

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

S CI 2011

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

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

Prepared by:

**ARNOLD BLOCH LEIBLER**

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This is the exhibit marked "CDC-10" now produced and shown to **CRAIG DAVID CROSBIE** at the time of swearing his affidavit on 13 December 2011.

**MATTHEW GORDON JACKSON**

Arnold Bloch Leibler

Level 21, 333 Collins Street

Melbourne 3000

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

Before me: 

**Exhibit "CDC-10"**  
**Forestry Management Agreement dated 22**  
**March 2006 in relation to Tranche 1**

# Forestry Management Agreement - Tranche 1

Dated 22 MARCH 2006

Grand Ridge Plantations Pty Ltd (ABN 56 004 285 705) ("Provider")  
Willmott Forests Limited (ABN 17 063 263 650) ("Recipient")

**Mallesons Stephen Jaques**  
Level 50  
Bourke Place  
600 Bourke Street  
Melbourne Vic 3000  
Australia  
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# Forestry Management Agreement - Tranche 1

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# Forestry Management Agreement - Tranche 1

## Details

**Interpretation** – definitions are at the end of the General terms

<b>Parties</b>	<b>Provider and Recipient</b>	
<b>Provider</b>	<b>Name</b>	<b>Grand Ridge Plantations Pty Ltd</b>
	<b>ABN</b>	56 004 285 705
	<b>Address</b>	Level 3, 517 Flinders Lane, Melbourne
	<b>Telephone</b>	(03) 9289 1400
	<b>Fax</b>	03 9629 1552
	<b>Attention</b>	Company Secretary
<b>Recipient</b>	<b>Name</b>	<b>Willmott Forests Limited</b>
	<b>ABN</b>	17 063 263 650
	<b>Address</b>	249 Park Street, South Melbourne, Victoria 3205
	<b>Telephone</b>	(03) 9696 1355
	<b>Fax</b>	(03) 9696 5567
	<b>Attention</b>	Senior Executive, Forestry Operations
<b>Recitals</b>	<b>A</b>	The Recipient is the manager of a professional investor project called the "Willmott Forests Professional Investor - 2004 Project" (" <b>Project</b> ").
	<b>B</b>	The Recipient has entered, or will enter, into a Grower/ Recipient FMA with each Grower.
	<b>C</b>	The Recipient wishes to engage the Provider to provide forestry management services on the terms of this agreement.
<b>Governing law</b>	Victoria	
<b>Date of agreement</b>	See Signing page	

# Forestry Management Agreement - Tranche 1

## General terms

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### 1 Appointment of Provider

#### 1.1 Appointment

The Recipient appoints the Provider to carry out the Services exclusively in respect of the Leasehold Property for the Term and in accordance with the terms and conditions of this agreement.

#### 1.2 Term

This agreement shall commence on the Commencement Date and shall continue until the Termination Date unless this agreement is terminated earlier as provided in this agreement.

---

### 2 Recipient's duties

#### 2.1 General

The Recipient undertakes to and warrants that it will:

- (a) co-operate and cause its employees, officers and Related Companies to co-operate with the Provider to enable the Provider to perform the Services in accordance with this agreement;
- (b) take reasonable steps to respond to enquiries from Growers and to encourage them not to contact the Provider directly;
- (c) if:
  - (i) the Trees are owned by the Growers, take reasonable endeavours to monitor insurance taken out by Growers in respect of damage to, or destruction of, such Grower's Trees, take reasonable endeavours to ensure such insurance is taken out by, or on behalf of, Growers (from the date on which they have an obligation to the Recipient or otherwise to take out such insurance) and provide all information reasonably requested by the Provider;
  - (ii) if the Trees are owned by the Recipient or a related entity, insure the Trees in accordance with the usual practices of the Recipient;
- (d) take reasonable endeavours to obtain payment of, or otherwise recover, any Insurance Proceeds; and
- (e) take reasonable steps to ensure that Growers do not elect to opt out of marketing and harvesting arrangements for the Project.

## **2.2 Licence**

- (a) The Recipient irrevocably grants to the Provider a licence as set out in this clause 2.2 for the Term.
- (b) The licence granted to the Provider is a licence to access and use (and to allow its subcontractors and agents to access and use) the Leasehold Property for all purposes necessary to carry out its obligations under this agreement.
- (c) The rights granted to the Provider under this clause 2.2 are:
  - (i) contractual;
  - (ii) non-exclusive;
  - (iii) irrevocable for the duration of the Term; and
  - (iv) terminated if the Lease terminates.

---

## **3 Insurances**

### **3.1 Recipient's obligations**

- (a) The Recipient must maintain Public Risk Liability Insurance in respect of the Leasehold Property for an amount of not less than \$10,000,000 for the first 5 years from the Commencement Date and thereafter, the amount determined in accordance with clause 3.1(b).
- (b) At each 5 year interval after the Commencement Date, the level of insurance required to be maintained under clause 3.1(a) shall be redetermined as being the nearest whole multiple of \$1,000,000 equal to the amount of \$10,000,000 CPI Indexed, provided that the level of insurance required to be maintained shall not be less than \$10,000,000.

### **3.2 Policy**

Each policy under clause 3.1 must be in the names of the Recipient, the Provider and any other person nominated by the Provider for their respective rights and interests.

### **3.3 Notifications relating to claims**

The Recipient must notify the Provider if:

- (a) an insurance policy required under clause 3.1 is cancelled; or
- (b) an event occurs which gives rise or may give rise to insurance claim; or
- (c) an insurance claim is refused either in part or in full.

### **3.4 Acknowledgement**

The parties acknowledge that the Provider has no obligation to the Recipient or any Grower (or any person claiming through them) to effect or maintain insurance for loss or damage to the Trees or any other insurance.

---

## **4 Provider's duties**

### **4.1 Services**

Subject to this agreement, the Provider shall use all reasonable endeavours to complete the Services in respect of the Leasehold Property in accordance with Standard Forestry Practice.

### **4.2 Sub-contracting**

The Provider, for the better performance of its obligations under this agreement, may engage any independent contractors, agents, professional advisers or other consultants whether or not that such persons are:

- (a) related entities of the Provider or the Recipient;
- (b) directors or officers of the Provider or the Recipient; or
- (c) in any way associated with the Provider or the Recipient.

### **4.3 Ownership of trees**

Subject to the other provisions of this agreement, the Lease and the Forest Property Agreement, the Provider acknowledges that:

- (a) if a Sub-Lease and Forest Property Agreement has been granted in respect of Trees, the Growers will have full right, title and interest in the Trees and subject to the Grower/ Recipient FMA, will have the right to harvest and market the Trees; and
- (b) if no Sub-Lease has been granted in respect of Trees, the Recipient will have full right, title and interest in the Trees and will have the right to harvest and market the Trees.

---

## **5 Fees**

### **5.1 Fees**

In consideration of providing the Services, the following fees are payable by the Recipient to the Provider:

- (a) an Upfront Management Fee in accordance with clause 5.2;
- (b) an Annual Management Fee in accordance with clause 5.3; and
- (c) a Deferred Management Fee in accordance with clause 5.4.



## **5.2 Upfront Management Fee**

The Upfront Management Fee:

- (a) shall be equal to \$550 multiplied by the number of Net Plantable Hectares in the Leasehold Property; and
- (b) shall be payable on the Commencement Date.

## **5.3 Annual Management Fee**

The Annual Management Fee:

- (a) shall be equal to:
  - (i) until 30 June 2007, \$70 per annum multiplied by the number of Net Plantable Hectares in the Leasehold Property; and
  - (ii) from 1 July 2007, \$70 per annum CPI Indexed multiplied by the number of Net Plantable Hectares in the Leasehold Property (provided that the Annual Management Fee is not to be less than \$70 multiplied by the number of Net Plantable Hectares in the Leasehold Property); and
- (b) shall be payable monthly in arrears in equal instalments for each month commencing on 1 July 2006 until the Termination Date.

## **5.4 Deferred Management Fee**

The Deferred Management Fee:

- (a) shall be equal to:
  - (i) subject to clause 14.7 of the Relationship Agreement, 3% of the Net Harvest Proceeds from the Harvesting of the Trees on the Leasehold Property; or
  - (ii) upon the occurrence of an Event, 3% of any Insurance Proceeds (that are not applied in replanting the affected parts of the Leasehold Property) in respect of the Trees on the Leasehold Property;
- (b) shall be payable in the following circumstances:
  - (i) following Harvesting of the Trees;
  - (ii) following the occurrence of any Event in respect of which less than the full amount of Insurance Proceeds in respect of the Event is applied in replanting the affected parts of the Leasehold Property; or
  - (iii) on the termination of this agreement, except if:
    - (A) this agreement is terminated as a consequence of an Event of Default (and the Provider is the Defaulting

Party and the Recipient is the Non-Defaulting Party);  
or

(B) the Provider retires under clause 10.3,

in which case, it shall not be payable; and

(c) shall:

(i) if it is payable in the circumstances described in clause 5.4(b)(i), be payable out of the Net Harvest Proceeds from the Harvesting of the Trees on the Leasehold Property, in arrears when the Net Harvest Proceeds are received by the Provider, the Recipient or a Grower (as the case may be);

(ii) if it is payable in the circumstances described in clause 5.4(b)(ii), be payable out of Insurance Proceeds, in arrears when Insurance Proceeds in respect of the Leasehold Property are paid by the relevant insurer; or

(iii) if it is payable in the circumstances described in clause 5.4(b)(iii), be payable as follows:

(A) the parties shall meet in good faith to agree an amount representing the Net Present Value of estimated Net Harvest Proceeds which would have been earned from the sale of forestry product from Harvesting in normal market conditions (at the time at which such sales were anticipated to occur) within 14 days; and

(B) failing such agreement, the parties shall refer the matter to the Expert for determination,

within 14 days of the agreement or determination (as the case may be).

## **5.5 Survival**

This clause 5 survives termination of this agreement.

---

## **6 Direct Costs**

### **6.1 Payment**

In addition to the fees payable under clause 5, but subject to clause 8.1 and clause 9 of the Relationship Agreement, the Recipient shall pay to the Provider the amount of any Direct Costs paid or incurred by the Provider in performing its obligations under this agreement monthly in arrears.

## **6.2 Other expenditures**

In addition to Direct Costs, the Provider may also recover any other expenditures it is entitled to recover under clause 9 of the Relationship Agreement.

## **6.3 Compensation or damages from third parties**

- (a) The Provider must take all commercially reasonable steps to:
  - (i) enforce its rights under any contract or arrangement with a third party under which it pays or incurs Direct Costs; and
  - (ii) pursue any claims or remedies it has in connection with such contracts or arrangements.
- (b) If the Provider receives any amount by way of compensation or damages from a third party by virtue of enforcing its rights or pursuing or claiming any remedy as contemplated by clause 6.3(a) then, to the extent that that amount is fairly attributable as a deduction to Direct Costs paid or incurred by the Provider in performing its obligations under this agreement:
  - (i) if the amount is received prior to any Tax Invoice in respect of the Direct Costs being sent to the Recipient, the amount payable by the Recipient in respect of such Direct Costs shall be reduced by that amount; and
  - (ii) otherwise, the Provider shall issue an Adjustment Note and the amount shall be applied as a credit against the Direct Costs payable under the next invoice issued after the date of receipt.
- (c) To avoid doubt, to the extent that an amount has not been included in Direct Costs because of an expectation that it will be received subsequently, then that amount shall not be deducted from Direct Costs.

## **6.4 Audit**

- (a) Subject to clause 6.4(c) and clause 6.4(d) and any conditions of confidentiality binding upon the Provider, at the request of the Recipient, the Provider shall make available to an Auditor, at the premises of Provider during business hours and on reasonable notice, records and documents of the Provider evidencing the performance of the Services, the Direct Costs and the Net Harvest Proceeds (including the revenue and cost components).
- (b) The Provider will cooperate with the Auditor in performing the tasks described in clause 6.4(a) and give such reasonable assistance and explanations as the Auditor may request.
- (c) The Recipient may not appoint an Auditor under this clause 6.4 more than once in any Financial Year.

- (d) If the Provider considers any information commercially sensitive, that information shall only be made available to an Auditor (within the meaning of paragraph (b) of that definition) who undertakes to keep the information confidential on terms satisfactory to the Provider (including from the Recipient).

## **6.5 Recipient directions in respect of Budgets**

- (a) The Recipient shall, at all times, have the right to direct the Provider to:
  - (i) not provide Services described in a Budget; or
  - (ii) provide Services in a manner other than in the manner, or at the time, proposed in that Budget,

in which case the parties shall agree, within 14 days, on whether or not the provision of Services in accordance with the Recipient's direction in this clause 6.5 is in accordance with Standard Forestry Practice.

If the parties are unable to reach agreement, either party may refer the matter to the Expert.

- (b) If:
  - (i) agreement is not reached as to whether or not the provision of Services in accordance with the Recipient's direction in clause 6.5(a) is in accordance with Standard Forestry Practice; or
  - (ii) it is agreed or determined by the Expert that the provision of Services in accordance with the Recipient's direction in clause 6.5(a) is not in accordance with Standard Forestry Practice,

clause 8.1(b) and clause 8.7 shall apply to any Services provided in accordance with that direction.

- (c) Without in any way limiting the breadth of this clause 6.5, the parties acknowledge that clause 6.5 shall apply to any Services provided in accordance with a direction from the Recipient to the Provider to plant any cuttings or seedling material other than in a manner, or at a time, which is in accordance with Standard Forestry Practice.

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## **7 Invoices**

- (a) The Provider will prepare and issue an invoice to the Recipient no later than 10 days after the end of the calendar month, setting out the fees and Direct Costs payable in respect of that month.
- (b) The Recipient will pay the amount of the invoice plus applicable GST:

- (i) within 30 days of the date of the invoice; or
- (ii) if the invoice is not received within 10 days of the date of the invoice, within 20 days of the date of receipt.
- (c) The Provider must issue a Tax Invoice to the Recipient no later than 10 days following payment of the invoice.

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## **8 Liability**

### **8.1 Provider liability**

- (a) Subject to clause 8.1(b), the Provider will only be liable to the Recipient in respect of any defects to the Leasehold Property or any Trees located on it and then only to the extent such defects arise from the faulty workmanship of the Provider or the Provider's employees, agents, contractors or services suppliers or the Provider's use of defective materials or the use by the Provider's employees, agents, contractors or services suppliers of defective materials.
- (b) The Provider will not be liable in respect of defects to the Leasehold Property or any Trees located on it under clause 8.1(a) to the extent such defects arise as a consequence of a direction from the Recipient under clause 6.5.

### **8.2 Recipient's acknowledgements**

Without limiting clause 8.1, the Recipient acknowledges and agrees that:

- (a) the Provider will not be taken to be liable to the Recipient in respect of any liability of the Recipient arising out of:
  - (i) the knowledge of any information regarding, or circumstances peculiar, to the Recipient, a Grower, or other person which may be known to the Recipient, a Grower or any other persons; or
  - (ii) the Recipient's compliance with any of its obligations as responsible entity of the Project, or any of its obligations as the holder of any licence, permit or authorisation entitling it to be responsible entity of the Project;
- (b) the Provider is not a sponsor of the Project;
- (c) the Provider does not guarantee or underwrite the Project;
- (d) the Provider does not give any guarantee or warranty regarding the Project's ability to achieve any forecasted, predicted, expected or estimated benchmark, target or standard (including those relating to rates of return, profitability, land productivity, growth rates, market prices, climate or rainfall);

- (e) the Provider does not guarantee or warrant the taxation consequences for the Recipient or the Growers of the Project or any transactions in connection with the Project; and
- (f) the Provider does not guarantee or warrant the availability of any carbon credits, carbon rights or other rights in connection with any system of emissions trading or sequestration.

### **8.3 No liability for Consequential Loss**

Neither party is liable to the other party for any Consequential Loss arising out of or otherwise in relation to this agreement.

### **8.4 Exclusion not permitted**

If any statute implies any term into this agreement and that statute prohibits contractual provisions which exclude or modify the operation of such term, the term is deemed to be included in this agreement.

### **8.5 Reduction in liability**

Without affecting anything else in this agreement, the Provider's liability to the Recipient, the Growers, or any other person for loss or damage of any kind arising out of or relating to the provision or non-provision of the Services is reduced to the extent that such persons (or any of them) cause or contribute to or fail to discharge their duty not to act unreasonably in relation to the possible avoidance or mitigation of the loss or damage. This reduction applies whether the Provider's liability is in contract, tort (including negligence), under any statute or otherwise.

### **8.6 Provider liability**

The Provider accepts liability to the Recipient and the Growers for any personal injury, sickness or death caused by the negligence of the Provider or its employees or contractors in relation to the obligations of the Provider under this agreement.

### **8.7 Recipient liability**

- (a) The Provider shall not be liable to the Recipient for; and
- (b) the Recipient accepts liability to the Provider, the Growers and third parties for (and indemnifies the Provider against),

any losses, expenses, liabilities, costs, claims and actions of any kind in connection with the Provider acting in accordance with a direction of the Recipient made under clause 6.5.

### **8.8 Survival**

This clause 8 survives termination of the agreement.

---

## **9 Termination**

### **9.1 Events of Default**

It is an Event of Default, whether or not it is within the control of the relevant party, if:

- (a)
  - (i) a party fails or omits to make a payment of an amount on the due date or breaches any other material obligation under this agreement or under Part C or Part D of the Relationship Agreement insofar as it relates to this agreement (**Defaulting Party**);
  - (ii) the other party gives written notice of the breach to the Defaulting Party; and
  - (iii) subject to clause 9.1(b), the Defaulting Party does not remedy the breach within:
    - (A) if the breach consists of a failure or omission to make a payment of an amount on the due date, 15 days after the date of the notice; and
    - (B) in any other event, 90 days after the date of the notice; or
- (b) if the breach is not capable of remedy, the parties, acting reasonably, have not agreed a mutually acceptable compromise, which may include payment of compensation for any loss, cost damage or expense caused by the breach, within 90 days after the date of the notice provided that, for the avoidance of doubt, the failure or omission to observe, perform or comply with an obligation by a specified date or within a specified period is taken to be a breach which is capable of remedy, even if the specified date has passed or the specified period has expired, by the Defaulting Party observing, performing or complying with the obligation within the relevant period specified in clause 9.1(a)(iii);
- (c) a party ceases or threatens to cease to carry on business;
- (d) an administrator is appointed or a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator to a party;
- (e) a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar officer is appointed over the assets or undertaking of a party; or
- (f) a party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them.

## **9.2 Consequences of Events of Default**

If an Event of Default occurs the other party ("Non-Defaulting Party") may (without affecting the accrued rights and obligations of the parties as at the date of termination and those rights and obligations which are expressed to survive termination of this agreement or revocation of the appointment) terminate this agreement immediately by notice to the Defaulting Party.

## **9.3 Replacement of Recipient as responsible entity**

If the Recipient is replaced as the responsible entity or manager of the Project, (without affecting the accrued rights and obligations of the parties as at the date of termination and those rights and obligations which are expressed to survive termination of this agreement or revocation of the appointment) the Provider may terminate this agreement with effect from the date on which the Recipient is replaced as the responsible entity of the Project.

## **9.4 Dispute**

If, following the issue of a default notice in respect of a breach of this agreement which is not a material breach, a party disputes that a breach has occurred or disputes the compensation that is payable in respect of a breach, then the parties must act in good faith to settle the dispute within 30 days after becoming aware of the dispute and in default of settlement each of the parties shall be free to exercise their rights at law.

## **9.5 Event**

(a) If:

- (i) there is an Event in respect of any of the Trees; and
- (ii) the Provider is not reasonably satisfied that the Trees will be replaced,

the Provider must give notice to the Recipient requiring the Recipient to demonstrate by written notice satisfactory to the Provider, within three years, that the Trees will be replaced, within one year of the date of the notice. Such written notice shall include evidence of the funding for the replacement of such Trees.

(b) If:

- (i) written notice complying with clause 9.5(a) is not received from the Recipient within three years of the Event; or
- (ii) replacement of the Trees has not occurred within one year of the date of the notice or, prior to that time, the Provider forms the view that it is unlikely that the Trees will be replaced by that time,

this agreement will terminate in respect of those Trees.

(c) If:



- (i) there is an Event in respect of any of the Trees; and
- (ii) the Trees are to be replaced in accordance with this clause 9.5,

this agreement will continue in respect of those replacement Trees and:

- (iii) the Recipient will pay to the Provider a management fee in respect of re-planting equal to:
  - (A) \$250 CPI Indexed, if the Event occurs within 5 years of planting (or re-planting); or
  - (B) \$450 CPI Indexed, if the Event occurs after 5 years of planting (or re-planting),
 in each case, multiplied by the number of Net Plantable Hectares on which Trees are being replaced; and
- (iv) that fee shall be payable on the date on which the Recipient gives notice that it intends to replace the Trees under clause 9.5(a).

---

## **10 Amendment, assignment and retirement**

### **10.1 Amendment**

This agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

### **10.2 Assignment**

- (a) The Provider may novate, dispose of, assign or otherwise deal with its rights under this agreement to:

- (i) any related entity of the Provider; or
- (ii) any related entity of Hancock Natural Resources Group Australia Pty Ltd,

incorporated, or taken to be incorporated, in the Commonwealth of Australia by giving notice to that effect if it demonstrates to the Recipient, acting reasonably, that that person:

- (iii) has the technical expertise and capabilities and the financial capabilities to perform the obligations to be assumed by it; and
- (iv) there is no material net increase in the aggregate amount of fees and costs which the Recipient is obliged to pay:
  - (A) as a direct consequence of the replacement of the Provider with the replacement service provider; and

- (B) of which the Provider was aware or ought reasonably to have been aware, at the time of the replacement.

Following such demonstration, the Provider may undertake such novation, disposal, assignment or dealing. Upon giving notice to the Recipient of notice of such novation, disposal, assignment or dealing, the Provider will be released from the Provider's obligations under this agreement by reason of such notice (other than accrued rights and obligations of the parties as at the date of retirement).

- (b) The Recipient may only dispose of, assign or otherwise deal with its rights under this agreement with the prior written consent of the Provider.

### **10.3 Replacement of Provider**

- (a) The Provider may retire from this agreement by giving at least 1 years' notice of its intention to do so if:
  - (i) the notice is given 5 years after the Commencement Date;
  - (ii) the replacement of the Provider with a replacement service provider is approved by the Recipient acting reasonably and taking into account whether:
    - (A) a replacement service provider assumes all, or substantially all of the obligations of the Provider under this agreement;
    - (B) the replacement service provider has the technical expertise and capabilities and the financial capabilities to perform the obligations to be assumed by it; and
    - (C) there is no material net increase in the aggregate amount of fees and costs which the Recipient is obliged to pay:
      - (aa) as a direct consequence of the replacement of the Provider with the replacement service provider; and
      - (ab) of which the Provider was aware or ought reasonably to have been aware, at the time of the replacement.
- (b) Upon retirement under clause 10.3, the Provider is discharged from any further obligations under this agreement. This discharge does not affect the accrued rights and obligations of the parties as at the date of retirement.

---

## **11 Provider's rights**

If any amount payable under the terms of this agreement is not paid on or before the due date for payment, the Provider will, in addition to any other rights it may have, be entitled charge interest on the amount outstanding at the Overdraft Rate.

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## **12 Representations and Warranties**

### **12.1 Representations and warranties**

Each party represents and warrants that:

- (a) it has full power and authority to execute and to perform this agreement;
- (b) such execution and performance:
  - (i) does not contravene its constitution or any undertaking or instrument binding on it or its property;
  - (ii) does not contravene any contractual, legal or other obligations of that party of any nature whatsoever; and
  - (iii) will not be a breach of any applicable statutes, laws, ordinances, rules, orders and regulations of any governmental authority or instrumentality;
- (c) this agreement constitutes a legal, valid and binding obligations on that party enforceable against it in accordance with its terms (subject to equitable principles and laws affecting creditors' rights generally).

### **12.2 No reliance**

Each party acknowledges that in entering into this agreement it has not relied on any representations or warranties from the other, except as provided in this agreement.

### **12.3 Exclusion of representation and warranties**

To the extent permitted by law, all other representations and warranties are excluded.

---

## **13 Expert**

- (a) If this agreement expressly provides that a matter may be referred to the decision of an Expert, or if the parties otherwise agree in respect of a dispute, the matter or dispute may be referred to an Expert and the following provisions shall apply in respect of any Expert:
  - (i) he shall be deemed to act as an expert and not as an arbitrator;
  - (ii) within 14 days after his appointment and before reaching any decisions to any matter in dispute he shall be obliged to hear

reasonable argument by or on behalf of the parties to this agreement;

- (iii) he may appoint consultants to advise on any aspects of the dispute. The fees of the consultant will be payable as directed by the Expert;
  - (iv) his decision as to any matter in dispute shall be final and binding on the parties to this agreement; and
  - (v) his fee shall be paid as determined by the Expert.
- (b) If the Expert is unable to carry out the determination within 28 days after the Expert's appointment, any party may require another Expert to be appointed.
- (c) If an Expert is appointed to determine any dispute arising under this agreement the parties must:
- (i) use all reasonable endeavours to cooperate in good faith; and
  - (ii) not commence or maintain any action, either legal or by arbitration, in relation to any dispute which arises in relation to this agreement unless that dispute has first been referred for determination under this clause.

---

## **14 GST**

### **14.1 Consideration does not include GST**

All consideration given under this agreement does not include GST.

### **14.2 Recovery of GST**

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the prevailing GST rate.

### **14.3 Time and manner of payment**

The additional amount is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates. However, the additional amount need not be paid until the supplier provides a Tax Invoice to the recipient.

### **14.4 Adjustment of Additional Amount**

If the additional amount differs from the amount of GST payable by the supplier, the additional amount must be adjusted by a cash payment either to the supplier or to the recipient (as the case requires), but subject to clause 6.3(b).

#### **14.5 Reimbursement**

If a party is entitled to be reimbursed or indemnified under this agreement (including in respect of Direct Costs), the amount to be reimbursed or indemnified includes any amount attributable to GST except for any amounts in respect of which the party is entitled to an Input Tax Credit.

---

### **15 Force Majeure**

- (a) The Provider and the Recipient are excused from performance of any of their respective duties and obligations under this agreement (except for any obligation to pay money) whenever and to the extent such performance is prevented or interrupted by reason of Force Majeure.
- (b) The Provider has no responsibility or liability for any loss or expense suffered or incurred by any party as a result of its not acting for so long as the impossibility under this clause 15 continues.

---

### **16 Notices**

#### **16.1 Form and address**

A notice or other communication in connection with this agreement is to be in writing and:

- (a) may be given by the relevant party or its solicitor or agent; and
- (b) may be left at the address of the addressee or sent by prepaid ordinary post to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case as set out in the Details or to any other address or facsimile number previously notified to the sender.

#### **16.2 Receipt**

Unless a later time is specified in it, a notice or other communication takes effect from the time it is received and is taken to be received:

- (a) in the case of a posted letter, on the third Business Day after posting; and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent to the facsimile number of the recipient.

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### **17 General**

#### **17.1 Governing law**

- (a) This agreement is governed by the law in force in Victoria.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, and any court that may hear

appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

#### **17.2 Liability for expenses**

Each party must pay its own expenses incurred in negotiating and executing this agreement and all goods and services and other taxes on or in respect of this agreement or the services to be provided or licence given under this agreement.

#### **17.3 Giving effect to this agreement**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this agreement.

#### **17.4 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

#### **17.5 Operation of this agreement**

- (a) This agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- (b) Any right that a person may have under this agreement is in addition to, and does not replace or limit, any other right that the person may have.

#### **17.6 Operation of payment obligations**

- (a) Each payment obligation in this agreement survives the expiry or termination of this agreement.
- (b) A party may recover a payment under this agreement before it makes the payment.

## **17.7 Counterparts**

This agreement may be executed in counterparts, in which case the counterparts as read together will form the one agreement.

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## **18 Interpretation**

### **18.1 Definitions**

These meanings apply unless the contrary intention appears:

**Adjustment Note** has the same meaning as in the GST Act.

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to a non-monetary consideration for a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

**Auditor** means:

- (a) a senior employee of the Recipient acceptable to Provider (acting reasonably); or
- (b) an independent auditor appointed by Recipient and acceptable to Provider (acting reasonably).

**Authority** means any governmental or other public body, local authority or other authority of any kind.

**Budget** has the meaning given in the Relationship Agreement.

**Business Day** means a day on which banks are open for general business in Melbourne, not being a Saturday or a Sunday.

**Commencement Date** means the date of this agreement.

**Consequential Loss** means loss or damage which does not naturally or directly result in the ordinary course of events from the breach, action or inaction in question, and also means loss of profit or anticipated profit, loss of data, loss of use, damage or goodwill.

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

**CPI Indexed** means, in respect of a number, that number multiplied by the following:

(a) 
$$\frac{C}{D}$$

where

C = the Consumer Price Index All Groups "weighted average for the eight capital cities" published by the Australian Bureau of Statistics as at the last 31 December before the commencement of the Financial Year in which the relevant amount is paid or calculated; and

D = the Consumer Price Index All Groups "weighted average for the eight capital cities" published by the Australian Bureau of Statistics as at 31 December 2005.

(b) If either:

(i) the Consumer Price Index All Groups "weighted average for the eight capital cities" ceases to be published quarterly; or

(ii) the method of calculation of the Consumer Price Index All Groups "weighted average for the eight capital cities" substantially alters,

then the Consumer Price Index All Groups "weighted average for the eight capital cities" is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made. That index and those amendments are to be determined as follows:

(iii) by agreement between the parties; or

(iv) if the parties do not agree, by the Australian Statistician or his nominee (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.

**Deferred Management Fee** means the fee payable in accordance with clause 5.4.

**Direct Costs** means the costs which are calculated as being payable by the Recipient in accordance with schedule 4 of the Relationship Agreement, but does not include the costs of providing Management Services.

**Discount Rate** means:

(a) 8.66% (calculated on a pre-tax real basis); or

(b) if that amount results in a material disadvantage to one party, an amount which represents a commercially reasonable real discount rate for long-term forestry assets in South Australia, Victoria, New South Wales and Tasmania:

(i) as agreed between the parties; or

(ii) if the parties are unable to agree within 14 days and the matter is referred to the Expert, as determined by the Expert.

If the parties are unable to agree but do not refer the matter to the Expert, the rate shall be as determined in accordance with paragraph (a).



**Event means:**

- (a) the destruction of any of the Trees; or
- (b) material damage to any of the Trees.

**Expert** means an independent person to be agreed in writing by the Provider and the Recipient, or failing agreement then appointed at the instance of either of them by:

- (a) in the case of a dispute in relation to issues which relate solely or substantially to silvicultural practices and / or management, a forestry consultant appointed by the national president or other senior officer for the time being of the Institute of Foresters of Australia; or
- (b) in any other case, the President or other senior officer for the time being at Law Institute of Victoria,

who must be requested by the party approaching them to take into account, when deciding who to appoint, whether the fees and charges of the proposed independent person are, or will be, reasonable and commercial.

**Final Harvesting** means the final Harvest of the Trees including the making good of the land in accordance with clause 16.3 of the Lease.

**Financial Year** means the period beginning on 1 July in a calendar year and ending on 30 June in the following calendar year.

**Force Majeure** includes any act of God, strike, lock out or other interference with work, war declared or undeclared, blockade, disturbance, riot, lightning, fire, earthquake, storm, flood, drought, pestilence or other natural disaster, explosion, governmental or quasi-governmental restraint, expropriation, 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 and any other cause which is not reasonably within the control of the Provider.

**Forest Property Agreement** means the deed of that name between Grand Ridge Plantations Pty Ltd (ABN 20 084 132) and Willmott Forests Investment Management Pty Ltd (ACN 098 718 837) dated on or about the date of this agreement.

**Grower** means a grower who has been granted a Sub-Lease by the Recipient in respect of all or part of the Leasehold Property.

**Grower/Recipient FMA** means each agreement between a Grower and the Recipient under which the Recipient provides or procures forestry management services in respect of that Grower's Trees and the land comprising that Grower's Sub-Lease.

**GST** has the meaning it has in the GST Act.

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

**Harvesting** includes the cutting down of the Trees and debarking, debranching, docking, bunching, skidding and provision of access (including roading, storing, loading and delivering to the customer) whether conducted as one operation or more than one operation and also includes the administration and supervision of such activities; and "Harvesting" and "Harvested" have corresponding meanings.

**Harvesting and Marketing Services** means the Harvesting and marketing of the Growers' Trees undertaken by the Provider in accordance with clause 14 of the Relationship Agreement.

**HVP Land** means land in Victoria in respect of which the Provider or a related entity:

- (a) is the owner in fee simple;
- (b) is a lessee; or
- (c) has the right to access, occupy and use, pursuant to a licence granted under the Victorian Plantations Corporations Act 1993 (Vic).

**Input Tax Credit** has the meaning it has in the GST Act.

**Insurance Proceeds** means any payment under an insurance policy in respect of damage to, or destruction of:

- (a) in the case of Trees owned by a Grower, which:
  - (i) the Recipient is entitled to recover, and does recover, from the Grower (or any person who has taken insurance out on behalf of the Grower); or
  - (ii) the Recipient has taken out for, or on behalf of, the Grower.

For the avoidance of doubt, this term relates to the total of such proceeds (including the amounts which the Recipient is required to distribute to the Growers, or which the Growers are entitled to retain, and not only the amounts which the Recipient is entitled to deduct); and

- (b) in the case of Trees owned by the Recipient, which the Recipient has taken out.

**Lease** means the lease in respect of the Leasehold Property between the Provider and the Recipient dated on or about the date of this agreement.

**Leasehold Property** means the "Land" under the Lease.

**Management Services** means the services of managing, overseeing and supervising the plantations and forestry operations which shall include the services described in schedule 3 of the Relationship Agreement.

**Net Harvest Proceeds** means the proceeds from Harvesting less the cost of:

- (a) log Harvesting and site clean up;

- (b) hauling;
- (c) log merchandising;
- (d) loading;
- (e) cartage;
- (f) harvesting and delivery related road use fees paid to Authorities;
- (g) log scaling;
- (h) tracking and tree marking;
- (i) log quality control;
- (j) yard, storage and wharf costs;
- (k) specific surveys or external payments required as part of gaining harvesting approvals;
- (l) third party log marketing fees;
- (m) any statutory or other mandatory levies imposed by a third party; and
- (n) any other third party direct costs related to the harvesting, marketing and sale of forestry product from Harvesting excluding any costs associated with the Management Services.

**Net Plantable Hectare** means an area measuring approximately 1 hectare on any "Accepted Land" (as defined in the Relationship Agreement) under the terms of the Relationship Agreement on the Leasehold Property.

**Net Present Value** means, in respect of an amount, the net present value of that amount calculated using the Discount Rate.

**Overdraft Rate** means the rate of interest applying to each daily balance being the rate 4% per annum above the 180 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if that rate has not been published, another rate set by the Provider in good faith).

**Project** has the meaning given in recital A.

**Public Risk Liability Insurance** means insurance under which the insurer agrees to indemnify the insured for legal liability owed to another person who suffers loss or damage by reason of the insured's business activities.

**Relationship Agreement** means the agreement of that name between Hancock Victorian Plantations Pty Limited (ABN 20 084 801 132), Grand Ridge Plantations Pty Ltd (ABN 56 004 285 705) and Willmott Forests Limited (ABN 17 063 263 650) dated on or about the same date of this agreement.

**Service Protocols** have the meaning given in the Relationship Agreement.

**Services means:**

- (a) the services described in Parts 1 and 2 of schedule 1;
- (b) the Management Services; and
- (c) the Harvesting and Marketing Services,

and includes the Service Protocols.

**Standard Forestry Practice** means the performance of an obligation in accordance with the methods and with the standard of skill, diligence and care normally applied or exercised:

- (a) by the Provider in connection with its own forestry practices; and
- (b) by owners of major softwood plantations in South Australia, Victoria, New South Wales or Tasmania in those states.

**Sub-Lease** means a sub-lease in respect of the Leasehold Property between the Tenant and a Grower, for the purposes of the Project.

**Tax Invoice** has the meaning it has in the GST Act.

**Term** means the period commencing on the Commencement Date and ending on the Termination Date.

**Termination Date** means:

- (a) the earlier of:
  - (i) the first 30 June after 30 years after the Commencement Date; and
  - (ii) the conclusion of Final Harvesting; or
- (b) if the Lease is extended in accordance with its terms, the earlier of:
  - (i) the extended period of the Lease; and
  - (ii) the conclusion of Final Harvesting,

unless this agreement is terminated early under clause 9.

**Trees** means the trees on the Leasehold Property.

## **18.2 References to certain general terms**

Unless the contrary intention appears, a reference in this agreement to:

- (a) **(variations or replacement)** a document (including this agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement;

- (c) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (d) **(related entity)** the words “related entity” have the meaning given in the Corporations Act;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Authority;
- (g) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (h) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (m) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;
- (n) **(next Business Day)** if an event under this agreement must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day; or
- (o) **(time of day)** time is a reference to Melbourne time.

### **18.3 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

### **18.4 Capacity of Recipient**

The Recipient's liability or obligations under this agreement shall not in any way be limited or qualified by the extent to which it may be indemnified or reimbursed by Growers, out of the property of the Project or otherwise.

### **18.5 Capacity of Provider**

The Provider enters into this agreement as an independent contractor of the Services. Nothing in this agreement must be construed as creating or evidencing:

- (a) any association or partnership; or
- (b) any fiduciary relationship or obligation of any kind; or
- (c) the relationship of employer and employee or master and servant,

between the Recipient, the Provider, the Growers or any other persons having interests in the Leasehold Property or any two or more of them and neither the Provider nor the Recipient has (and must not represent that it has) any power right or authority to bind the other.

### **18.6 Acknowledgment**

The parties acknowledge that this agreement is the First FMA for the purposes of the Relationship Agreement.

# Forestry Management Agreement - Tranche 1

## Schedule 1 - Works and Services

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### **1 Part 1 - Establishment Services**

#### **1.1 Preparation and planting**

Preparation & planting services provided in Year 0:

- (a) preparation works - cultivation, heaping or burning (where required);
- (b) pre-planting weedicide treatments where required;
- (c) supplying and planting *Pinus radiata* cuttings or seedling material at such number of stems per Net Plantable Hectare as accords with Standard Forestry Practice, depending on the site and planting stock;
- (d) fertilising, where required;
- (e) pest control.

#### **1.2 Post planting establishment**

Establishment Services (other than those provided in Year 0) including:

- (a) supply and replanting of *Pinus radiata* cuttings or seedling material where required;
- (b) treatment of regrowth;
- (c) post-planting weedicide treatments where required;
- (d) foliar analysis of planted stock where required;
- (e) construction & maintenance of access roads and firebreaks where required; and
- (f) general maintenance inclusive of ongoing monitoring.

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### **2 Part 2 - Annual Services**

#### **2.1 Year 2 and 3**

General maintenance, including, monitoring, attention to regrowth, access roads and firebreaks, fertilising, and general maintenance where required.

## **2.2 Year 4 to the Termination Date**

Further fertilising, general maintenance including monitoring, attention to regrowth, access roads, firebreaks and selective pruning.




# Forestry Management Agreement - Tranche 1

## Signing page

EXECUTED by GRAND RIDGE  
PLANTATIONS PTY LTD in  
accordance with section 127(1) of the  
Corporations Act 2001 (Cwlth) by  
authority of its directors:

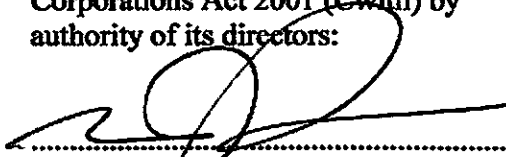
  
.....  
Signature of director

KARL KNY  
.....  
Name of director (block letters)

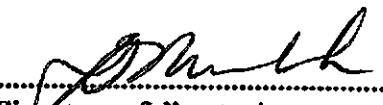
  
.....  
Signature of director/company  
secretary

CHARLES AMATI  
.....  
Name of director/company secretary  
(block letters)

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

  
.....  
Signature of director

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

  
.....  
Signature of director/company  
secretary

JONATHAN DAVID MADGWICK  
.....  
Name of director/company secretary  
(block letters)