

**GREAT SOUTHERN VINEYARDS 2004 PROJECT (ARSN 108 137 284)**  
**GREAT SOUTHERN VINEYARDS 2005 PROJECT (ARSN 112 665 433)**  
**GREAT SOUTHERN VINEYARDS 2005 (PROJECT 2) (ARSN 112 665 433)**

## **Explanatory Memorandum to Growers** **(Project Investors)**

This Explanatory Memorandum is important and we recommend that you read it in full. It explains to you the resolutions set out in the Notice of Meeting and should be read in conjunction with the Notice of Meeting.

A number of capitalised terms are defined in the Glossary.

**Your vote is important because resolutions 2 and 3 to change the Responsible Entity cannot take effect unless at least 50% of ALL eligible Vinelots vote in favour of the resolutions.**

**If the resolutions are not passed, there is a high likelihood the Project will be wound up by the Receivers and Managers.**

**If you cannot attend the meeting in person then please sign and return the enclosed Proxy Form without delay.**

**A concurrent Meeting will be held on Wednesday 3<sup>rd</sup> February 2010 in Fremantle, WA to consider and vote on the Resolutions. Voting will be on a Project by Project basis. Proxy Forms must be returned by no later than 5.00pm WST on Monday 1<sup>st</sup> February 2010. This Explanatory Memorandum accompanies a Notice of Meeting.**

# 1. INTRODUCTION

The Great Southern Group of Companies (Great Southern) were placed into administration on 16 May 2009 and Receivers and Managers were appointed on 18 May 2009. On 19 November 2009, certain companies within the Great Southern Group, including the current Responsible Entity of the Project, Great Southern Managers Australia Limited (**GSMAL**), were placed into liquidation.

A group of Growers having substantial interests in Great Southern Vineyards 2004 Project (ARSN 108 137 284), Great Southern Vineyards 2005 Project (ARSN 108 137 293) and Great Southern Vineyards 2005 (Project 2) (ARSN 112 665 433) (the **Projects**) have been working since the appointment of Administrators to ensure that Growers' interests are protected and that all options, both short term and long term, are fully explored and considered for the benefit of Growers.

More than 5% of Growers in each of the Projects have now authorised Primary Securities to call concurrent meetings of Growers in the Projects to consider changing the Responsible Entity (RE) from GSMAL to Primary Securities and to make certain constitutional amendments.

The purpose of the meetings is to ensure the Projects can continue for at least the short term and to facilitate the consideration of various alternatives to hopefully achieve a better outcome for Growers other than winding up. Whilst a change of RE does not guarantee the viability of the Projects, it is believed that it will allow various options to be explored and considered and will provide Growers with the best prospect of achieving the best possible outcome in respect of their investment.

Primary Securities is one of the two main independent RE's in Australia in relation to agricultural schemes, and is one of four responsible entities in the Primary Securities Group. The role of Primary Securities is purely to represent Growers.

In order to effect the proposed changes, the resolutions need the requisite number of Growers to approve the changes. Details of the resolutions are set out in Section 2 of this Explanatory Memorandum. **YOUR VOTE IS IMPORTANT** as if the requisite voting thresholds are not achieved, it is considered **highly likely that Receivers and Managers appointed will seek to wind up the Projects**, as they have already sought to do on other vineyard projects for which they act as RE.

## 1.1 Background

Following the appointment of Administrators and Receivers and Managers, the most critical issue facing the Projects was the need to prune the vines and manage the vineyards so as to produce a commercial harvest for 2010 and beyond and maintain their commercial value.

The position of the Receivers and Managers was that they did not have the funds to undertake these critical works. The group of concerned Growers then arranged for the current vineyard manager and two winery companies who acquired grapes from the Projects

to undertake the required pruning and maintenance at their own cost, and to provide additional funding for matters such as crop insurance, and to be reimbursed out of the proceeds of the 2010 harvest. This arrangement was discussed with the Receivers and Managers in early August 2009, however despite the urgency it took some weeks before the Receivers and Managers signed a letter of understanding that would allow the arrangement to proceed. Whilst the vineyards are still being managed and maintained in accordance with the letter of understanding, the basis of the arrangement has not yet been formalised in formal contracts.

In September 2009, the Receivers and Managers advertised for expressions of interest in respect of a number of Great Southern's managed investment schemes, including the Projects. Through this process Primary Securities understands that one vineyard company submitted an expression of interest to acquire the underlying land and to do a scheme of arrangement in respect of the Projects. After discussions with the Receivers and Managers the offer was revised and re-submitted on 14 October 2009. On 25 November 2009 the Receivers and Managers advised that the secured creditors of Great Southern were not prepared to accept the offer and subsequently advised that in the absence of any other alternative they would have no option but to wind up the Projects.

## **1.2 Current Position**

There are a number of concerning issues for Growers. The most important of these are:

- (1) The current RE (GSMAL) is in liquidation, does not have access to funds to continue to manage the vineyards and intends, in the absence of another alternative, to seek to wind up the Projects.
- (2) The current RE is controlled on behalf of the secured creditors of Great Southern who have different interests to those of the Growers.
- (3) There has been little information provided in respect of harvest proceeds for 2009 and Growers have not been provided with a reconciliation or detailed information in respect of what return, if any, remains outstanding in respect of the 2009 harvest year;
- (4) On 30 September 2009, GSMAL lodged a notification with ASIC claiming relief from the obligation to comply with the reporting requirements in relation to the Projects for 3 months, but has still failed to lodge financial statements for the Projects;
- (5) The arrangements in place in respect of the 2010 crop have not been formalised and investors are relying on the good faith of the vineyard manager and winery companies to continue to maintain the vineyards. Whilst under these arrangements there is likely to be little, if any, return to investors for the 2010 year, the continued maintenance of the vineyards and production of a commercial crop, remains very much in the best interests of Growers; and
- (6) Options for the Projects need to be considered and explored, which may include an offer for a scheme of arrangement, re-negotiations with the vineyard manager and

winery companies for post 2010 or otherwise re-structuring the Projects. The Receivers and Managers have indicated that they will simply seek to have the Projects wound up which may remove the ability for these other options to be considered. Refer to Section 1.3 for further information in respect of the proposed approach should Primary Securities be appointed as RE to the Projects.

### **1.3 Proposed Approach**

Given the issues outlined in Section 1.2, it is proposed to seek to change the current RE to Primary Securities so as to allow:

- (a) A full and independent reconciliation and accounting for 2009 Harvest Proceeds to take place as soon as practicable;
- (b) Formal agreements to be executed with the vineyard manager and winery companies in respect of the 2010 harvest. (Further details on the arrangements are included in Section 3.1 of the Explanatory Memorandum);
- (c) Pursue with interested parties a possible Scheme of Arrangement in respect of the Projects;
- (d) In the absence of an outcome at (c), discuss alternate options (such as the arrangements in place for 2010) with interested parties or to otherwise consider other possibilities for the Projects for the next season;
- (e) Continue this process from year to year;
- (f) If no Scheme of Arrangement can be negotiated and there is no funding to pay for costs for the following season, to wind up the Projects.

**It is believed that this approach will provide the best opportunity to Growers to maximise the potential of their current investment.**

Investors should be aware that if suitable alternate arrangements have not been effected by the end of August in any year, the Projects would need to be wound up in any event. However, even in this scenario it is believed that Growers' interests will be best protected by having an independent RE control this process and to negotiate the allocation of any sales proceeds between the landowners and the Growers.

### **1.4 Fees and Costs**

To facilitate the meetings, the preliminary fees of Primary Securities have been paid by an interested party. However, there is no provision in the Constitutions for fees to the RE, once appointed. Primary Securities will need to be paid fees and to be reimbursed for some out-of-pocket costs.

Accordingly, it is proposed that each Grower will be charged a fee of \$25 per Vinelot (plus GST) as the Responsible Entity Fee for the period up to 30 September 2010 (and annually thereafter if the Projects continue). This fee will pay for:

- Book-keeping and accounting (but not the financial audit)
- Preparing and lodging the annual report and ASIC returns
- Keeping the registers
- Making amendments to the Constitution and Lease and Management Agreement
- Inspecting the vineyards and overseeing the work of third parties in relation to the Projects, including travel and accommodation
- Any consultants employed by the RE in relation to the Projects
- Any RE time spent reviewing any scheme of arrangement
- The Compliance Committee and any compliance auditor
- Postage, bank fees and printing costs (except in relation to the convening of any further meeting of Growers)

It is proposed that (as for the 2009 season) Net Harvest Proceeds shall be used to pay for Ongoing Maintenance Services (including any interest if those costs of been incurred in advance by a third party).

It is proposed that the RE be reimbursed out of Net Harvest Proceeds for any out-of-pocket costs incurred in relation to financial audit, any scheme of arrangement, holding any meeting, vineyard and produce insurance, and taking any action to protect the rights of Growers. It is possible that there may not be any Net Harvest Proceeds and the RE is therefore taking the risk that it may not be reimbursed for these costs.

By agreeing to the proposed resolutions, Growers are agreeing to be invoiced the proposed fee of \$25 per Vinelot (plus GST). If the responsible entity fee is not paid within 30 days of invoice, then the Grower will be invoiced a further \$50 as an administration fee. If these two fees are not paid, then the Grower may be invoiced a further \$100 to pay for the costs of enforcing collection. No right of termination on default is being inserted into the Constitution, however there is a right to put the Grower's Vinelots up for sale on the RE's website and to assign the Vinelots.

It is proposed that the RE fee of \$25 per Vinelot will be repaid out of, and to the extent of, any harvest proceeds for 2010 (after other operational management costs have been repaid but before distributions to Growers of Net Harvest Proceeds).

Should any Grower wish to pay by credit card, there will be an additional 2% fee.

Further information regarding the cost structures of the Projects are included in Section 2 of the Explanatory Memorandum.

## **1.5 State of the Viticulture Industry**

Many Growers will be aware that Australia-wide, the viticulture industry is depressed:

- The rise in value of the Australian dollar relative to the US dollar means that Australian wines have been more difficult to sell internationally and as a consequence, international sales have slumped.
- In many parts of Australia, vineyards are suffering from the problem of access to water.
- Many vineyards are unable to sell their grapes and are having to bulldoze their vines.

Fortunately, in the last few seasons, the Great Southern vineyards have had buyers for their produce. However, competition from other vineyards keen to sell their produce is keen and there is no certainty that these buyers will purchase the grapes from the Great Southern Vineyards after the 2010 season.

If there is no purchaser for the grapes, whoever is responsible for the vineyards will be obliged to prune and maintain the vineyards, the cost of which is between approximately \$4,000 and \$8,000 per hectare per annum. In Western Australia, the occupier of a vineyard that is not being maintained and suffers a plant disease risks an order under section 11 of the Plant Diseases Act to eradicate the disease. As Growers are lessees under the Lease and Management Agreement, they are the occupiers of the vineyards.

## **1.6 Benefits**

The main benefit to Growers of passing the resolutions is that control of the Projects is effectively passing to the hands of an independent company whose only obligation will be to look after the interest of the Growers.

Pursuant to section 601FD(1) of the Corporations Act, 2001, various duties are imposed on a responsible entity in addition to any other duties that a responsible entity may have at law. In particular the responsible entity of a registered scheme must:

- (a) exercise the degree of care and diligence that a reasonable person would exercise if they were in the responsible entity's position;
- (b) act in the best interests of the Growers and, if there is a conflict between the Growers' interests and its own interests, give priority to the Growers' interests;
- (c) treat the Growers who hold interests of the same class equally and Growers who hold interests of different classes fairly.

Continuation of the Projects in the short term may facilitate some scheme of arrangement which may be of benefit to Growers. Primary Securities has had preliminary discussions in this regard with an interested party.

If a scheme of arrangement does not eventuate, then the Projects may be able to continue from year to year on the same basis as for 2009/2010 in which the vineyard costs have been paid by third parties who have agreed to recover those costs plus interest from proceeds of grape sales.

If none of these alternatives takes place, then Primary Securities will terminate the Projects.

## **1.7 Risks**

The major risks to Growers with respect to the implementation of the resolutions are:

1. The fees that will be payable by Growers if the resolutions are carried are only sufficient to pay for the RE's administrative costs. There is no money for on-the-ground operations and it is not proposed to ask Growers to pay for on-the-ground operations. It is still possible that no viable arrangements or alternatives with respect to the Projects can be found for the next season and if no suitable arrangements are in place by 31 August in any year, the Projects may need to be wound up. In this scenario if this process is controlled by an independent RE, Growers can be assured that their interests are protected to the fullest extent possible.
2. The Proposed Resolutions are subject to certain matters, as detailed in Section 1.9. Most importantly, the implementation of the Proposed Resolutions are dependant upon similar resolutions being passed in respect of all of the Projects. If such resolutions are not also passed by investors in all of the Projects, the Proposed Resolutions will not be implemented in respect of any of the Projects.
3. Any claims by the current RE against Growers and/or the new RE that impact the viability of the Projects. Whilst considered unlikely, Primary Securities cannot provide any guarantee or assurance in this regard.

## **1.8 Information on Primary Securities**

Primary Securities is part of the Primary Securities Group which comprises four responsible entities, the main responsible entity being Primary Securities.

Primary Securities is one of two main independent responsible entities in Australia with extensive experience in acting as responsible entity in the agricultural sector and has the resources, skills and experience to act as RE in respect of the Projects. Primary Securities has issued capital of \$100,000.

The Primary Securities Group:

- has been operating managed investment schemes since 1999
- is independent from all parties associated with the Projects
- is solvent
- runs or has received conditional approval from the Australian Securities and Investments Commission to run 14 registered managed investment schemes including the Projects.
- has consented in writing to take on the role of responsible entity if all resolutions are passed and take effect.

Further details on the Primary Securities Group, including details on the board of directors and senior management team are available on the Primary Securities website, [www.primarysecurities.com.au](http://www.primarysecurities.com.au).

## **1.9 Conditionality of Proposed Resolutions**

All resolutions to be put to the meeting of Growers, as set out in the Notice of Meeting, are inter-conditional. This means that no single resolution will take effect unless all other resolutions before the meeting are passed.

The resolutions are also conditional on similar resolutions being passed by Growers in all of the Projects. Importantly, the 2005 Project is on the same property as the 2004 Project. It is considered necessary to have resolutions passed by Growers in all of the Projects so as to provide the economies of scale and operational efficiencies that would not exist unless all of the Projects are managed by a single RE, that is, Primary Securities.

The resolutions are also subject to Primary Securities having not withdrawn before the commencement of the meeting, its written consent to act as the replacement responsible entity for the Projects.

## **1.10 Other important information**

### **1.10.1 Taxation Considerations**

The Projects were originally covered by Product Rulings which have now ceased to have effect, as the eligibility for initial tax deductions has expired. On this basis, the proposed arrangements are not expected to have any impact on the deductions in respect of application monies already claimed.

However, as the Projects are no longer covered by Product Rulings, this means that the \$25 fee may not be deductible except out of proceeds, depending on the applicability of the non commercial loss provisions of the Income Tax Assessment Act.

Investors should seek their own independent taxation advice in respect of all taxation matters associated with the Proposed Resolutions.

### **1.10.2 Financed Investors**

Some Growers entered into the Projects by obtaining a loan for the subscription monies to obtain an interest in their Project. This loan documentation may contain undertakings to not do certain things without the approval of the lender.

If you obtained a loan in order to enter your Project you should refer to your loan documentation and seek appropriate advice (including if there are any requirements or documentation required by the Lender) before voting on the resolutions.

### **1.10.3 ASIC License Requirements**

On 18 December 2009, ASIC offered to vary the Australian Financial Services Licence of Primary Securities to enable it to operate the Projects, should Growers appoint it to do so.

Accordingly, Primary Securities has, or will have, the required authority to act as RE for the Projects if the resolutions are approved.

### **1.10.4 Responsibility Statement and Disclaimer of Liability**

The information in this Explanatory Memorandum has been prepared by, or on behalf of Primary Securities. The Growers who convened the meeting are not responsible for this Explanatory Memorandum.

Changes to the Explanatory Memorandum (including the Annexure) which are not materially adverse to Growers may be published on the website of Primary Securities ([www.primarysecurities.com.au](http://www.primarysecurities.com.au)) and if so those changes are incorporated into the Explanatory Memorandum. Growers are encouraged to check the website regularly for any changes, especially in the period leading up to the lodgement of proxy forms and the day of the meeting.

### **1.10.5 Date of Document**

This Explanatory Memorandum is dated 21<sup>st</sup> December 2009.



Rob Garton Smith  
Managing Director  
Primary Securities Ltd

## **2. PROPOSED RESOLUTIONS**

### **2.1 Introduction**

There are a total of 3 resolutions included in the Notice of Meeting. These resolutions are set out in the Annexure to this Explanatory Memorandum.

Resolution 2 and 3 are each Extraordinary Resolutions. To be passed they require at least 50% of the total votes that may be cast by all Growers entitled to vote on the resolution **(including Growers who are not present whether in person or by proxy or attorney)**. This means that the resolution will not be passed unless it has the support of at least 50% of all Vinelots in the Projects (excluding ineligible Vinelots).

Resolution 1 is a Special Resolution. To be passed this resolution requires at least 75% of the total votes that may be cast by Growers who are entitled to vote on the resolution and who are present at the meeting (in person or by proxy).

***It is extremely important that you either submit the enclosed Proxy Form or you attend the meeting in person.***

### **2.2 Conditionality of Proposed Resolutions**

All resolutions to be put to the meeting of Growers, as set out in the Notice of Meeting, are inter-conditional. This means that no single resolution will take effect unless all other resolutions before the meeting are passed.

The resolutions are also conditional on similar resolutions being passed by Growers in all of the Projects. It is considered necessary to have resolutions passed by Growers in all of the Projects so as to provide the economies of scale and operational efficiencies that would not exist unless all of the Projects are managed by a single RE.

### **2.3 Consequence of Resolutions Not Being Passed and not taking Effect**

If any of the resolutions are not passed, then the current insolvent responsible entity, **GSMAL**, will remain as the responsible entity. It is financially unable to manage your Project and it is considered highly likely that GSMAL will seek to wind up the Project, as it has sought to do with other vineyard projects for which it acts as RE. In these circumstances Growers will lose their investment.

### **2.4 Resolution 1 – Changes to the Project Constitution and Lease and Management Agreement**

Your Project is governed by a legal document known as a project constitution.

In return for Primary Securities agreeing to take on the role of the responsible entity, and so as to provide greater optionality and flexibility for the Projects, Growers are being asked to

approve the following key changes to the Project Constitutions and to the Lease and Management Agreements.

A summary of these changes is as follows (refer to the Annexure for the full text):

Permit the RE to:

- protect the interest of the Growers on the title in various ways
- commence proceedings to protect the interest of Growers
- enter into one consolidated Lease and Management Agreement for the Project
- vary that agreement
- sell on termination for cash or shares
- make interim distributions

Remuneration to RE:

- Fee of 33% of Net Harvest Proceeds (or other fixed fee) to be abolished
- Fee to be \$25 per Vinelot to cover RE's time through to end of September each year
- Certain out-of-pocket costs to be paid out of Net Harvest Proceeds or any other benefit (Ongoing Maintenance Services, financial audit, any scheme of arrangement, holding any meeting, insurance, and taking any action to protect the rights of Growers)
- The RE will refund the \$25 fee and other reimbursements before distributing Net Proceeds of Sale
- In the event of 30 days' default by any Grower, an administrative fee of \$50.00, and in the event of a further 30 days' default, an additional administrative fee of \$100
- Charge a 2% fee if any Grower wishes to pay by credit card
- On default in payment of fees to the RE, the RE may offer the Vinelots of the Grower on its website to other Growers or any other person, sell the Vinelots, and pay the price to the Grower after deducting the outstanding fees and costs

RE may terminate Project by end of August in any year if there is no source of funding for the following season.

RE may enter into a conditional capital reconstruction, subject to approval of 75% of members voting.

On termination, RE may rescind the Lease and Management Agreement and any head-lease.

Viticulture Expert's Report to be optional.

Communications to Growers may be sent electronically.

Only fire insurance to be taken out (hail and other insurance removed).

RE not obliged to pay for Ongoing Management Services unless funds are available.

RE not obliged to pay head-lease outgoings.

***The above description of the changes to the Project Constitution and Lease and Management Agreement are a summary only. All of the amendments are set out in detail in the Annexures and you should read them in full. The RE may also make other non-prejudicial amendments to the Constitution and Lease and Management Agreement (such as the address for service of notices of the RE).***

## **2.5 Resolution 2 – Removal of Existing RE**

Resolution 2 seeks to remove the current RE, GSMAL, as responsible entity for the 2004 Project.

GSMAL is insolvent and is in liquidation. If GSMAL is not removed as RE it is highly likely GSMAL will seek to immediately wind up the Project.

If Resolution 2 is not passed then Resolution 3 cannot be passed.

If Resolution 2 (removal of existing RE) is passed but Resolution 3 (Appointment of new RE) is not passed and does not take effect, then Resolution 2 will not take effect and the current insolvent RE, GSMAL, will remain as the RE.

## **2.6 Resolution 3 – Appointment of Primary Securities as new RE**

Resolution 3 seeks to appoint Primary Securities as the new RE for the Project.

Resolution 3 is subject to and conditional on:

- (1) Resolution 1 and Resolution being passed; and
- (2) All of the resolutions contained in the notices of meeting of all of the Projects which are dated 21 December 2009, being passed.

### **3. MATERIAL AGREEMENTS AND ARRANGEMENTS**

#### **3.1 Arrangements in respect of the 2010 Harvest**

On 19 August 2009 the Supreme Court of Victoria issued general orders in respect of a number of projects for which GSMAL acts as RE, including the Projects. Those orders provide a basis for the Receivers and Managers of the Great Southern group:

- (a) to incur reasonable expenditure and reasonable remuneration in the care, preservation, protection and/or realisation of the scheme property;
- (b) to be entitled to indemnify themselves for their reasonable expenditure and reasonable remuneration out of the scheme property and the product thereof; and
- (c) be entitled to a lien over the scheme property and the product thereof and to secure the same in priority to all other charges thereon.

Under these orders, the Receivers and Managers will be entitled to recover any reasonable costs as set out at (a) above, from the 2010 or subsequent year's harvest proceeds. No information is publicly available in respect of what costs, if any, have been incurred by the Receivers and Managers in respect of the Projects.

On the 28 August 2009 the Receivers and Managers entered into a letter of understanding with Quenby Viticultural Services Pty Ltd ("QVS"), the incumbent provider of Vineyard management services in respect of the Projects, to undertake vineyard management services for the 2010 season at their own cost, to be reimbursed out of and to the extent of harvest proceeds for 2010 pursuant to the lien the Receivers and Managers have in respect of the Projects.

As at the date of this Explanatory Memorandum, the arrangements with QVS have not been formalised and no formal grape sale contracts have been entered in respect of the 2010 harvest. It is the intent of Primary Securities, if appointed as RE, to formalise vineyard management services and grape sale contracts for the 2010 season pursuant to the broad understanding of QVS and the relevant winery companies.

The practical effect of these arrangements is that all management and operational costs will be recovered from 2010 harvest proceeds before Growers would be entitled to any distribution. This outcome is regardless of whether the Proposed Resolutions are approved or not. However, in the absence of these arrangements it is likely that no commercial crop would be produced for 2010 and that the quality and condition of the vineyards would decline dramatically.

## **4. QUESTIONS AND ANSWERS**

### **4.1 Is it important that I vote?**

Yes – the resolutions can only be passed if the required number of Growers actually vote. In particular, Resolutions 2 and 3 require 50% of ALL Vinelots for the resolution to be passed, whether Growers attend the meeting or not.

### **4.2 What will happen if the Resolutions are not passed?**

If the resolutions are not passed, GSMAL will continue to be the RE for the Projects and it is considered highly likely they will seek to wind up the Projects.

### **4.3 What will happen if the Resolutions are passed?**

If the resolutions are passed, Primary Securities intends to follow the proposed approach set out at section 1.3 of the Explanatory Memorandum. In particular it will reconcile and account for 2009 harvest proceeds, formalise arrangements for the 2010 harvest and then seek alternatives for the longer term, primarily to seek scheme of arrangement proposals from interested parties or otherwise negotiate arrangements for post 2010.

### **4.4 Why do I have to pay a fee of \$25 per vinelot – there weren't supposed to be any on-going costs in respect of my Project?**

There will be significant costs to Primary Securities to become the RE and it cannot do this for nothing. As GSMAL is insolvent, it is not possible for the Projects to continue under the original arrangements. Primary Securities has endeavoured to minimise the costs that Growers will need to bear, which allow an independent RE to be appointed and to protect the interests of Investors. The additional fee will be reimbursed to Project Investors if there are sufficient proceeds available for the 2010 harvest after reimbursement of operational costs.

### **4.5 I want to approve the Resolutions but I don't want to pay any additional fees**

The payment of the fee is what facilitates the proposed approach to the Projects as set out in Section 1.3 of the Explanatory Memorandum. Primary Securities does not receive any other fees and will incur significant costs which result from being RE (such as audit costs, professional indemnity insurance costs, administrative costs in managing the Projects, accounting requirements, negotiating future vineyard management contracts and maintaining communications with Growers).

There will be an additional administrative fee payable if you do not pay the \$25.00 fee. If Primary Securities commences proceedings to recover the fee, a further \$100 will be payable.

#### **4.6 Will the success of the Resolutions guarantee the viability of the Projects?**

No. Whilst the resolutions will facilitate a consideration of alternatives, there is no guarantee that a long term solution will be found. However, if the resolutions are not passed, the opportunity to consider other alternatives may be lost. In addition the Projects are likely to be wound up by GSMAL. If Primary Securities proceeds to wind up the Projects, it will only be after exhausting all alternatives to maximise returns to Growers

#### **4.7 Why should I bother voting if my Project may be wound up in any event?**

The proposed resolutions will allow the consideration of other possible alternatives that may realise more value to Growers than the winding up of the Projects. Even if the Projects are wound up, it is considered beneficial to Growers to have this process controlled by an independent RE, that will seek to protect Growers' interests and to maximise the likelihood of receiving some compensation in respect of a winding up.

#### **4.9 I have a loan still outstanding in respect of my interest in the Project. What are the implications for the loan if the Resolutions are passed.**

This will depend on your financier and your original loan agreements. You should seek your own advice in this regard.

#### **4.10 Why are the resolutions dependant on the outcome of all of the Projects?**

The 2004 and 2005 Projects are on the same property and the 2005(2) project includes some properties in the vicinity of that property. There are significant economies of scale and operational efficiencies for all of the Projects to have the same RE.

#### **4.11 Are there likely to be any other offers to take over the RE of the Projects?**

Whilst this is always possible, Primary Securities is not aware of any other interested parties and no alternative offers have emerged as at the date of this Explanatory Memorandum.

#### **4.12 I have not received any distributions from the Project for 2009 – am I likely to?**

Primary Securities intends to undertake a full reconciliation and accounting for the 2009 harvest proceeds and will provide further information to Growers once this has been complete. Until this process is undertaken it is not possible for Primary Securities to know if any amounts will be paid to Growers.

#### **4.13 If the RE is changed, will I receive future cash distributions from the Project?**

This will depend on what longer term outcome is achieved in respect of the Project. Whilst no guarantee or assurance can be provided in this regard, the opportunity for the Project to deliver some return or value is considered most likely through the successful passing of the Proposed Resolutions.

#### **4.14 I have read that the viticultural industry is in the doldrums. Is the Project even worth saving?**

Whilst it is true the viticultural industry is facing some difficulty and values have been significantly affected, all industries face cyclical patterns and therefore if a longer term solution for the Project can be implemented, there is a greater prospect that the industry and the value of your investment will recover over a longer term period.

#### **4.15 If the Project is wound up, do I recover any value?**

This is not possible to ascertain at the present time. However, it is believed that Growers interests will be best served by having an independent RE oversee any winding up of the Project and to negotiate the allocation of value between the landowner and the leasehold interests.

#### **4.16 Why is Primary Securities putting up the resolutions?**

Primary Securities was approached by or on behalf of some concerned Growers in the Projects. It has the experience and expertise to act as an independent RE and agreed to arrange the convening of a meeting of Growers to consider the Proposed Resolutions. Primary Securities will receive a Responsibility Entity Fee and some cost reimbursements (and on default, certain administrative fees) as detailed in this Explanatory Memorandum. Primary Securities has no conflicts of interest in respect of the Projects.

#### **4.17 Who will manage the vineyards if Primary Securities is appointed as RE?**

Primary Securities will seek to formalise arrangements with the current vineyard manager, QVS, to manage the vineyards until the completion of the 2010 season. It will then consider longer term options for the Projects including the appointment, if required, of QVS or other independent vineyard management past 2010.

#### **4.18 I have other Great Southern investments – will Primary Securities be looking to put similar proposals to investors in the Projects?**

This Explanatory Memorandum relates to the Projects, that is, Great Southern Vineyards 2004 Project (ARSN 108 137 284), Great Southern Vineyards 2005 Project (ARSN 108 137 293) and Great Southern Vineyards 2005 (Project 2) (ARSN 112 665 433).

Whilst a related company to Primary Securities was a proponent in respect of certain Great Southern pulpwood projects, this is not relevant to the Proposed Resolutions. Other than in respect of the Projects and certain Great Southern forestry projects, Primary Securities is not currently engaged by any person in respect of any other Great Southern Projects. Investors in other Great Southern projects should seek their own independent advice in respect of those investments.

#### **4.19 How do I vote without attending the meeting?**

We are not expecting many Growers to attend the meeting as most Growers are in the Eastern States. To vote, you should complete and forward a Proxy Form, which is attached to the Notice of Meeting. You can appoint your own proxy or appoint the Chairman of the meeting to vote on your behalf and as directed by you.

#### **4.20 Where can I find out further information?**

Further information in respect of Primary Securities can be found at its website, [www.primarysecurities.com.au](http://www.primarysecurities.com.au). Growers should seek their own independent financial and taxation advice in respect of this Explanatory Memorandum and the Proposed Resolutions.

## 5. GLOSSARY

**“2004 Project”** means the Great Southern Vineyards 2004 Project, ARSN 108 137 284.

**“2005 Project”** means the Great Southern Vineyards 2005 Project, ARSN 108 137 293.

**“2005(2) Project”** means the Great Southern Vineyards 2005 (2) Project, ARSN 112 665 433.

**“ARSN”** means Australian Registered Scheme Number.

**“ASIC”** means the Australian Securities and Investments Commission.

**“Explanatory Memorandum”** means this Explanatory Memorandum to Growers.

**“Extraordinary Resolution”** means an “extraordinary resolution” as defined in the Corporations Act 2001, and requires at least 50% of the total votes that may be cast by all members entitled to vote on the resolution (including members who are not present in person or by proxy.)

**“Grower”** means a person, company or other entity which is recorded in the Project’s register of members as holding one or more Vinelots (or leased areas) in the Project.

**“GSMAL”** means Great Southern Managers Australia Limited ACN 083 825 405 (Receivers and Managers Appointed) (In Liquidation)

**“Meeting”** means the meeting of Growers to be convened pursuant to the Notice of Meeting.

**“Notice of Meeting”** means the notice of meeting dated on or about xx December 2009 accompanying this Explanatory Memorandum.

**“Primary Securities”** means Primary Securities Ltd ABN 96 089 812 635, holder of Australian Financial Services Licence No 224107.

**“Primary Securities Group”** means Primary Securities Ltd and all other companies in the same group of companies.

**“Proposed Resolutions”** are the resolutions to put at the meeting, as set out in the Notice of Meeting.

**“Project”** means the 2004 Project.

**“Project Constitution”** means the constitution of the Project which governs the establishment and the operation of the Project, and sets out the rights and obligations of the Responsible Entity and each Grower.

**“Projects”** means the 2004 Project, 2005 Project and the 2005(2) Project.

**“Growers”** means Investors in the 2004 Project.

**“RE”** means a “Responsible Entity” as defined in the Corporations Act 2001.

**“Receivers and Managers”** means James Gerard Thackray, Simon Andrew Read, Colin McIntosh Nicol and Anthony Gregory McGrath in their capacity as receivers and managers of GSMAL.

**“Special Resolution”** means a “special resolution” as defined in the Corporations Act 2001, and requires at least 75% of the total votes cast by all members entitled to vote on the resolution.

**“Vinelot”** means an interest in the Project, as defined in the Project Constitution, Lease and Management Agreement and product disclosure statement.

# **ANNEXURE:**

## **AMENDMENTS TO THE CONSTITUTION**

All of the changes to the Project Constitution under Resolution 1 are set out below:

Amend clause 12 of the Constitution by adding the following clause as a new clause 12.6:

### **Additional powers to the Responsible Entity**

12.6 Each Grower agrees that the Responsible Entity shall have irrevocable power as the agent of the Grower and whether in the name of the Grower or the Responsible Entity:

- (a) **[Head-Lease]** in its name or in the name of any custodian or agent for the Responsible Entity, to assume any interest in any head-lease or other lease under which the Responsible Entity or any former responsible entity leases any of the Vineyards that relate to the Project, to register the head-lease or other lease on the relevant certificate of title, and to exercise all the powers over and in respect of the head-lease or other lease which it could exercise if it were the absolute and beneficial holder of the head-lease or other lease including the power to vary, cancel, enter into and negotiate further leases, options to renew, rent reviews, renewals, options, and accept surrenders of leases, attend to termination of lease, and attend to the yielding up provisions on the expiration of lease;
- (b) **[caveat]** to lodge and withdraw a subject to claim caveat against the certificates of title in relation to Vinelots; and
- (c) **[Lease and Management Agreement]** to enter into a consolidated Lease and Management Agreement being one document in which each Grower contracts severally with the Responsible Entity with the descriptions of the Grower, Vineyard and Vinelot being as described per the Register;
- (d) to enter into any contracts with any person which have the effect of varying, or replacing the Lease and Management Agreement in order to better achieve the purposes of the Project provided that no variation or replacement contract may be entered into which the Responsible Entity reasonably considers adversely affects Growers' rights except pursuant to a special resolution (as defined in the Corporations Act) of Growers;
- (e) if considered in the interest of the Grower for the better protection of the Grower, to register the Lease and Management Agreement or an abbreviated or collateral form of the Lease and Management Agreement which protects the leases under the Lease and Management Agreement in relation to all Vinelots upon the certificate of title of the Land;
- (f) **[sale on termination]** upon the termination of the Project, or earlier after the passing of a resolution at a meeting of Growers in terms which support the proposed sale or assignment, to sell or assign all right, title and interest of the Grower in relation to the Project, whether for money, shares or some other consideration;
- (g) **[Proceedings to protect Vinelots]** to take any action (including Court action and the payment of Rates and Taxes and Variable Outgoings, as defined in the Lease and Management Agreement) necessary or desirable to protect or preserve the Grower's right to use their Vinelot, should that right be threatened, challenged or compromised, or otherwise if thought fit by the Responsible Entity;

- (h) **[legal and arbitration proceedings]** to commence any other legal or arbitration proceedings to protect the interest of the Grower;
- (i) **[settle and compromise]** to receive, collect, pay, settle and compromise any payments, debts, obligations, judgments or settlements in relation to the Project; and
- (j) **[other]** to execute any deed, agreement, certificate or other document and to do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity in this sub-clause.

### **Viticulture Expert's Report to be optional**

Amend clause 18.1 of the Constitution by deleting the word "will" in the first line and inserting in lieu thereof the word "may".

### **Alternative remuneration of the Responsible Entity**

Amend clause 26 of the Constitution by renumbering Clause 26 as 26.1 and inserting new paragraphs (b), (c) and (d) as follows and by re-lettering the existing paragraphs (b) and (c) as paragraphs (e) and (f) respectively:

- (b) **[Responsible Entity Fee]** From the date of appointment of Primary Securities Ltd as responsible entity of the Project, the Grower shall pay to the Responsible Entity an annual responsible entity fee of \$25.00 per Vinelot in respect of the period from 1 October (or appointment) to the following 30 September (or part thereof) that the Project continues and is not (on 1 October) in the process of being wound up. The responsible entity fee shall be for carrying out responsible entity services in relation to the Project.
- (c) **[Administrative fees on default]** From the date of appointment of Primary Securities Ltd as responsible entity of the Project, in the event that the Grower fails to pay the responsible entity fee of \$25.00 per Vinelot within 30 days of an invoice being sent to the Grower, that Grower shall pay to the Responsible Entity an additional administrative fee of \$50.00 to pay for the time and cost of sending the Grower a reminder letter. In the event that that Grower fails to pay the responsible entity fee of \$25.00 per Vinelot and the administrative fee of \$50.00 (per Grower) within 30 days of being sent the reminder letter, in addition to any costs and other fees that may be claimed in any legal proceedings, that Grower shall pay to the Responsible Entity an additional administrative fee of \$100.00 for the time and cost involved in enforcing the obligation to pay the responsible entity fee.
- (d) **[Costs of carrying out additional powers]** The Responsible Entity may deduct from the Proceeds Fund at any time by way of payment or reimbursement all costs and expenses properly paid or incurred by the Responsible Entity in carrying out any of the powers specified in sub-clause 11.6 paragraphs (a) and (b) and in sub-clause 12.2 paragraphs (a), (b), (e), (g), (h) and (i).

Amend the new paragraph (e) by deleting the reference to "paragraph (a)" and in lieu thereof inserting "paragraphs (a), (b), (c) and (d)".

Add a new paragraph (g) as follows:

- (g) **[Credit card fee]** In the event that the Grower wishes to pay any amount to the Responsible Entity by credit card, the Responsible Entity may levy a fee of 2% of the amount payable.

### **Consequences of Default**

Add a new Clause 26.2 as follows:

- 35.3 If the Grower has failed to pay the responsible entity fee of \$25.00 per Vinelot, the administrative fee of \$50.00 and an additional administrative fee of \$100.00 (or part of any of these) and the

Responsible Entity has given the Grower a default notice specifying that the Responsible Entity will assign the Grower's Vinelots if the outstanding fees are not paid in full within 30 days, and if on the expiration of the 30 days, the Grower still has not paid the outstanding fees in full, then the Responsible Entity may invite other Growers (which invitation may be on its website) or any third party (including associates of the Responsible Entity) to submit tenders for the Vinelots of the Grower and assign the interest of the Grower in the Vinelots to the highest bidder (whether in cash or other consideration). Thereupon, if the Responsible Entity has received cash consideration, the Responsible Entity shall deduct the balance of fees outstanding and pay the Grower the balance. If the Responsible Entity has received consideration other than cash, the Responsible Entity may sell the other consideration or part thereof in such manner as it thinks appropriate, retain the outstanding fees and the costs of sale and assign the balance to the Grower. If there remain outstanding fees then the Grower shall remain obliged to pay those outstanding fees to the Responsible Entity. The Grower appoints the Responsible Entity as its attorney to enter into and execute for and on behalf of the Grower such documents and do such other things as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to the provisions of this clause.

### **Reimbursement of Certain Costs out of the Proceeds Fund**

Delete Clause 30.2 and insert in lieu thereof the following [paragraphs (b), (c) and (j) repeat the existing paragraphs of the clause, the rest are new]:

"30.2 The Responsible Entity shall as part of its remuneration and in addition to the remuneration referred to in Clause 26 be reimbursed for the following costs and expenses out of the Proceeds Fund or from out of any other benefit provided to Growers:

- (a) any costs and expenses of the Responsible Entity in relation to Ongoing Maintenance Services (and interest, if the Ongoing Maintenance Services are provided by any third party at their cost to be recouped from Gross Proceeds of Sale as defined in the Agreement plus interest);
- (b) the Costs of Harvesting (as that term is defined in the Agreement);
- (c) any income tax or other tax or duty payable under the Income Tax Assessment Act 1936 of the Income Tax Assessment Act 1997 or any other fiscal legislation (including without limitation, any GST that has previously been reimbursed) in respect of the Project or the Investments;
- (d) the cost of taking any action necessary or desirable to protect or preserve the Grower's right to use their Vinelot, should that right be threatened, challenged or compromised;
- (e) the reasonable fees of the Auditor in connection with the audit, any inspections or inquiries provided for by clause 34 and the auditing of accounts and the preparation and lodgement of taxation returns in relation to the Project;
- (f) any costs or expenses reasonably and properly incurred or paid by the Responsible Entity in connection with any rearrangement of the capital structure of the Project;
- (g) the cost of insurance required to be taken out under Clause 12 of the Lease and Management Agreement; plus
- (h) the costs of convening and holding any meeting of Growers;
- (i) fees payable to any regulatory authority.

Remove paragraphs (c), (e) and (h) of paragraph 30.3 [so that the RE no longer is obliged to pay for audit costs, the cost of rearrangement of the capital structure of the Project and the costs of convening and holding any meeting]

### **Priority Distribution from Proceeds Fund**

Add a new clause 30.4 of the Constitution as follows:

**“30.4 Refund of \$25 fee and RE costs to Growers**

Prior to making any distribution of Net Proceeds of Sale to Growers, the Responsible Entity shall (to the extent funds are available in the Proceeds Account) repay to Growers the additional fee of \$25 per Vinelot payable under Clause 26 paragraph (b) plus GST plus interest on the whole thereof from the date upon which the fee and GST were invoiced, at the rate of 10% per annum, and any payment made to the Responsible Entity under Clause 30.2.”

### **Interim Distributions**

Amend clause 31 of the Constitution by inserting the following sub-clause as a new clause 31.5:

**“31.5 Interim Distributions from Proceeds Fund to Growers**

Notwithstanding clause 31.1, the Responsible Entity may, in its absolute discretion, from time to time and at any time make interim distributions to Growers out of the Proceeds Fund, provided that the Responsible Entity has first prepared accounts for that period in accordance with generally accepted accounting standards.”

### **Termination of the Project if no source of funding**

Amend clause 35.2 of the Constitution by inserting a new paragraph (c) [in relation to when the Project may be wound up] as follows and re-lettering the existing paragraphs (c) and (d) as (d) and (e) respectively:

- (c) if on or before 31 August in any Financial Year the Responsible Entity has not been able to enter into any arrangement with any person to fund the costs of maintenance of the Vineyard and harvesting for that Financial Year and as a consequence considers that it is in the best interest of Growers that the Project be wound up;

### **Procedure for Capital Reconstruction**

Amend clause 35 of the Constitution by inserting a new clause 35.3 as follows:

35.3 The Responsible Entity may at any time enter into an arrangement for the termination of the Project and the sale of the interest of the Growers in the Project (whether for cash or shares) or other form of capital reconstruction conditional upon the approval of the Growers at a meeting of Growers called for that purpose.

35.4 The Responsible Entity shall then convene a meeting of Growers seeking the approval of the Growers and setting out in writing the terms and conditions of the arrangement.

35.5 The arrangement will become binding on all Growers in the Project if and only if:

- (a) a resolution is passed at a meeting of Growers which approves the arrangement, where that resolution is passed by a majority in number of Growers present and voting at the meeting (whether in person or by proxy) and passed by 75% or more of the votes actually cast on the resolution; and

- (b) the Responsible Entity has sent a notice of meeting to the Growers which contains, or is accompanied by, the terms and conditions of the arrangement, explaining the effect of the proposed arrangement on the Project and the Growers, and providing all information which is material to the making of a decision by a Grower whether or not to approve the arrangement.

35.6 An arrangement approved under clause 35.5 is binding on all Growers of the Project in accordance with its terms and conditions.

### **Additional Powers of Responsible Entity on Termination**

Amend clause 36.1 of the Constitution by inserting new paragraphs (a) and (b) as follows and re-lettering the existing paragraphs (a) and (b) as (c) and (d) respectively:

- (a) rescind the Lease and Management Agreement;
- (b) assign, rescind or surrender any head-lease or other lease under which the Responsible Entity leases any of the Vineyards that relate to the Project;

### **Electronic Communications to Growers**

Amend clause 41.1 of the Constitution by inserting the following at the end of that clause:

The Responsible Entity may send or deliver any document required to be sent or delivered to a Grower (or to Growers as a whole) under this Constitution (including the Expert's Report under clause 33.13), other than a document where the process or method for sending that document is regulated by the Corporations Act (such as notices of meeting and scheme annual reports), by making that document available on the website of the Responsible Entity for the period commencing on the date the document is, apart from this clause, required to be sent or delivered to a Grower and ending no earlier than 6 months later.

## **AMENDMENTS TO THE LEASE AND MANAGEMENT AGREEMENT**

All of the proposed changes to Growers' Lease and Management Agreements are set out below:

### **RE not obliged to pay for Head-Lease Costs and Rates and Taxes [the Land Owner must pay for these]**

Delete clause 4.

### **Insurance (so that only fire insurance is required and this cost will be paid out of Net Harvest Proceeds)**

Delete the words "hail, frost," and "and/or other risks, including but not limited to loss of income" in clause 12.1(b).

Delete "and the Grower must bear the costs of such insurance".

### **RE only obliged to carry out Ongoing Maintenance Services to the extent that funds are available**

Delete clause 16.1 and insert in lieu the following:

"Notwithstanding any provision to the contrary in this Agreement, the Responsible Entity does not warrant that it has the funds, resources, staff, personnel, consultants, specialist services, plant, and equipment to carry out the Ongoing Maintenance Services and to harvest, deliver and sell and is only

obliged to carry out Ongoing Maintenance Services and to harvest, deliver and sell to the extent that it is able to negotiate with third parties to provide the same at their cost and be recouped from Gross Proceeds of Sale.

### **Correct typo**

Amend clause 21.2 paragraph (b) by deleting the reference to clause 31.2 and inserting in lieu thereof “clause 30.2”.

### **Fee**

Delete Clause 22.5 (Fifth Period) and insert the following in lieu:

Following the appointment of Primary Securities Ltd as Responsible Entity, no fee shall be paid to the Responsible Entity under this Schedule (except to the extent to which any amount may be payable to the former responsible entity Great Southern Managers Australia Limited).

### **Removal of Fee of 33% of Net Harvest Proceeds**

Delete Item 7.5 of Schedule 1.