

2002 021

**Licence and Joint
Venture Agreement**

Almond Land Pty Ltd

Timbercorp Securities Limited

Each several Grower

**2002 Timbercorp Almond Project
(Carina West Growers)**

(Public Offer)

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L A W Y E R S

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Details of this Licence and Joint Venture Agreement

Date of the Agreement:

In respect of each several Grower means the date on which the Responsible Entity has accepted the Grower's application for Almondlots being offered under the Prospectus as specified in the First Schedule.

Parties to the Agreement:

1. **ALMOND LAND PTY LTD**
ACN 091 460 392
Level 8, 461 Bourke Street
Melbourne Victoria 3000
(Land Owner)
2. **TIMBERCORP SECURITIES LIMITED**
ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne Victoria 3000
(Responsible Entity)
3. 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 of an almond orchard, the cultivation of almond trees 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 is or is entitled to become the registered proprietor of the Land, the owner of the Water Licences and the Capital Works and any other capital works that may, in future, be established on the Land.
- C. The Land Owner will lease the Land to the Responsible Entity, which will sub-lease the Land back to the Land Owner.
- D. The Land Owner has agreed to grant a licence to the Grower to use and occupy the JV Almondlots in association with itself as joint venturers for the cultivation of Almond Trees and harvesting of Almonds, subject to the terms and conditions of this Agreement.

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 out opposite each of them:

Administrator:	has the meaning given to it in section 9 of the Corporations Act;
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;
Almondlot Management Agreement:	an agreement for the management of the business of the Joint Venturers conducted on the JV Almondlots between the Responsible Entity and the Joint Venturers;
Almond Trees:	the almond trees planted or to be planted on the Orchard;;
Almonds:	the almonds grown or growing on the Joint Venture's Almondlots or the Orchard, whichever is applicable, and whether harvested or unharvested;
ASIC	the Australian Securities and Investments Commission;
Business Day:	a day other than a Saturday or Sunday on which all trading banks are open for general banking business in Melbourne, Victoria;
Capital Works:	the infrastructure and capital works, including the planting of the Almond Trees, that the Land Owner has carried out and any other works that the Land Owner may be required in the future to carry out, including the works that the Land Owner will carry out on Carina West, at its cost, in accordance with clause 2.3 of this Agreement;
Carina West Almondlot:	an Almondlot on the Carina West Site;
Carina West Grower:	a several person (or if more than one person, those persons jointly) who is named or otherwise described in the First Schedule in respect of Almondlots on the Carina West Site and "Carina West Growers" means all of the persons so named or described;
Carina West Site:	that part of the Land as is defined in the Supplementary Prospectus;"
Commencement Date:	the date of this Agreement;
Constitution:	the Constitution entered into by the Responsible Entity and the Growers, which governs the Project;
Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;

Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2002 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
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 A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Grower:	a several person (or if more than one person, those persons jointly) who is named or otherwise described in the First Schedule and " Growers " means all of the persons so named or described;
Indexed:	adjusted on the date on which a relevant payment is due, or the date upon which a relevant calculation is made, whichever is applicable (the Date), by the aggregate percentage change in the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) for the previous four (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date (or if in the relevant clause a date is provided from which the adjustment is to be made then prior to that date);
Internal Irrigation Equipment and Internal Irrigation System:	the internal irrigation system that has been installed, or will be installed, in the Orchard for the purpose of enabling and facilitating the irrigation and delivery of water within the Almondlots;;
Irrigation Infrastructure:	the pipeline (including the mainline), dam, pump and other equipment that have been, or will be installed, and are owned by the Land Owner or to which the Land Owner has rights and which enable and facilitate the irrigation and delivery of the necessary water to the Almondlots;;
Irrigation and Drainage Plan:	the irrigation and drainage plan for the Carina West Site that the Land Owner must develop under sub-paragraph 2.3(c)(iv) of this Agreement;
JV Almondlots:	the number of Almondlots allotted to the Joint Venture as set out in Schedule 1;
Joint Venture:	the joint venture between the Land Owner and the Grower constituted by this Agreement in respect of the Joint Venture Operations;
Joint Venturers:	the Land Owner and the Grower;
Joint Venture Assets:	the Participating Interest of the Joint Venturers as calculated under the Almondlot Management Agreement;
Joint Venture Operations:	the growing and cultivation of Almond Trees on, and management of, the JV Almondlots for the production and processing of Almonds for commercial gain;

Joint Venture Proceeds:	the Joint Venturer's entitlement to the Proceeds;
Land:	the land on which the Project will be conducted as described in the Prospectus or such other land which is used for the Project;
Orchard:	all of the Almondlots;
Participating Interest:	has the meaning given in the Almondlot Management Agreement;
Prescribed Proportion:	the proportionate interest of the Grower and the Land Owner respectively in the Joint Venture Assets as set out in clause 11.4;
Proceeds:	has the meaning given in the Almondlot Management Agreement;
Project:	the 2002 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;
Prospectus:	the prospectus lodged with ASIC under which the Responsible Entity offers for subscription interests in the Project;
Supplementary Prospectus:	the third supplementary prospectus lodged with ASIC on 13 June 2002 which discloses to prospective Growers the addition of the Carina West Site to the Project;
Term:	the term of this Agreement set out in clause 4.1;
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 a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
- (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;

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- (j) if any of the persons comprising the Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; 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.

1.2 Headings

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

1.3 Delegation

The Land Owner is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement, through,

its employees, agents and contractors but any delegation by the Land Owner does not release the Land Owner from liability under this Agreement.

2. ESTABLISHMENT OF ORCHARD

2.1 Warranty by Land Owner

The Land Owner warrants and represents to the Grower that it has, at its own cost, established, or procured the establishment of, the Almondlots on the Land in accordance with good horticultural and environmental practices and constructed the necessary infrastructure and carried out the Capital Works, and without limiting the generality of this clause, it has:

- (a) identified the relevant parts of the Land which are suitable for growing almonds based on soil types, soil depths and contours;
- (b) organised various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
- (c) organised block layout in relation to the Almondlots and the pegging of those blocks;
- (d) acquired rights to, constructed and installed, as the case requires, the Internal Irrigation Equipment and the Internal Irrigation System and the Irrigation Infrastructure;
- (e) carried out drainage work and work to help prevent soil erosion on all Land;
- (f) cleared any vegetation or trees from the Orchard, performed broadacre weed spraying, disc ploughing and ripping and mounding of tree rows, applied preplant fertiliser spreading and undertaken discing, x-planning of tree rows and marking out of tree location; and
- (g) planted almond trees on the Orchard during June and July 2001; and
- (h) provided or undertaken, as the case requires, such other capital works, services or things which, in the reasonable opinion of the Land Owner, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs (a)-(g) above.

2.2 Acknowledgments

The Grower acknowledges that the Capital Works on the Grower's Almondlot, including

the Almond Trees, and the Water Licences attributed to the Project are, and will at all times remain, the property of the Land Owner.

2.3 Carina West Growers

- (a) This clause 2.3 prevails over any other provision in this Agreement to the extent of any inconsistency.
- (b) The Land Owner does not make any of the representations and warranties contained in clause 2.1 to any Carina West Grower and the representations and warranties contained in clause 2.1 with respect to any other Grower do not extend to any infrastructure or Capital Works in respect of the Carina West Site.
- (c) The Land Owner must at its own cost, establish, or procure the establishment of the Almondlots on the Carina West Site in accordance with good horticultural and environmental practices and construct necessary infrastructure and carry out capital works, and without limiting the generality of this clause, it must:
 - (i) identify the relevant parts of the Carina West Site which are suitable for growing almonds based on soil types, soil depths and contours;
 - (ii) organise various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
 - (iii) organise block layout in relation to the Almondlots, organise the pegging of those blocks and prepare the Carina West Site for planting;
 - (iv) cause the preparation of the Irrigation and Drainage Plan and carry out all works necessary to construct and install the Internal Irrigation Equipment and the Internal Irrigation System and the Irrigation Infrastructure on the Carina West Site specified in the Irrigation and Drainage Plan;
 - (v) carry out drainage work and work to help prevent soil erosion on all Carina West Site;
 - (vi) prepare the Carina West Site for planting, including clearing any vegetation or trees from the Carina West Site, broadacre weed spraying, disc ploughing, ripping and mounding of tree rows, preplant fertiliser spreading and discing, x-planning tree rows and marking out tree location;
 - (vii) subject to planting taking place in appropriate climatic and horticultural condition, plant almond trees on the Carina West Site; and
 - (viii) provide any other capital works, services or things which, in the reasonable opinion of the Land Owner, are incidental or ancillary to the effective establishment and provision of the works referred to in sub-paragraphs 2.3(c)(i)-(vii) above.
- (d) The Land Owner will use best endeavours to complete the Capital Works specified in paragraph 2.3(c) on the Carina West Almondlots by 30 June 2002 or such later date as may be agreed between the Land Owner and the Carina West Grower. However, the Land Owner will not be liable for any loss or damage incurred by the Carina West Grower arising from any delay in so doing caused for any reason other than the negligence of the Land Owner, its officers, employees or agents.

3. GRANT

3.1 Grant of Licence

The Land Owner grants to the Grower and the Grower takes from the Land Owner a licence, effective from the Commencement Date, to use and occupy the JV Almondlots in joint venture with the Land Owner for the sole purpose of conducting the Joint Venture Operations.

3.2 No right of exclusive occupation

The right granted to the Grower under clause 3.1 confers no right of exclusive occupation of the JV Almondlots.

3.3 Water Licences

The Land Owner must:

- (a) do all things necessary to ensure that its rights under the Water Licences are fully exploited to maximize the use and enjoyment of them by the Grower;
- (b) take all steps to avoid interfering with the supply of water to the Grower's Almondlots and to avoid any actions that would prejudice the Grower's rights under this Agreement; and
- (c) purchase and maintain the Water Licences during the Project and purchase any additional water rights on a temporary or permanent basis that may be required from time to time in order to irrigate the Almondlots.

4. TERM

4.1 Term of Agreement

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 10.1 to 10.3 and clauses 10.5 and 12, this Agreement will continue until the earlier of:
 - (i) termination of the Joint Venturers' Participating Interest in the Project;
 - (ii) 30 June 2022; and
 - (iii) termination of the Project.

4.2 Grower's Obligations Upon Termination

- (a) At the end of this Agreement, the Grower must return the JV Almondlots to the Land Owner in good condition, but the Grower is not required to remove Almond Trees or restore the JV Almondlots to their original condition.
 - (b) Any structures or plant and equipment of any description, which belong to the Joint Venture must be removed from the JV Almondlots within 30 days after the end of this Agreement. If the parties do not comply with this requirement then, as between the Land Owner and the Grower, all structures and plant and equipment remaining on the JV Almondlots at the time will become the absolute property of the Land Owner.
 - (c) The Land Owner has no obligation to pay the Grower any compensation.
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5. GOVERNMENT APPROVALS

The Responsible Entity must maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Almondlots.

6. CONDITION PRECEDENT

This Agreement is subject to and conditional on the Joint Venturers entering into the Almondlot Management Agreement with the Responsible Entity on or before the Commencement Date.

7. LICENCE FEE

7.1 Fee

- (a) The Grower must pay to the Land Owner a licence fee of \$774.55 per JV Almondlot for each of the following periods:
 - (i) from the Commencement Date until 30 June 2002 payable on or before the Commencement Date; and
 - (ii) in respect of each of the Financial Years ending 30 June 2003 and 30 June 2004, such licence fee being payable on 31 October 2002 and 31 October 2003 respectively.

Thereafter, on 31 October of each subsequent year during the Term, the Grower must pay an annual licence fee in accordance with clause 7.2.

- (b) All licence fees under this Agreement are payable solely by the Grower and the Land Owner will not be required to pay or contribute to any licence fees at any time during the Term of this Agreement.

7.2 Adjustments to Licence Fee

The licence fee payable by the Grower on 31 October 2004 in respect of the Financial Year ending 30 June 2005 and each 31 October thereafter during the Term will be the licence fee payable on the immediately preceding 31 October, Indexed.

7.3 Discontinuance or suspension of CPI

If the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) is discontinued or suspended, the method of indexation set out in clause 7.2 will cease to apply and will be replaced with such alternative method as is mutually agreed between the Land Owner and the Grower or, if they fail to agree, such alternative method as is in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia. The cost of any expert determination carried out under this clause must be borne equally between the Land Owner and the Grower.

8. GROWER'S OBLIGATIONS

8.1 Grower's duties

The Grower must, at its expense:

- (a) use the JV Almondlots solely for the purpose of Joint Venture Operations;
- (b) comply with good horticultural and environmental practices;
- (c) comply with all laws and regulations relating to the use and occupancy of the JV Almondlots;
- (d) maintain the JV Almondlots in accordance with good horticultural practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) permit the Land Owner and its employees, agents and contractors to enter upon the JV Almondlots from time to time with or without equipment for the purposes of observing the state of the JV Almondlots, and provide to the Land Owner sufficient rights of access to the Almond Trees in order for it to perform its duties and obligations under this Agreement;
- (f) permit the Responsible Entity and its employees, agents and contractors to enter upon the JV Almondlots from time to time with or without equipment for the purpose of performing its obligations under the Almondlot Management Agreement;
- (g) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (h) give such rights of way and free access to the occupiers of any other Almondlots adjoining the JV Almondlots as are necessary for their proper use and enjoyment of their Almondlots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the JV Almondlots.

8.2 Delegation by Grower

The Grower may, for the better performance of its obligations under this Agreement, engage any person as an agent and all rights granted and obligations imposed on the Grower under this Agreement may be enjoyed by the Grower's agent.

8.3 Delegation does not limit Grower's liability

Any delegation by the Grower under clause 8.2 does not release the Grower from liability under this Agreement.

9. LAND OWNER'S OBLIGATIONS

The Land Owner must:

- (a) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent authority in respect of all Almondlots; and
 - (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner or other persons.
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10. TERMINATION OF AGREEMENT

10.1 Termination of Agreement by Grower

The Grower may terminate this Agreement by notice in writing to the Land Owner and the Responsible Entity immediately, if either the Land Owner or the Responsible Entity:

- (a) 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 the Responsible Entity or any part of its undertaking;
- (b) ceases to carry on business; or
- (c) 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 or the Responsible Entity, as appropriate, of written notice from the Growers or a Grower specifying the default and requesting that the default be remedied (except where the Land Owner or the Responsible Entity, as appropriate, 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).

10.2 Termination of Agreement by Land Owner or Responsible Entity

- (a) Subject to clause 10.2(b) and without prejudice to the Land Owner's rights under clause 12, the Land Owner or the Responsible Entity may terminate this Agreement, with immediate effect, if the Grower fails to make a payment within the time required 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 or the Responsible Entity has served a written notice on the Grower requiring the Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach.
- (c) The Agreement will terminate if the Land Owner exercises its rights under clause 12.

10.3 Damage to Almondlots

If, in respect of the JV Almondlots:

- (a) the whole or a substantial part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant commissioned by the Grower reasonably determines that the whole or a substantial part of the JV Almondlots is no longer commercially viable,

the Grower may terminate this Agreement in respect of all the JV Almondlots by giving not less than 4 months' prior written notice of such termination to the Land Owner. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.4 Reduction of JV Almondlots

If in respect of the JV Almondlots:

- (a) part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant commissioned by the Grower

reasonably determines that part of the JV Almondlots is no longer commercially viable,

the Grower may terminate this Agreement in respect of the JV Almondlots on which the affected part of the Almond Trees is or was growing, by giving not less than 4 months' prior written notice of such termination to the Land Owner. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.5 Termination of Almondlot Management Agreement

This Agreement terminates in respect of the Grower immediately if the Almondlot Management Agreement in respect of the Grower is terminated for any reason.

10.6 Effect of Termination

- (a) Termination of this Agreement under clauses 10.1, 10.2, 10.3 or 10.5 or reduction of the JV Almondlots under clause 10.4 is without prejudice to any rights and obligations which may have accrued prior to the date of termination.
- (b) Termination of this Agreement in respect of any number of all of the JV Almondlots or part of a JV Almondlot under this clause 10 does not affect the rights or obligations of the parties in respect of any other JV Almondlots or other part of the reduced JV Almondlots.
- (c) If this Agreement is terminated under clause 10.2, the Grower loses all rights and interest as a participant in the Project and the procedures for the consequences of termination as set out in clause 18 of the Constitution and, if applicable, clause 12 of this Agreement, may be followed.
- (d) 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.

11. JOINT VENTURE

11.1 Acknowledgement

The Land Owner, the Responsible Entity and the Grower acknowledge that the Land Owner and the Grower have entered into the Almondlot Management Agreement as joint venturers on the terms and conditions which follow for the purpose of engaging in a primary production business of developing and cultivating an almond orchard and producing and processing Almonds for commercial gain.

11.2 Constitution of Joint Venture

The Land Owner and the Grower constitute a joint venture for the purposes of carrying on the Joint Venture Operations in accordance with this Agreement.

11.3 Name

The joint venture will be known as the 2002 Timbercorp Almond Project Joint Venture.

11.4 Joint Venturer's Prescribed Proportion

The Grower is entitled to a Prescribed Proportion of the Joint Venture Assets of 90% and the Land Owner is entitled to a Prescribed Proportion of the Joint Venture Assets of 10%.

11.5 Entitlements and Obligations

Subject to the terms and conditions of the Almondlot Management Agreement, each of the Grower and the Land Owner:

- (a) is entitled to its Prescribed Proportion of the Almonds and the Joint Venture Proceeds;
- (b) must contribute to the Responsible Entity in proportion to its Prescribed Proportion the management expenses payable by the Joint Venture under the Almondlot Management Agreement; and
- (c) indemnifies the other against any losses or liability exceeding its Prescribed Proportion by reason of any joint liability incurred, or joint loss sustained, in connection with any contract or arrangement entered into by the Joint Venture.

11.6 Commencement and Term of this Joint Venture

The Joint Venture commences on the date of this Agreement and unless terminated under clause 10, terminates on the expiry of the Term.

11.7 Disposition of Joint Venture Assets on Termination

- (a) On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Joint Venturers in their Prescribed Proportions, or be sold.
- (b) If the Joint Venture Assets are sold under clause 11.7(a), the net proceeds of sale must be divided amongst the Joint Venturers on a pro rata basis in accordance with their Prescribed Proportions.

12. LICENCE FEES AND EXPENSES

12.1 Failure to Pay

If the Grower fails or neglects to pay the licence fee or its Prescribed Proportion of any amount due and payable by the Joint Venturers under the Almondlot Management Agreement by the due date, the Land Owner may, after giving the Grower 30 days' prior written notice, terminate this Agreement under clause 10.2 and exercise either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of the Land Owner).

12.2 Land Owner may pay on Behalf of Defaulting Grower

If the Grower fails or neglects to make payment of any amount under clause 12.1, the Land Owner may pay on behalf of the Grower, from its own funds, any such expense owing by the Grower and the Land Owner will be entitled to be reimbursed out of any Proceeds of the Grower the amount of such payment together with interest at a rate of 3% above the Commonwealth Bank of Australia's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full.

12.3 Responsible Entity may Sell Defaulting Grower's Interest

If a Grower fails or neglects to make payment of any amount under clause 12.1 then the Responsible Entity, on behalf of the Land Owner, may deal with the interest of the Grower by exercising any of its powers under clause 18 of the Constitution.

13. ASSIGNMENT

13.1 Assignment by Land Owner or Responsible Entity

Subject to clause 13.2, the Land Owner and the Responsible Entity may freely assign any of their rights and interests under this Agreement so long as the Land Owner or Responsible Entity (as the case requires) does not assign its interest in this Agreement in any way without first entering a deed with the person with whom the Land Owner or Responsible Entity 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 Almondlot Management Agreement; and
- (b) required to be observed or performed by the Land Owner or the Responsible Entity (as the case requires).

Paragraph 13.1(a) also applies if the Land Owner sells the Land and the obligations of the Land Owner are read as applying to the purchaser of the Land.

13.2 Agreements with Contractors

The Land Owner or the Responsible Entity may only assign their 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 it has delegated some or all of its obligations under this Agreement, and for this purpose, the Land Owner or the Responsible Entity has obtained the written consent to the assignment from the contractor.

13.3 Land Owner, Responsible Entity or Grantee to pay for deed

The cost of any deed required under clause 13.1 must be paid by the Land Owner, the Responsible Entity or the Grantee, but not the Grower.

13.4 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 and the Responsible Entity stating that the assignee will at all times during the Term observe and perform all and any of the terms and conditions of this Agreement, the Constitution and the Almondlot Management Agreement applying to the Grower.

13.5 Release of liability of Grower

Once the Grower has perfected an assignment of its interest in this Agreement in accordance with clause 13.4, 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.

14. GOODS AND SERVICES TAX

- (a) 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 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.
- (b) 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.

- (c) The GST payable under paragraph 14(b) 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.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph (b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit.
- (h) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

15. LIMITATION OF LIABILITY OF GROWER

Subject to clause 12.2, in no circumstances will the Grower be obliged to incur any liability under this Agreement in excess of the annual licence fee payable under this Agreement, its Prescribed Proportion of the fees and expenses payable by the Joint Venture under the Almondlot Management Agreement and its Prescribed Proportion of the Joint Venture Proceeds.

16. NOTICE

16.1 Form of Notice

Any notice to be given under or in connection with this Agreement will 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.

16.1 Receipt of Notice

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.

17. PROPER LAW

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

18. AMENDMENTS

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
- (b) Subject to paragraph 18(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) Before giving its written consent under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of Growers.
- (d) The Land Owner may make the amendments under paragraph 18(b) 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.
- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a) of this clause.

19. DISPUTES

If a dispute arises under this Agreement between any parties it must be referred for resolution under the dispute resolution provisions of the Constitution.

20. CONSTITUTION

The rights and obligations of the parties under this Agreement are subject to the terms and conditions of the Constitution.

Executed as an Agreement

EXECUTED by TIMBERCORP)
SECURITIES LIMITED in)
accordance with section 127 of)
the Corporations Act:)



Signature

Robert J Hance

Full Name

DIRECTOR

Position Held



Signature

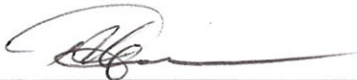
Sol Rabinowicz

Full Name

DIRECTOR

Position Held

EXECUTED by ALMOND LAND)
PTY LTD in accordance with)
section 127 of the Corporations)
Act:)



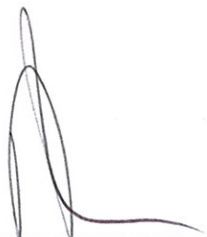
Signature

Robert J Hance

Full Name

DIRECTOR

Position Held



Signature

Darren Lipton

Full Name

DIRECTOR

Position Held

EXECUTED by TIMBERCORP)
SECURITIES LIMITED as agent)
and attorney for and on behalf of)
each several grower in)
accordance with section 127 of)
the Corporations Act:)



Signature

Robert J Hance

Full Name

DIRECTOR

Position Held



Signature

Sol Rabinowicz

Full Name

DIRECTOR

Position Held

SCHEDULE 1

Grower Details

Name:

Address:

Contact Phone No:

Contact Fax No:

Contact Email Address:

Date Application Accepted:

JV Almondlot Details

Description of JV
Almondlots