formula:

$$GP_{PA} = (100\% - (AA/TA \times 100\%)) \times OGP$$

where:

GP_{PA} means that Grower's Proportion, expressed as a percentage;

OGP means the Grower's Proportion of that Affected Grower as defined in clause 1.1, expressed as a percentage;

AA means the Affected Area of that Affected Grower's Macgroves; and

TA means the total area of that Affected Grower's Macgroves; and

- (iii) clauses 25.3 and 25.5 apply to the separate fund and the Affected Growers as if:
 - (A) the separate fund were the Proceeds Fund and the Growers' Proportion were calculated as provided in sub-paragraph (B) below; and
 - (B) the Grower's Proportion of each Affected Grower (**GP_{SF}**) was the proportion calculated by the following formula:

$$GP_{SF} = AA/TAA \times 100\%$$

where:

GP_{SF} means that Grower's Proportion, expressed as a percentage;

AA has the meaning given in clause 25.4(c)(ii); and

TAA means the total Affected Area of all Affected Growers' Macgroves.

25.5 Interim distributions

Notwithstanding anything contained in this Constitution, the Responsible Entity may at any time make interim distributions to Growers on account of their respective entitlements under this clause 25. The timing and the amount of the distributions is at the complete discretion of the Responsible Entity.

26. Deductions from distributions

26.1 Deduction of taxes

The Responsible Entity may, in its absolute discretion, deduct or require to be deducted from any amounts payable to any Grower, the amount of any tax or duty or other similar revenue impost which is paid or payable in respect of those payments.

26.2 Goods & services tax

Without limiting the generality of clause 26.1, the Responsible Entity will be entitled to collect and pay to the Australian Taxation Office any amounts received by the Responsible Entity in respect of GST on payments made under any Sale Agreement.

26.3 Indemnity

The Responsible Entity is indemnified by each person who is or was at any time a Grower in respect of any Taxes or duty referred to in this clause.

26.4 Payments by Growers

Subject to clause 32, if any amount payable by a Grower to the Responsible Entity under any Project Agreement is or becomes subject to a value added tax, goods and services tax, GST or taxation of a similar nature on the supply of goods or services, then the Grower will be obliged to pay to the Responsible Entity a further amount equal to the amount of that taxation.

27. Complaints handling

27.1 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.

27.2 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 27.2(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.

27.3 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.

27.4 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.

27.5 Resolution of complaints

- (a) The Responsible Entity must act reasonably in attempting to resolve a complaint, however nothing in this clause 27 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 including to an external industry complaints tribunal or other body if the complainant is not satisfied with the response of the Responsible Entity.

27.6 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 28 of this Constitution; and
- (b) take what ever other action is open to the Complainant under the general law.

27.7 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.

27.8 Disclosure in PDS

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

28. Dispute resolution

28.1 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.

28.2 Response to Dispute Notice

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

28.3 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.

28.4 Negotiations without prejudice

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

28.5 Continued performance

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

28.6 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.

29. Amendments to Project Agreements

29.1 Extent of amendments

The Responsible Entity may amend the provisions of the Project Agreements to such extent as may be required to:

- (a) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
- (b) comply with the effect of any judicial decision; or
- (c) enable the provisions of the Project Agreements, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.

29.2 No adverse effect to Growers

Prior to making any amendment under clause 29.1, the Responsible Entity must be reasonably satisfied the proposed amendment does not:

- (a) adversely affect the rights of Growers; or
- (b) impose or increase a liability of Growers to pay money to the Responsible Entity or any other person.

29.3 Appointment of attorney

The Responsible Entity may make the amendments on behalf of itself, and then on behalf of the Growers. To give effect to this clause, each of the Growers appoints the Responsible Entity as its attorney to make amendments to their respective Project Agreements, but only where those amendments are permitted under this Constitution.

29.4 Amendment by agreement

If the Responsible Entity is not satisfied the amendments can be made in accordance with the provisions of clauses 29.1 and 29.2, then amendments may only be made to the Project Agreements by written agreement between the Responsible Entity and each Grower.

30. Amendments to Constitution

30.1 Power to amend

Subject to the provisions of the Corporations Act, the Responsible Entity may amend any provision of the this Constitution, including this clause 30, by Deed.

30.2 Consent of Growers

Without limiting the provisions of clause 30.1, the Responsible Entity must obtain the approval of an ordinary resolution of Growers at a duly convened meeting of Growers in respect of any amendment to the Constitution unless:

- (a) the Responsible Entity reasonably believes the proposed amendment will not adversely effect the rights of any Growers; or

- (b) the Responsible Entity reasonably believes the amendment is necessary or desirable to obtain or maintain registration of the Project by ASIC under Chapter 5C of the Corporations Act.

31. Changing the Responsible Entity

31.1 Retirement of Responsible Entity

The Responsible Entity may retire by giving notice to ASIC requesting ASIC to alter the record of the Project's registration provided that the Responsible Entity first:

- (a) convenes a meeting of Growers to explain its reasons for wanting to retire;
- (b) obtains the approval of at least 50% of the total votes that may be cast by Growers entitled to vote on the resolution (including Growers who are not present in person or by proxy); and
- (c) obtains the approval of Growers, by an extraordinary resolution, to the appointment of a Company that will act as responsible entity in place of the Responsible Entity and obtains the written consent of the new responsible entity to becoming the Project's Responsible Entity.

31.2 Removal of Responsible Entity by Growers

Growers may remove the Responsible Entity by an extraordinary resolution passed at a meeting of Growers convened in accordance with clause 23, provided that the Growers also resolve to appoint a Company to act as new responsible entity of the Project in place of the Responsible Entity.

32. GST

32.1 Defined terms

In clause 32, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

32.2 Responsible Entity reimbursed for GST

If the Responsible Entity is liable for GST on any supply made under or in connection with this Constitution (including, the supply of any goods, services, rights, benefits or things), the Responsible Entity is entitled to receive, unless the consideration for the supply is specifically described in this Constitution as being inclusive of GST, in addition to any consideration for that supply, or any other fee, amount or consideration, an additional amount on account of GST, equal to the GST payable by the Responsible Entity, and the Responsible Entity is entitled to be reimbursed or indemnified for the amount out of the relevant Fund.

32.3 Tax invoice

The Responsible Entity is not entitled to be reimbursed or indemnified under clause 32.2 until it issues a tax invoice for the supply.

32.4 GST inclusive supply

Where the consideration for a supply made under or in connection with this Constitution is specifically described as being inclusive of GST and:

- (a) the Supply is not subject to GST, and the GST rate is the same as at the date of this Constitution, the consideration to be provided for that Supply is reduced by one-eleventh; or

- (b) there is a change to the prevailing rate of GST, the consideration is increased or decreased in proportion to the change in the rate of GST.

33. Miscellaneous provisions

33.1 Service of notices

- (a) Any notice, demand, approval or communication required to be given to the Responsible Entity or to a Grower under this Constitution (**Notice**) is deemed to have been duly given if given in writing by letter or fax addressed to them.
- (b) The address for the Responsible Entity will be the address for Notices specified in the Details or such other address as is notified in writing to the Growers.
- (c) The addresses for Growers will be as they appear in the Register.
- (d) Any Notice given by post is deemed to have been served on the second Business Day after the day when it was posted. In cases where Notices are sent by the Responsible Entity, the sender may prove such Notice was properly addressed and posted by preparing a statement signed by the sender that the Notice was posted and when it was posted. This statement is conclusive evidence of that fact.
- (e) Any Notice sent by fax is deemed to have been received at the time printed on the confirmation slip of the fax machine of the sender which indicates an accurate transmission without error.
- (f) A fax is deemed to be received at 8.30 am on the next Business Day if it is sent:
 - (i) after 5:00 pm on any Business Day; or
 - (ii) on any day that is not a Business Day.
- (g) If a fax is sent before 8:30 am on a Business Day then the fax is deemed to be received at 8:30 am on that Business Day.

33.2 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.

33.3 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.

33.4 Retention of documents

Applications for Growers' Interests, and instruments of transfer and transmission must be retained by the Responsible Entity either in their original form or on microfilm or like process and be available for inspection by or on behalf of the auditor of the Project or the auditor of the compliance plan at any time during normal business hours. However, on the expiration of 7 years from the date of each document, or the date upon which the Grower's Interest terminates,

whichever is the later, the document may, in the absolute discretion of the Responsible Entity, be destroyed.

33.5 No partnership

Nothing contained in this Constitution is deemed:

- (a) to constitute the Responsible Entity the partner of the Growers; or
- (b) to constitute the Growers as partners of each other or as being in some other relationship which each other except as specifically provided for in this Constitution and the Project Agreements.

33.6 Changes to the Corporations Act

If there is any change to the Corporations Act 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.

33.7 Unavoidable events

To the extent permitted by Corporations Act, if the Responsible Entity is prevented from performing its duties under this Constitution or the Corporations Act 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.

33.8 Applicable law

This Constitution is governed by and to be interpreted in accordance with the laws of Queensland. The parties to this Constitution agree to submit to the non-exclusive jurisdiction of the courts of Queensland.

34. Joint Venturers

- (a) Subject to clause 35, the Responsible Entity agrees and acknowledges that a Joint Venturer is not liable for any amount or liability exceeding the Joint Venturer's respective Prescribed Portion by reason of joint liability incurred or joint loss sustained in connection with any contract or arrangement entered by the Joint Venturer.
- (b) Subject to clause 34(c)(i) of this Constitution, a default on the part of one Joint Venturer will constitute a default of both Joint Venturers that comprise the Grower in respect of the Joint Venture Macgrove.
- (c) Each Joint Venturer acknowledges and agrees with the Responsible Entity and the other Joint Venturer that:
 - (i) If a Joint Venturer defaults in its obligations set out in Clause 35 or otherwise under this Constitution or the Project Agreements, then the Innocent Joint Venturer in respect of the relevant Grower's Macgrove may within 30 days of the Responsible Entity notifying the Joint Venturers of such default purchase the Defaulting Joint Venturer's interest in the Joint Venture at its market value, subject to the market value of the relevant Macgrove being determined by an independent valuer appointed by the Responsible Entity at the Defaulting Joint Venturer's cost
 - (ii) the Defaulting Joint Venturer:
 - (A) irrevocably directs the Innocent Joint Venturer to pay the money for any assignment of the Defaulting Joint Venturer's interest in the Joint Venture (made in contemplation of clause 34(c)(i) to the Responsible Entity, free of any deductions, and

- (B) agrees that the Responsible Entity may apply the money received under this clause 34(c)(ii) in accordance with clause 17.6(f)(iii) of the Constitution
- (iii) if the Innocent Joint Venturer has not purchased the Defaulting Joint Venturer's interest in the Joint Venture as provided in clause 34(c)(i) and served on the Responsible Entity a copy of the assignment document in the form specified in this Constitution, then the Responsible Entity may exercise all its rights and powers it has under this Constitution in respect of the Joint Venture as a Defaulting Grower, notwithstanding only one of the Joint Venturers may have defaulted in its obligations as set out in clause 35, including the power and right of the Responsible Entity to:
 - (A) terminate the Projects Agreements in respect of the Joint Venture's Macgrove, and
 - (B) sell and assign the Joint Venture's interest in its Macgrove
- (iv) upon a sale and assignment under clause 34(c)(iii) the Innocent Joint Venturer:
 - (A) will then be entitled to receive its Prescribed Proportion of the money received for the sale and assignment of the Joint Venture's interest in its Macgrove, before it is applied in accordance with clause 17.6(f)(iii),
 - (B) will not be liable for any difference for which the Joint Venturer is liable under clause 17.6(e), with the Defaulting Joint Venturer being liable to make good the whole difference as required under clause 17.6(e), and
 - (C) will be entitled to receive its Prescribed Proportion of the Joint Venture Assets, with all amounts being deducted from the Defaulting Joint Venturer's Prescribed Proportion of the Joint Venture Assets, and
- (v) if the Innocent Joint Venturer purchases the Defaulting Joint Venturer's interest in the Joint Venture as provided in clause 34(c)(i) then the Innocent Joint Venturer for the purpose of this Constitution and the Project Agreements becomes the sole Grower in respect of the Joint Venture Macgrove, but the Defaulting Joint Venturer will not be relieved of any of its liabilities and obligations under this Constitution.
- (d) Noting in this clause is intended to create a charge.

35. Grower Joint Venture

35.1 Background

The Joint Venturers propose to establish an unincorporated joint venture between themselves for the purpose of engaging in a primary production business of developing and cultivating a macadamia orchard and producing Macadamia Nuts for commercial gain under the Project.

35.2 Terms and Conditions

- (a) The First Joint Venturer and the Second Joint Venturer constitute a joint venture for the purposes of carrying on the Joint Venture Operations in respect of the Joint Venture Assets in accordance with this clause 35.
- (b) The interests of the Joint Venturers in the Joint Venture and the Joint Venture Assets

and any losses realised from the Joint Venture will be as tenants in common in their Prescribed Proportions.

- (c) Nothing contained in this clause 35 whether express or implied is to be read and construed so as to constitute the Joint Venturers in the relationship of a partnership or trust.

35.3 Name

The Responsible Entity may record a Joint Venture under any name it sees fit and may communicate with the Joint Venture using that name.

35.4 Joint Venturer's Prescribed Proportion

- (a) Early Growers

The First Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 50% and the Second Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 50%.

- (b) Late Growers

The First Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 50% and the Second Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 50%.

- (c) 2009 Growers

The First Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 50% and the Second Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 50%.

35.5 Rights and Obligations

The rights and obligations of the Joint Venturers are as follows:

- (a) **Early Growers**

- (i) The First Joint Venturer will be solely responsible for paying the following fees and other amounts:

A. Management Agreement

- 100% of the management fees payable for the 2007 Financial Year (which fees are included in the Application Money).
- Nil of the management fees in respect of management services provided in all Financial Years commencing on and from the 2008 Financial Year up to and including the 2011 Financial Year.
- 50% of the management fees in respect of management services provided in all Financial Years, commencing on and from the 2012 Financial Year.
- Nil of the Grower's Expenses in all Financial Years, commencing on and from the 2007 Financial Year up to and including the 2011 Financial Year.
- 50% of the Grower's Expenses in all Financial Years, commencing on

and from the 2012 Financial Year.

- 50% of the Orchard Operating Expenses (as defined in clause 14.3 of the Management Agreement) in all Financial Years, commencing on and from the 2013 Financial Year.

B. Sub-lease

- 100% of the rent payable in respect of all leasehold rights granted in the 2007 Financial Year (which are fees included in the Application Money).
- Nil of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2008 Financial Year up to and including the 2011 Financial Year.
- 50% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2012 Financial Year.

C. Finance

If the Grower borrows the Application Money from the Responsible Entity's associate, Maccfinance Pty Ltd, then the First Joint Venturer will pay 100% of the interest incurred on the borrowed funds for the term of the loan.

- (ii) The Second Joint Venturer will be solely responsible for paying the following fees and other amounts:

A. Management Agreement

- Nil of the management fees payable for the 2007 Financial Year.
- 100% of the management fees in respect of management services provided in all Financial Years commencing on and from the 2008 Financial Year up to and including the 2011 Financial Year.
- 50% of the management fees in respect of management services provided in all Financial Years, commencing on and from the 2012 Financial Year.
- 100% of the Grower's Expenses in all Financial Years, commencing on and from the 2007 Financial Year up to and including the 2011 Financial Year.
- 50% of the Grower's Expenses in all Financial Years, commencing on and from the 2012 Financial Year.
- 50% of the Orchard Operating Expenses (as defined in clause 14.3 of the Management Agreement) in all Financial Years, commencing on and from the 2013 Financial Year.

B. Sub-lease

- Nil of the rent payable in respect of all leasehold rights granted in the 2007 Financial Year.
- 100% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2008 Financial Year up to and including the 2011 Financial Year.

- 50% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2012 Financial Year.

(b) **Late Growers**

(iii) The First Joint Venturer will be solely responsible for paying the following fees and other amounts:

A. Management Agreement

- 100% of the management fees payable for the 2008 Financial Year (which amount is included in the Application Money).
- Nil of the management fees in respect of management services provided in all Financial Years commencing on and from the 2009 Financial Year up to and including the 2012 Financial Year.
- 50% of the management fees in respect of management services provided in all Financial Years commencing on and from the 2013 Financial Year.
- Nil of the Grower's Expenses in all Financial Years, commencing on and from the 2008 Financial Year up to and including the 2012 Financial Year.
- 50% of the Grower's Expenses in all Financial Years, commencing on and from the 2013 Financial Year.
- 50% of the Orchard Operating Expenses (as defined in clause 14.3 of the Management Agreement) in all Financial Years, commencing on and from the 2014 Financial Year.

B. Sub-lease

- 100% of the rent payable in respect of all leasehold rights granted in the 2008 Financial Year (which are fees included in the Application Money).
- Nil of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2009 Financial Year up to and including the 2012 Financial Year.
- 50% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2013 Financial Year.

C. Finance

If the Grower borrows the Application Money from the Responsible Entity's associate, Maccfinance Pty Ltd, then the First Joint Venturer will pay 100% of the interest incurred on the borrowed funds for the term of the loan.

(iv) The Second Joint Venturer will be solely responsible for paying the following fees and other amounts:

A. Management Agreement

- Nil of the management fees payable for the 2008 Financial Year.
- 100% of the management fees in respect of management services provided

in all Financial Years commencing on and from the 2009 Financial Year up to and including the 2012 Financial Year.

- 50% of the management fees in respect of management services provided in all Financial Years, commencing on and from the 2013 Financial Year.
- 100% of the Grower's Expenses in all Financial Years, commencing on and from the 2008 Financial Year up to and including the 2012 Financial Year.
- 50% of the Grower's Expenses in all Financial Years, commencing on and from the 2013 Financial Year.
- 50% of the Orchard Operating Expenses (as defined in clause 14.3 of the Management Agreement) in all Financial Years, commencing on and from the 2014 Financial Year.

B. Sub-lease

- Nil of the rent payable in respect of all leasehold rights granted in the 2008 Financial Year.
- 100% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2009 Financial Year up to and including the 2012 Financial Year.
- 50% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2013 Financial Year.

(c) 2009 Growers

(v) The First Joint Venturer will be solely responsible for paying the following fees and other amounts:

A. Management Agreement

- 100% of the management fees payable for the 2009 Financial Year (which amount is included in the Application Money).
- Nil of the management fees in respect of management services provided in all Financial Years commencing on and from the 2010 Financial Year up to and including the 2013 Financial Year.
- 50% of the management fees in respect of management services provided in all Financial Years commencing on and from the 2014 Financial Year.
- Nil of the Grower's Expenses in all Financial Years, commencing on and from the 2009 Financial Year up to and including the 2013 Financial Year.
- 50% of the Grower's Expenses in all Financial Years, commencing on and from the 2014 Financial Year.
- 50% of the Orchard Operating Expenses (as defined in clause 14.3 of the Management Agreement) in all Financial Years, commencing on and from the 2015 Financial Year.

B. Sub-lease

- 100% of the rent payable in respect of all leasehold rights granted in the 2009 Financial Year (which are fees included in the Application Money).
- Nil of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2010 Financial Year up to and including the 2013 Financial Year.
- 50% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2014 Financial Year.

(vi) The Second Joint Venturer will be solely responsible for paying the following fees and other amounts:

A. Management Agreement

- Nil of the management fees payable for the 2009 Financial Year.
- 100% of the management fees in respect of management services provided in all Financial Years commencing on and from the 2010 Financial Year up to and including the 2013 Financial Year.
- 50% of the management fees in respect of management services provided in all Financial Years, commencing on and from the 2014 Financial Year.
- 100% of the Grower's Expenses in all Financial Years, commencing on and from the 2009 Financial Year up to and including the 2013 Financial Year.
- 50% of the Grower's Expenses in all Financial Years, commencing on and from the 2014 Financial Year.
- 50% of the Orchard Operating Expenses (as defined in clause 14.3 of the Management Agreement) in all Financial Years, commencing on and from the 2015 Financial Year.

B. Sub-lease

- Nil of the rent payable in respect of all leasehold rights granted in the 2009 Financial Year.
- 100% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2010 Financial Year up to and including the 2013 Financial Year.
- 50% of the rent payable in respect of all leasehold rights granted in all Financial Years, commencing on and from the 2014 Financial Year.

(d) **All Growers:**

(vii) The Joint Venturers will be responsible for paying their Prescribed Proportion of any Performance Incentive Fees payable by the Joint Venture under the Management Agreement.

(viii) Each Joint Venturer indemnifies the other against any losses or liability exceeding its respective Prescribed Proportion by reason of any joint liability incurred or joint loss sustained in connection with any contract or arrangement entered into by the Joint Venture.

35.6 Rights to the Joint Venture's Macadamia Nuts, Crop and Proceeds

- (a) In consideration for the First Joint Venturer being solely responsible for paying the fees and rent and other amounts described in clause 35.5, the First Joint Venturer is entitled to its Prescribed Proportion of the Joint Venture's Macadamia Nuts, Crop and the Joint Venture Proceeds.
- (b) In consideration for the Second Joint Venturer being solely responsible for paying the fees and rent and other amounts described in clause 35.5, the Second Joint Venturer is entitled to its Prescribed Proportion of the Joint Venture's Macadamia Nuts, Crop and the Joint Venture Proceeds.

35.7 Acknowledgement

The Responsible Entity acknowledges the Joint Venturers have entered into the Management Agreement and the Subleases as joint venturers on the terms and conditions set out in clause 34 and this clause 35.

35.8 Disposal of interest

Each Joint Venturer may dispose of its interest in the Joint Venture by offering to sell all or part of its interest in the Joint Venture to the other Joint Venturer for a price equal to the market value of that interest and on terms otherwise agreed between the parties, provided that the Joint Venturers are not in default of the obligations under this Constitution and the Project Agreements.

35.9 Commencement and Term of this Joint Venture

- (a) The Joint Venture commences on the date of the Management Agreement and the Subleases and unless terminated under clause 35.9(b), terminates on the expiry of the Project.
- (b) The Joint Venture will terminate on the earlier of:
 - (i) the completion of the sale of the Joint Venture Assets, and
 - (ii) the date on which a Joint Venturer sells its interest in the Joint Venture to the other Joint Venturer at market value.
- (c) However, the Joint Venture may not be terminated if any of the Joint Venturers are in default of their obligations under this Constitution.
- (d) On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Joint Venturers in their Prescribed Proportions, or be sold.
- (e) If the Joint Venture Assets are sold under clause 35.9(d) or 35.9(b)(i), the net proceeds of sale must be divided between the Joint Venturers in accordance with their Prescribed Proportions.

35.10 Dealing with a Joint Venture Interest

- (a) The interests of the Joint Venturers in the Joint Venture Macgrove issued pursuant to this Constitution and the Project Agreements must not be dealt with without the

interest of the other Joint Venturer in that Macgrove and vice versa.

- (b) The Responsible Entity may not register any assignment of the interests of the Joint Venturers in a Macgrove under clause 18 of the Constitution unless the assignment is for the whole of the Joint Venture's interest in the Macgrove.
- (c) This clause 35.10 does not apply to a Joint Venturer selling its interest in the Joint Venture to the other Joint Venturer.

35.11 General

- (a) Each Joint Venturer agrees with the other Joint Venturer to be just and faithful in all transactions relating to the Joint Venture and to perform the obligations imposed on it under clause 35.
- (b) Nothing in this clause 35 is intended to create a charge.

Schedule 1 - Fees

1. Responsible Entity's fees

Before and after termination of the Project, the Responsible Entity is entitled to a fee of \$55,000.00 (exclusive of GST) for each Financial Year, calculated and payable on the last Business Day of each calendar month or calendar quarter or other times as the Responsible Entity in its discretion may determine from time to time and to be borne by each Grower in the Grower's Proportion payable from the Application Monies in the first Financial Year and from the Management Fees in each subsequent Financial Year or if the Responsible Entity determines in its discretion from time to time out of the income of the Project.

The Responsible Entity is also entitled to a fee being 20 percent of Application Monies received in the first Financial Year and in each subsequent Financial Year, 20 percent of the Management Fees.

Signing page

EXECUTED as a deed.

Executed by Maccacorp Limited

_____ Signature of director	← _____ ← Signature of director/company secretary (Please delete as applicable)
_____ Name of director (print)	_____ Name of director/company secretary (print)

Annexure A

Management Agreement

Annexure to Constitution

Annexure B

Sublease

Annexure to Constitution