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CARINA (BLOCK 13)

TIMBERCORP SECURITIES LIMITED

ALMOND LAND PTY LTD

**VARIATION AND PARTIAL SURRENDER OF SUB-UNDERLEASE
2002 ALMOND PROJECTS**

CORRS CHAMBERS WESTGARTH

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THIS SURRENDER OF SUB-UNDERLEASE is made on the date set out in the **schedule**

BETWEEN **TIMBERCORP SECURITIES LIMITED** ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, 3000 ("**Subunderlessee**")

AND **ALMOND LAND PTY LTD** ACN 091 460 392 of Level 8, 461 Bourke Street, Melbourne, 3000 ("**Subunderlessor**")

RECITALS

- A The Subunderlessee and the Subunderlessor are the Subunderlessee and Subunderlessor respectively under the Sub-Underlease.
- B The Subunderlessee and the Subunderlessor have agreed that the Sub-Underlease be surrendered in respect of the Surrendered Land on the terms set out in this document.
- C The Subunderlessee and the Subunderlessor have agreed that the Sub-Underlease continue in full force and effect in respect of the Remaining Land, but subject to the variations set out in this document.

IT IS AGREED

1 INTERPRETATION

1.1 Definitions

In this document:

"**Land**" has the same meaning as in the Sub-Underlease.

"**Plan**" means the plan in **annexure 1**.

"**Remaining Land**" means that part of the Land coloured red on the Plan, being land used for the 2002 Timbercorp Almond Project (Public Offer).

"**Sub-Underlease**" means the sub-underlease described in the **schedule**.

"**Sub-Underlease Obligations**" means every obligation, express or implied, of a party under or by virtue of the Sub-Underlease.

"**Subunderlessee**" includes the Subunderlessee in each capacity specified in **1.4(a)** of the Sub-Underlease (to the extent that the Subunderlessee is actually entitled to contract in that capacity).

"**Surrender Date**" means the surrender date set out in the **schedule**.

"**Surrendered Land**" means that part of the Land coloured blue on the Plan, being land used for the 2002 Timbercorp Almond Project (Private Offer No. 1).

1.2 Interpretation

Unless the context requires otherwise:

- (a) the headings appearing in this document are not to be taken into account in the interpretation of this document and are included for ease of reference only;
- (b) any obligation imposed by this document on more persons than one binds them jointly and severally;
- (c) the singular includes the plural and vice-versa and a gender both other genders;
- (d) a reference to legislation includes that legislation as modified from time to time and legislation replacing it and subordinate legislation made under it;
- (e) a reference to a document (including this document) includes that document as modified from time to time and any document replacing it;
- (f) where the due date for discharge of any financial obligation falls on a Saturday Sunday or Public Holiday for the City of Melbourne the date for discharge of that obligation is postponed to the next date which is not a Saturday Sunday or Public Holiday for the City of Melbourne;
- (g) each obligation imposed on a party by this document is a separate covenant in favour of the other party;
- (h) sums of money are expressed in Australian currency; and
- (i) wherever any form of the word "include" appears it is interpreted as if followed by the words "(without limitation)".

1.3 Headings

The clause headings appearing in this document are inserted for convenience of reference and do not affect its construction.

1.4 Governing law

This document is governed by and is to be construed in all respects in accordance with the law of Victoria.

2 SURRENDER OF LEASE

2.1 Surrender

The Subunderlessor surrenders the Sub-Underlease in respect of the Surrendered Land as from midnight on the Surrender Date and the Subunderlessee accepts the surrender subject to the Subunderlessor's compliance with its obligations under this document.

2.2 Vacation of Premises

The Subunderlessor must deliver up possession of the Surrendered Land on the Surrender Date.

2.3 Release by Subunderlessee

- (a) The Subunderlessee releases the Subunderlessor from all of the Subunderlessor's Sub-Underlease Obligations in respect of the Surrendered Land falling due for performance after the Surrender Date.
- (b) Any release or indemnity given by the Subunderlessor to the Subunderlessee in the Sub-Underlease is not affected by this document or the surrender of the Sub-Underlease but continues to operate in respect of any event occurring on or before the Surrender Date.

2.4 Release by Subunderlessor

The Subunderlessor releases the Subunderlessee from all of the Subunderlessee's Sub-Underlease Obligations in respect of the Surrendered Land falling due for performance after the Surrender Date.

3 REMAINING LAND

3.1 Variations to Sub-Underlease

The Subunderlessee and the Subunderlessor agree that with effect from midnight on the Surrender Date the Sub-Underlease is varied in the manner set out in the document in **annexure 2** so that the terms of the Sub-Underlease will be those terms set out in **annexure 2**.

3.2 Sub-Underlease Remains in Full Force and Effect

The Subunderlessee and the Subunderlessor agree that subject to:

- (a) the variations effected by **clause 3.1**; and
- (b) the surrender of the Sub-Underlease and the releases of the obligations of the parties in respect of the Surrendered Land,

the Sub-Underlease remains in full force and effect and continues to operate as a sub-underlease between the Subunderlessee and the Subunderlessor in respect of the Remaining Land.

4 GENERAL PROVISIONS

4.1 Costs

The Subunderlessor must pay to the Subunderlessee the Subunderlessee's costs and expenses, including legal costs, of and incidental to the:

- (a) negotiation, preparation and execution of this document and any associated documentation; and
- (b) surrender of the Sub-Underlease.

The Subunderlessee's costs and expenses must be paid on or prior to the date of this document or the Surrender Date, whichever is the earlier.

4.2 Withdrawal of caveat

If the Subunderlessor has lodged a caveat against the title to the Surrendered Land, the Subunderlessor must deliver to the Subunderlessee on the Surrender Date, a registrable withdrawal of that caveat and must pay the registration fee payable in respect of it.

4.3 Further action

The Subunderlessor and the Subunderlessee must take all necessary steps to give full effect to this document.

4.4 No waiver

The parties' rights under this document continue to be enforceable after the Surrender Date.

4.5 Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Victoria in respect of all matters arising in relation to this document or in relation to the transaction evidenced by it.

4.6 Joint and several liability

In this document, an obligation incurred by two or more persons binds those persons jointly and severally.

4.7 Counterparts

This document may be executed in any number of counterparts and by different persons on separate counterparts. Those counterparts together constitute the same instrument.

5 GST

5.1 Definitions

"**GST**" means GST within the meaning of the GST Act.

"**GST Act**" means A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Except where a contrary intention appears, expressions used in this **clause 5.1** and in the GST Act have the same meanings as when used in the GST Act.

5.2 Recipient of supply to pay GST

Except where this document specifies otherwise, an amount payable by a party under this document in respect of a taxable supply by the other party represents the value of the supply or the net amount under **clause 5.3** and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.

5.3 Reimbursement of expenses

If this document requires a party to pay for, reimburse or indemnify against any expense or liability (“**reimbursable expense**”) incurred by the other party (“**payee**”) to a third party, the amount to be paid, reimbursed or indemnified is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (“**net amount**”).

5.4 Supplier to provide tax invoice

A party is not obliged, under **clause 5.2**, to pay an amount for GST in respect of a taxable supply to it, until given a valid tax invoice for the supply.

SCHEDULE

DATE:

12 August 2002

SURRENDER DATE:

12 August 2002

LEASE:

The sub-underlease between the parties dated [11-9-01]
entitled "Sub-Underlease-Carina".

EXECUTED as a deed

THE COMMON SEAL of
TIMBERCORP SECURITIES
LIMITED is affixed in the presence of
authorised persons:

.....
.....

John Vaughan

.....
.....

SOL RABINOWICZ

.....

)
)
)
)
Director

Name of Director (print)

~~Secretary~~/Director

Name of ~~Secretary~~/Director (print)



THE COMMON SEAL of **ALMOND**
LAND PTY LTD is affixed in the
presence of authorised persons:

.....
.....

John Vaughan

.....
.....

Darren Lipton

.....

)
)
)
)
Director

Name of Director (print)

~~Secretary~~/Director

Name of ~~Secretary~~/Director (print)



ANNEXURE 1
PLAN

2002 TIMBERCORP ALMOND PROJECT

Almondlot Plan, Carina Development

AERIAL PHOTOGRAPHY SUPPLIED BY QASCO VicIMAGE
Crown (State of Victoria) Copyright. Reproduced with permission of
Land Victoria, Department of Natural Resources and Environment

gen

107 Almondlot (+/- 0.001 ha)

Total quarter-hectare
Woodlots : 574

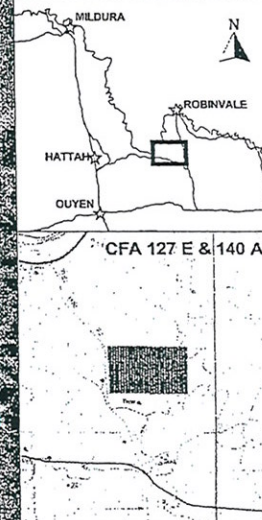
Property Code : CAR

Residual 0.4 ha



0 32 64
meters

Key Map



Project Managers



Almond Management Pty Ltd

Level 8, 461 Bourke Street
Melbourne VIC 3000
TEL : 03 8615 1200
FAX : 03 9670 4271

Quality Assurance Timbercorp

Initials Signature Date
T.S. _____
Plan and Database prepared by
RAPID MAP GLOBAL Pty. Ltd.
Suite 5, 2 Research Avenue
Bundoora 3083
Tel : 03 9459 6355
Fax : 03 9459 6733

Quality Assurance Rapid Map

Initials Signature Date
R.V. _____
Drawing No. _____ Rev. _____

2002 Private offer #1
2009 Public Offer

2005 Almond Project Early

ANNEXURE 2
SUB-UNDERLEASE VARIATIONS

**SUB-UNDERLEASE -
Carina**

**(2002 Timbercorp Almond Project –
Public Offer)**

Timbercorp Securities Limited

Almond Land Pty Ltd

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Sub-underlease

Date of the Sub-underlease:

This Sub-underlease is made on

200

1. **TIMBERCORP SECURITIES LIMITED**

ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Sub-underlessor)

2. **ALMOND LAND PTY LTD**

ACN 091 460 392
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Sub-underlessee)

The Parties Agree as Follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Sub-underlease, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

Almondlot Management Agreement:	means the agreement of that name as defined in the Constitution;
Business Day:	means any day (other than a Saturday, Sunday or a public holiday) on which banks are open for business with the public in Melbourne;
Constitution:	means the Constitution of the 2002 Timbercorp Almond Project;
Grower:	Has the meaning given to that term in the Constitution;
GST Law:	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) (as amended);
Head Lease:	means the sublease dated on or about the date of this document between Almond Land Pty Ltd as sublessor and Timbercorp

	Securities Limited as sublessee in respect of the Land;
Land:	means that part of the land that will be used for the Project, being the land described in the Schedule;
Licence and Joint Venture Agreement:	has the meaning given to that term in the Constitution;
Project:	means the 2002 Timbercorp Almond Project;
Project Manager	means the project manager for the time being of the Project; and
Responsible Entity:	means the responsible entity for the time being under the Constitution, currently the Sub-underlessor.

1.2 Interpretation

In this Sub-underlease, 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 a clause, recital or schedule is to a clause, recital or schedule in or to this Sub-underlease;
- (i) if a party comprises two or more persons, this Sub-underlease binds them jointly and each of them severally; and
- (k) 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.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this Sub-underlease.

2. TERM

The Sub-underlessor grants to the Sub-underlessee a Sub-underlease over the Land for a period commencing on the date of this Sub-underlease and, subject to clause 8, expiring on 29 June 2022.

3. RENT

If demanded by the Sub-underlessor, the Sub-underlessee must pay to the Sub-underlessor an amount of \$1.00 per annum for the term of this Sub-underlease.

4. USE OF LAND

4.1 Use of Land by Sub-underlessee

The Sub-underlessee must only use the Land in accordance with the Constitution, the Almondlot Management Agreement and the Licence and Joint Venture Agreement. The Sub-underlessee may only use the Land in any other manner with the prior and express written consent of the Sub-underlessor, which consent may be given or refused at the absolute discretion of the Sub-underlessor.

4.2 No warranty as to use

The Sub-underlessor does not warrant that the Land is suitable for all or any of the purposes referred to in this Sub-underlease or for any other purpose and the Sub-underlessee must take such steps and do all necessary acts, matters and things to enable the Land to be used for the purpose for which the Land is leased.

5. QUIET ENJOYMENT

The Sub-underlessee may, during the term of this Sub-underlease, possess the Land without interruption from the Sub-underlessor or any person claiming through it, except to the extent that the interruption is expressly permitted by this Sub-underlease.

6. ASSIGNMENTS, SUB-UNDERLEASES, MORTGAGES AND LICENCES

6.1 Assignments, Sub-underleases, mortgage and licences by Sub-underlessee

Subject to clause 6.4, the Sub-underlessee must not under any circumstances assign this Sub-underlease or transfer, sublet or part with possession of the Land or any part of the Land without the prior written consent of the Sub-underlessor, which may be granted or refused at the absolute discretion of the Sub-underlessor.

6.2 Where the Sub-underlessee is a company

Where the Sub-underlessee is a company, other than a company listed on any recognised stock exchange, any change in the principal shareholding of, or any change in the principal shareholding of any holding company of, the Sub-underlessee altering the effective control of the Sub-underlessee, will (for the purpose of this clause), be deemed to be an assignment of this Sub-underlease and must require the written consent of the Sub-underlessor.

6.3 The Sub-underlessee must not mortgage its interest

The Sub-underlessee must not under any circumstances mortgage, charge or otherwise encumber its estate or interest in this Sub-underlease without the prior written consent of the Sub-underlessor, which consent may be granted or refused at the absolute discretion of the Sub-underlessor.

6.4 Right to occupy

The Sub-underlessor acknowledges the right granted to Growers to occupy and use a portion of the Land under the Licence and Joint Venture Agreements. That right is subject to each Licence and Joint Venture Agreement and the terms of the Constitution. Execution of this Sub-underlease is deemed to be the written consent of the Sub-underlessor required under clause 6.1 of this Sub-underlease.

7. DEFAULT AND RE-ENTRY

7.1 Default and Re-Entry by Sub-underlessor

The Sub-underlessor and the Sub-underlessee covenant that the Sub-underlessor will have the right to re-enter upon the Land if:

- (a) the rent remains unpaid for a period of 28 days after payment was demanded by the Sub-underlessor under clause 3; or
- (b) the Sub-underlessee commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of its obligations under this Sub-underlease or the Constitution; or
- (c) a receiver or receiver and manager has been appointed in respect of the Sub-underlessee or the Sub-underlessee's property or the Sub-underlessee is liquidated, wound up, dissolved, is under administration, executes a deed of company arrangement, enters into a compromise or arrangement with another person or is otherwise unable to pay its debts in the ordinary course of its business; or
- (d) an order is passed or a resolution is effectively passed to the effect of any of the matters referred to in paragraph (c) above.

7.2 Remedies not waived

Should the Sub-underlessor exercise its right under clause 7.1, it will do so without prejudice to any action or other remedy which the Sub-underlessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Sub-underlease by the Sub-underlessee.

7.3 Discharge of Sub-underlessor

Where the Sub-underlessor exercises its rights under clause 7.1, and upon re-entry by the Sub-underlessor, the Sub-underlessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Sub-underlessee under or by virtue of this Sub-underlease.

7.4 Sub-underlessee not to remove fixtures

As long as any rental or other money is due by the Sub-underlessee to the Sub-underlessor, or the Sub-underlessee has committed any breach of the terms of this Sub-underlease which has not been made good or remedied and whether the Sub-

underlessee is still in possession or not, the Sub-underlessee must not remove any of its fixtures, fittings or plant from the Land and is not entitled to enter upon the Land for the purpose of removing any of its fixtures, fittings or plant.

7.5 Waiver by Sub-underlessor

No waiver by the Sub-underlessor of a breach of any covenant, obligation or provision contained or implied in this Sub-underlease will operate as a waiver of another breach of the same or of any other covenant, obligation or provision contained or implied in this Sub-underlease. The only waiver by the Sub-underlessor having any effect will be a waiver in writing by the Sub-underlessor.

8. TERMINATION

8.1 Termination of the Project

If the Project ends then:

- (a) this Sub-underlease is automatically terminated; and
- (b) both the Sub-underlessor and the Sub-underlessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

8.2 Termination of Head Lease

If the Head Lease comes to an end for whatever reason then this Sub-underlease is automatically terminated.

8.3 Termination of Head Lease in Part

In the event that the Head Lease is terminated by the Sub-underlessee in respect of only a portion of the Land used for the Project (as contemplated in clause 12 of the Head Lease) then this Sub-underlease will also be deemed to have been terminated in respect of the same portion of the Land.

9. SUB-UNDERLESSEE WILL ASSUME ALL RISK

The Sub-underlessee will, to the entire exclusion of the Sub-underlessor, assume all risk of loss, damage or injury by fire or otherwise to person or property by reason of the condition of the Land or any plant, equipment, fixtures or fittings at the Land, or by reason of the use, management, control or operation of any plant, equipment, fixtures or fittings and the Sub-underlessee releases the Sub-underlessor from all claims of such loss, damage or injury, including any loss of profits or other outgoings sustained by the Sub-underlessee or by any person whatsoever. The Sub-underlessee will indemnify the Sub-underlessor from and against all actions, claims, demands, losses, damages, costs and expenses, either direct or indirect, for which the Sub-underlessor shall or may be or become liable in respect of or arising from:

- (a) the negligent use, misuse, waste or abuse by the Sub-underlessee of the water, gas, electricity, oil, lighting and other services and facilities of the Land;
- (b) overflow or leakage of water (including rain water) into or from the Land from whatever cause; or
- (c) loss, damage or injury from any cause whatsoever to property or person

caused or contributed to by the use of the premises by the Sub-underlessee.

10. LEGAL COSTS

10.1 Sub-underlessee to pay legal costs

The Sub-underlessee must pay the reasonable costs of the Sub-underlessor's solicitors of and incidental to the preparation, execution, stamping and registration of this Sub-underlease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

10.2 Sub-underlessee to pay legal costs in connection with litigation

The Sub-underlessee must pay to the Sub-underlessor all reasonable legal fees and disbursements incurred by the Sub-underlessor in connection with any litigation commenced by or against the Sub-underlessee (other than litigation between the Sub-underlessor and the Sub-underlessee) arising directly or indirectly out of the Sub-underlessee's occupancy of the Land. The Sub-underlessee must also pay all costs, expenses and reasonable legal fees that may be payable by the Sub-underlessor in connection with the giving of any notice or consent or in enforcing or attempting to enforce the covenants and agreements in this Sub-underlease.

11. CAPACITY AND LIABILITY OF THE SUB-UNDERLESSOR

11.1 Capacity of Sub-underlessor

The parties acknowledge that:

- (a) the Sub-underlessor has entered into this Sub-underlease only in its capacity as Responsible Entity under the Constitution of a Project; and
- (b) the Sub-underlessor has full, complete and valid authority and power to enter into this Sub-underlease pursuant to the terms of the Constitution of the Project.

11.2 Benefit to Sub-underlessor

Each of the parties to this Sub-underlease acknowledges and agrees that every agreement and condition in this Sub-underlease for the benefit of the Sub-underlessor benefits the Sub-underlessor personally and in its capacity as Responsible Entity under the Constitution.

11.3 Limitation of Liability

The parties agrees that the Sub-underlessor will in no circumstances be required to satisfy any liability of the Sub-underlessee for breach of any obligation pursuant to or in respect of this Sub-underlease out of any funds, property or assets other than the assets held as the Responsible Entity under the Constitution under the Sub-underlessor's control and in its possession and available to be properly resorted to by the Sub-underlessor.

12. NOTICES

12.1 Any notice to be given under or in connection with this Sub-underlease must be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

- (a) hand delivery;
- (b) post or registered or certified mail; or
- (c) fax,

to such address or fax number of the party to whom the notice is directed as the addressee may notify prior to such notice being given.

12.2 Any notice will be effective and will be deemed to be received:

- (a) if hand delivered, then upon delivery;
- (b) if posted, then 48 hours after the notice has been properly posted if that falls on a Business Day, and if not, on the first Business Day afterwards; and
- (c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.

13. PROPER LAW

This Sub-underlease is governed by and to be interpreted in accordance with the laws of Victoria and the parties to this Sub-underlease submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them for determining any dispute concerning this Lease or the transactions contemplated by this Sub-underlease.

14. SEVERANCE

This Sub-underlease, so far as possible, must be constructed to give validity to all of its provisions. Any provision found to be prohibited by law will be ineffective so far as it is prohibited without invalidating any other part of this Sub-underlease.

15. ENTIRE AGREEMENT

Each party acknowledges that this Sub-underlease is not entered into in reliance on any representation or warranty, expressed or implied, whether oral, in writing or contained in any brochure, advertisement or otherwise, except as may be specifically set out in this Sub-underlease.

16. GST

- (a) Except where a contrary intention appears, expressions used in this clause 16 and in the GST Law have the same meaning as when used in the GST Law.
- (b) If any supply made by the Sub-underlessor ("Supplier") to the Sub-

underlessee ("Recipient") under this Sub-underlease is a taxable supply so that the Sub-underlessor is liable to pay GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "GST Exclusive Amount") and not the price for that taxable supply.

- (c) In addition to the GST Exclusive Amount for a taxable supply under this Sub-underlease, the Sub-underlessee must pay to the Sub-underlessor a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the prevailing rate of GST.
 - (d) The GST payable under paragraph (c) is payable by the Sub-underlessee 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 Sub-underlessee under this Sub-underlease.
 - (e) The Sub-underlessor must, in respect of a taxable supply made by it under this Sub-underlease, issue to the Sub-underlessee a valid tax invoice in the prescribed form, for the amount of GST referable to that taxable supply, in order that the Recipient may obtain an input tax credit for the amount of GST payable on the taxable supply.
-

Executed

EXECUTED by TIMBERCORP)
SECURITIES LIMITED by authority)
of its directors:)

Signature

Full Name

Position Held

Signature

Full Name

Position Held

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

Signature

Full Name

Position Held

Signature

Full Name

Position Held

SCHEDULE

Description of Land (Clause 1.1)

That part of the land shaded in colour on the attached plan being part of the land in certificate of Title Volume 10530 Folio 483.