

2001 Q21

Tree Supply and Planting Agreement

Almond Land Pty Ltd

Each Several Grower

2001 Timbercorp Almond Project

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

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Details of this Tree Supply and Planting Agreement

Date of the Agreement:

This Agreement is made on

30 June
April

2001.

Parties to the Agreement:

1. ALMOND LAND PTY LTD

ACN 091 460 392
Level 5, 95 Queen Street
Melbourne Victoria 3000

(Land Owner)

2. The Grower named in Schedule 1 to this Agreement

(Grower)

Background to the Agreement

- A. The Responsible Entity intends to establish a project for the management and cultivation of an almond orchard and harvesting and processing of almonds for commercial gain. The Land Owner and the Grower will participate in that project and associate themselves as joint venturers.
- B. The Land Owner has purchased the Almond Trees from Select for sale to Growers for planting on the Grower's Almondlots.
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The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

| | |
|-----------------------|---|
| Administrator: | has the meaning given to it in section 9 of the Corporations Law; |
| Almondlot: | each separate identifiable area of the Land comprising approximately 0.25 hectares on which a Grower will carry on the business of primary production in a joint venture with the Land Owner and includes the Capital Works and the Water Licences attributed to the Project. |

| | |
|---|---|
| Almonds: | all almonds produced on the Growers' Almondlots or the Orchard whether whole, kernel and/or nut and whether harvested or unharvested. |
| Almond Trees: | the almond trees sold by the Land Owner to the Grower under this Agreement and which are to be grown on the Orchard. |
| Almondlot Management Agreement: | the agreement of that name between each Grower and AMPL made on or about the date of this Agreement. |
| AMPL: | Almond Management Pty Ltd (ACN 094 429 419) and its permitted assigns and successors. |
| Best Horticultural Practice: | sound horticultural and environmental practices and industry practices for similar orchards. |
| Business Day: | a day other than a Saturday, Sunday or a public holiday in Victoria. |
| Capital Works: | the infrastructure and capital works that the Land Owner has agreed to carry out, at its cost, under the Licence and Joint Venture Agreement. |
| Constitution: | the constitution that governs the Project. |
| Controller: | has the meaning given to it in section 9 of the Corporations Law; |
| Encumbrances: | all mortgages, charges, liens, bills of sale, pledges, options, title retentions and other encumbrances or securities or adverse interests whatsoever. |
| Force Majeure: | has the meaning given in clause 8.4. |
| Grower: | each several person (or in the case of joint applicants or successors or permitted assigns, each of those persons) who becomes a party to the Constitution (as a Grower), and includes the Land Owner, who as a consequence of entering into a Licence and Joint Venture Agreement is a joint venturer with a Grower. |
| GST: | a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law; |
| GST Law: | the same as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended); |
| Joint Venture: | the joint venture between each Grower and the Land Owner, constituted under the Licence and Joint Venture Agreement; |
| Joint Venturers: | each Grower and the Land Owner, comprising a Joint Venture; |
| Land: | the land on which the Orchard is to be established; |
| Land Owner: | Almond Land Pty Ltd (ACN 091 460 392) and its permitted assigns and successors. |
| Licence and Joint Venture Agreement: | the agreement of that name between the Land Owner as licensor and the Grower as licensee in relation to the Grower's Almondlots and the agreement constituting the joint venture between the Grower and the Land Owner; |

| | |
|--------------------------------|--|
| Orchard: | the almond orchard to be established on the Land under this Agreement. |
| Participating Interest: | has the meaning given to that expression in the Constitution. |
| Plantable Portion: | in relation to the Land, a portion of that land in respect of which Almond Trees are planted or able to be planted. |
| Planting Works: | the planting works that the Land Owner will perform under clause 5 of this Agreement. |
| Prescribed Proportion: | has the meaning given to that expression in the Licence and Joint Venture Agreement; |
| Project: | the 2001 Timbercorp Almond Project promoted by the Responsible Entity relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain. |
| Responsible Entity: | Timbercorp Securities Limited (ACN 092 311 469) of Level 5, 95 Queen Street, Melbourne, Victoria 3000 |
| Select: | Select Harvests Limited (ACN 000 721 380) and its approved assigns. |
| Water Licences: | the water licences owned or acquired by the Land Owner and attributed to the Project. |

1.2 Interpretation

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to **\$** or **dollars** is a reference to Australian dollars;
- (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally;
- (j) the word "**include**" or "**includes**" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "**including**" is to be read as if the expression "(but not limited to)" immediately followed such word;
- (k) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement; and

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- (i) the defined terms in clause 1.1 have the meanings given to them in that clause except where the context otherwise requires.

1.3 Headings

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

1.4 Severance

Each word, phrase, sentence, paragraph and clause (**a provision**) of this Agreement is severable and, if a Court determines that a provision is unenforceable, illegal or void, the Court shall sever that provision, which shall become inoperative, and such severance shall not affect the other provisions of this Agreement.

2. TERM

This Agreement will commence on the date of this Agreement and, unless terminated earlier under clause 7 or otherwise, will continue until the earlier of:

- (i) the date on which the last of the services under this Agreement are completed to the Grower's satisfaction;
 - (ii) termination of the Grower's Participating Interest in the Project; and
 - (iii) termination of the Project.
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3. PURCHASE OF ALMOND TREES

3.1 Terms and Conditions of Sale

- (a) The Land Owner agrees to sell to the Joint Venturers the number of Almond Trees that the Responsible Entity specifies are to be planted on the Joint Venturers' Almondlots.
- (b) Title to the Almond Trees will pass to the Joint Venturers free from all Encumbrances on the date on which the Responsible Entity accepts the Grower's application to become a Grower in the Project.
- (c) The Land Owner warrants that:
 - (i) the Almond Trees will be of a minimum height of 3 feet on delivery of the Almond Trees to the Grower immediately prior to planting in accordance with clause 5.1; and
 - (ii) at the time title to the Almond Trees passes to the Joint Venturers in accordance with clause 3.1(b), the Almond Trees will be fit for horticultural purposes, healthy, free of disease, infections and pests, to the extent that can be ascertained on a visual inspection of the Almond Trees.
- (d) Subject to clause 3.1(c), the Land Owner has not made and will not make any representation or warranty in relation to the absence or lack of presence of any viral/viroid infection, phytoplasma infection, bacterial infection, fungal infection or any other pest or disease in relation to the Almond Trees or the ultimate performance of the Almond Trees after they are planted on the Land.

3.2 Obligation to Sell

The Joint Venturers acknowledge that the purchase of the Almond Trees is subject to the Grower's obligation, under the Licence and Joint Venture Agreement, to sell its Prescribed Proportion of the Almond Trees to the Land Owner upon the termination of the Project free from all Encumbrances.

4. ENGAGEMENT OF THE LAND OWNER

4.1 Engagement

The Grower engages the Land Owner as an independent contractor to carry out the Planting Works on and subject to the terms and conditions of this Agreement.

4.2 Acceptance of Engagement

The Land Owner accepts its engagement to carry out the Planting Works on and subject to the terms and conditions of this Agreement.

5. PLANTING WORKS

5.1 Planting

The Land Owner will:

(a) Maintain the Almond Trees

Until the Almond Trees are planted, maintain the Almond Trees separately and clearly labelled.

(b) Plant Almond Trees

- (i) Arrange delivery of the Almond Trees from Select's nursery to the Land and plant the Almond Trees on the Land in a manner consistent with Best Horticultural Practice;
- (ii) immediately prior to planting the Almond Trees on the Land, use its reasonable endeavours to eradicate, as far as reasonably possible, any pests and competitive weeds which may affect the growth or yield of the Almond Trees;
- (iii) erect stakes approximately 1.5 meters in height in accordance with Best Horticultural Practices; and
- (iv) generally establish the Almond Trees in a proper and workmanlike manner.

(c) Labour

Ensure that it has available sufficient labour and equipment to enable planting of all the Almond Trees by 30 June 2001, subject to planting taking place in appropriate climatic and horticultural conditions.

(d) Replanting

At its cost, replace and replant any Almond Trees which fail in the first 6 months after planting where such failure is due to any breach or default by the Land Owner under this Agreement or caused by the Land Owner but not those Almond Trees that fail due to an event of Force Majeure.

5.2 Delegation

The Land Owner may appoint agents and sub-contractors and engage such personnel and acquire and use materials necessary, usual or desirable for the purposes of exercising its powers or performing its obligations under this Agreement.

5.3 Timing of Works

The Land Owner must use its best endeavours to complete the works in a timely manner.

6. FEES

6.1 Fees to Land Owner

In consideration for the purchase of the Almond Trees on each of the Grower's Almondlots under clause 3, and the Planting Works to be performed by the Land Owner on each of the Grower's Almondlots under clause 5, the Grower will pay to the Land Owner a fee equal to \$1,111.11 per Almondlot licensed to the Grower under the Licence and Joint Venture Agreement.

6.2 Payment of Fee

The fee is payable as follows:

- (a) by one instalment of \$555.56, payable by the Grower upon submitting an application to participate in the Project; and
 - (b) the balance on 30 September 2001.
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7. TERMINATION AND DEFAULT

7.1 Termination by Grower

Subject to clause 8.5, the Grower may terminate this Agreement by notice in writing to the Land Owner immediately, if the Land Owner:

- (i) goes into liquidation other than for the purposes of reconstruction or amalgamation or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or any part of its undertaking;
- (ii) ceases to carry on business; or
- (iii) fails or neglects to pay any monies due to any Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by the Land Owner of written notice from the Growers or a Grower specifying the default and requesting that the default be remedied (except where the Land Owner has advised the Growers or the Grower, whichever is the case, of a plan of remedial action to satisfy any such duty and has substantially completed such plan).

7.2 Termination by the Land Owner

Subject to clause 8.5, the Land Owner may terminate this Agreement, with immediate effect, if the Grower fails to make a payment within the required time under this Agreement or commits a material breach of this Agreement and fails to remedy the

breach or make reasonable compensation in money within 30 days after the Land Owner has served a written notice on the Grower specifying the breach and requiring the Grower to remedy the breach.

7.3 Effect of Termination

- (a) The termination of this Agreement will terminate the rights and obligations of the parties under this Agreement, except to the extent that those rights and obligations are expressed to survive termination, provided however that the termination of this Agreement will not prejudice any right, power or remedy of any party to the extent that it accrued prior to or on termination.
- (b) If this Agreement is terminated under clause 7.2:
 - (i) the Grower loses all rights as a participant in the Project;
 - (ii) the Grower remains liable for payment of all fees in respect of work done by the Land Owner, and
 - (iii) the procedure for the consequences of termination as set out in clause 18 of the Constitution must be followed.
- (c) If this Agreement is terminated under clause 7.2 of this Agreement as a consequence of the Grower failing to make the payment described in paragraph 6.2(b), the parties agree that title to the Almond Trees will revert to the Land Owner, free from all Encumbrances, on the date of such termination of this Agreement.

7.4 Termination of Almondlot Management Agreement or Licence and Joint Venture Agreement

This Agreement terminates in respect of the Grower immediately if the Almondlot Management Agreement or Licence and Joint Venture Agreement is terminated in respect of the Grower for any reason.

8. EXCUSES FOR NON PERFORMANCE

8.1 Observation or compliance with terms of Agreement

Neither party will have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

8.2 Liability

A party's failure to observe or comply with the terms of this Agreement will not give rise to any liability to that party for any direct or indirect consequential or special loss or damage of any kind, to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

8.3 Claiming protection or benefit of Force Majeure

A party claiming the benefit or protection of clause 8.1 or 8.2 must at its own cost:

- (a) promptly give notice to the other party, as soon as it becomes aware of the Force Majeure, of the occurrence and circumstances in respect of which the claim arises;
- (b) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay and give the other parties on request details of the

steps that have been taken or are to be taken; and

- (c) resume performance in full of its obligations under this Agreement as soon as reasonably practicable and give the other parties notice as soon as it is able to resume performance of its obligations.

8.4 Force Majeure

- (a) For the purposes of this Agreement, Force Majeure means an act of God, war declared or undeclared, blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition, intervention, embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, or any other cause whether of the kind specifically set out above or otherwise which is not reasonably within the control of the person relying on the force majeure.
- (b) Force Majeure does not include any events or circumstances referred to in clause 8.4(a) caused by a lack of or unavailability of funds or as a result of any event or chain of events brought about by the action or inaction of a party seeking to claim the benefit of clause 8. Each of the terms within clause 8.4(a) is to be construed separately and independently. None of them is to limit the generality of any other.

9. ASSIGNMENT AND ENCUMBRANCES

9.1 Assignment by Grower

Subject to the requirements of the Constitution, the Grower may not assign its rights under this Agreement unless the Grower first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner stating that the assignee will at all times during the term of the Project observe and perform all and any of the terms and conditions of this Agreement, the Constitution, Licence and Joint Venture Agreement and Almondlot Management Agreement applying to the Grower.

9.2 Assignment by Land Owner

Subject to clause 9.3, the Land Owner may freely assign any of its rights and interests under this Agreement so long as the Land Owner does not assign its interest in this Agreement in any way without first entering a deed with the person with whom the Land Owner is dealing ("the Grantee"). The deed must contain a covenant by the Grantee in favour of the Grower to observe and perform all or any of the covenants:-

- (a) contained or implied in this Agreement and the Licence and Joint Venture Agreement; and
- (b) required to be observed or performed by the Land Owner.

9.3 Agreements with Contractors

The Land Owner may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which the Land Owner has delegated some or all of its obligations under this Agreement, and for this purpose, the Land Owner has obtained the written consent to the assignment from the contractor.

9.4 Land Owner or Grantee to pay for deed

The cost of any deed required under clause 9.3 must be paid by the Land Owner or the Grantee, but not the Grower.

9.5 Release of Liability of Grower

Once the Grower has perfected an assignment of its interest in this Agreement in accordance with clause 9.1, the Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected.

9.6 Grower not to Encumber

The Grower must not create an Encumbrance over the Almond Trees at any time during the life of the Project. This clause will survive the termination of this Agreement.

10. DISPUTE RESOLUTION BY EXPERT

10.1 Dispute Notice

If a dispute arises concerning this Agreement, either party may serve a dispute notice on the other. The dispute notice must state that a dispute has arisen and identify what is disputed.

10.2 Appointment of expert

The parties may appoint an expert to determine the dispute after service of the dispute notice. If the parties cannot agree on the expert within 7 days, either party may request the president for the time being of the Institute of Chartered Accountants (Victorian Division) to appoint an expert.

10.3 Legal representation

The parties are entitled to legal representation during the dispute resolution proceedings.

10.4 Expert's responsibilities

The parties must instruct the expert to;

- (a) Determine, after consultation with the parties, the dispute resolution technique and procedures to be adopted;
- (b) determine the timetable for all steps in those procedures;
- (c) seek any information and conduct investigations as the expert thinks fit;
- (d) act as an expert and not as an arbitrator;
- (e) determine the dispute, excluding liability to pay legal costs (each party bearing their own), as the expert thinks fit; and
- (f) advise the parties in writing of the determination.

10.5 Determination binding

The determination of the expert is binding on the parties.

10.6 Costs of Expert

The parties must pay the expert's costs equally unless the expert determines otherwise.

11. COUNTERPARTS

11.1 Counterparts Constitute One Instrument

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together will constitute the one instrument.

11.2 Execution of Counterparts

Each party agrees with the other party that it will, at the request of the other Party, execute any further counterparts in the form or to the effect of this Agreement, so long as in no circumstances will the rights or entitlement of that party be diminished.

11.3 Liability of Parties

Each party agrees that, by their execution of any counterpart of this Agreement, they will be and remain liable to the other party notwithstanding any other person intended to be a party does not sign or execute this counterpart of the Agreement.

12. MISCELLANEOUS

12.1 Further assurances

Each party must execute all documents and take all other action necessary or desirable to give full effect to this Agreement.

12.2 Entire understanding

This Agreement contains the entire understanding between the parties concerning the subject matter contained in it. All previous representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

12.3 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or exercise of any other right.
- (b) Neither party is liable for any loss or expense of the other party caused or partly caused by the waiver or exercise of, or failure to exercise, a right.

12.4 Legal costs

Each party agrees to pay its own legal costs relating to the preparation and negotiation of this Agreement.

12.5 Relationship

This Agreement does not create any partnership, agency, trust or joint venture between the parties. Neither party may pledge the credit of the other party, nor purport to enter into contracts on behalf of the other or bind the other, otherwise than specifically provided in this Agreement. This Agreement does not constitute nor does it create any Agreement or relationship whatsoever between the Land Owner and the Growers or the Land Owner and any of the Growers.

12.6 Governing Law and Jurisdiction

- (a) This Agreement is governed by the laws in force in Victoria.

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- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts having jurisdiction to hear appeals from those courts.

12.7 Variation

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
- (b) Subject to paragraph (c), the Land Owner, with the written consent of the Responsible Entity, may amend the provisions of this Agreement to such extent as may be required to:
 - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
 - (ii) comply with the effect of any judicial decision; or
 - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Prior to making any amendment under paragraph (b), the Land Owner must be reasonably satisfied that the amendment does not adversely affect the rights of Growers.
- (b) The Land Owner may make the amendments on behalf of itself, and then on behalf of the Growers. To give effect to this clause, each of the Growers appoints the Land Owner as its attorney to make amendments to this Agreement.
- (c) If the Land Owner cannot be satisfied that the amendments can be made in accordance with the paragraph (c), then amendments may only be made in accordance with paragraph (a) of this clause.

12.8 Confidentiality

All matters pertaining to this Agreement are required to be kept confidential unless agreed by the parties in writing or required to be disclosed by law (including the Corporations Law) or the Listing Rules of Australian Stock Exchange Limited.

13. NOTICES

13.1 Form of notice

Notices and other communications under this Agreement -

- (a) must be in writing, and
- (b) must be signed by an authorised officer of the relevant party.

13.2 Service of Notice

Notices and other communications relating to this Agreement must be served -

- (a) personally on the person;
- (b) if to a natural person, by leaving it at or posting it by prepaid post (or prepaid airmail if to an address outside Australia) to the person's current address for service;
- (c) if to a company, by addressing it to the company and leaving it at or posting it

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- by prepaid post (or prepaid airmail if to an address outside of Australia) to the company's registered office or place of business;
- (d) by facsimile to the person's current number for service; or
 - (e) by any other method authorised by law.

13.3 Particulars for Service

The particulars for service are:

To the Land Owner:

Attention: Darren Lipton, General Manager
Almond Land Pty Ltd
Level 5
95 Queen Street
Melbourne VIC 3000
Facsimile: (03) 9670 4271

To the Grower:

To the address specified in Schedule 1 of this Agreement

A party may change its particulars for service by 5 calendar days' written notice to the other parties.

13.4 Time of Service

- (a) A letter posted in Australia to an Australian address is deemed to have been received two Business Days after posting and, in any other case, seven Business Days after posting.
- (b) A facsimile is deemed received at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile.
- (c) A letter or facsimile received after 5.00 pm in the place of receipt or on a day which is not a Business Day is deemed received at 9.00 am on the next Business Day.

14. LIABILITY AND INDEMNITY

14.1 Available Remedies

In addition to any other remedies available at law, a party is entitled to exercise or obtain declaratory relief, an injunction or restraining order to restrain a breach by another party of its obligations or duties, a mandatory injunction, or order for specific performance in order to compel another party to perform its obligations or duties.

14.2 Limitation of Liability

Despite anything else contained in this Agreement, the Grower is not obliged to incur any liability under this Agreement in excess the fees payable by the Grower under this Agreement, the Constitution, the Licence and Joint Venture Agreement and the Almondlot Management Agreement.

14.3 Third Party Claim

Nothing in this Agreement will limit any claim against the Grower or the Land Owner irrespective of whether the Grower or the Land Owner is entitled to be insured in respect of that claim or is entitled to recover damages from another person in respect of that claim.

14.4 Indemnity

Subject to this Agreement and the law, the Land Owner will indemnify and keep indemnified the Grower against any liability, demand, loss, costs, charges and expenses which may be suffered or incurred by the Grower as a result of any breach of the Land Owner's obligations under this Agreement or any neglect or fraud on its part, or any of its employees, contractors or agents.

15. GST

- 15.1 If any supply made by a party ('Supplier') to the other ('Recipient') under this Agreement is a taxable supply (according to GST law) so that the supplier is liable to pay GST, the parties agree that the consideration payable for that supply represents the value of the supply (the "GST Exclusive Amount") and not the price for that supply.
- 15.2 In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate in force from time to time.
- 15.3 The GST payable under clause 15.2 is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- 15.4 The Supplier must, in respect of each taxable supply made by it under this Agreement, issue to the Recipient a valid tax invoice in the prescribed form for the amount of GST referable to the taxable supply, in order to enable the Recipient to obtain an input tax credit for the amount of GST payable on the taxable supply.

Executed as an Agreement

EXECUTED by ALMOND LAND)
PTY LTD by authority of its directors:)



Signature

Robert J Hance

Full Name

DIRECTOR

Position Held



Signature


Sol Rabinowicz

Full Name

DIRECTOR

Position Held

EXECUTED by **TIMBERCORP**)
SECURITIES LIMITED as agent and)
attorney for and on behalf of each)
several grower by authority of its)
directors:)



Director



Director/Secretary

SCHEDULE 1