

2003 001

CONSTITUTION

2003 TIMBERCORP ALMOND PROJECT

Timbercorp Securities Limited
(ACN 092 311 469) &
Each Grower

2003 Timbercorp Almond Project

[EXECUTION COPY]

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Details of this Constitution

Date of the Deed:

This Deed is made on 17 December 2002.

Parties to the Deed:

1. TIMBERCORP SECURITIES LIMITED

ACN 092 311 469

Level 8, 461 Bourke Street

Melbourne Victoria 3000

(Responsible Entity)

2. EACH GROWER

(Grower)

Background to the Deed

- A. The Responsible Entity is the holder of a dealer's licence, issued by ASIC, which authorises it to operate the Project.
- B. The Responsible Entity proposes to issue the Prospectus, which will invite persons to participate in the Project. By participating, either through the Prospectus or by some other means, such as a secondary sale, a person will become a Grower and be bound by this Deed.
- C. Each Grower will be granted a licence by the Land Owner in respect of one or more Almondlots and will associate itself as a joint venturer with the Land Owner, under the Licence and Joint Venture Agreement.
- D. The Licence and Joint Venture Agreement permits each several Grower to use its Almondlots for the purpose of cultivation of Almonds and each Grower intends to use its Almondlots for this purpose.
- E. Each Grower wishes to engage the Responsible Entity to cultivate, maintain and harvest Almond Trees on, and generally manage, the Almondlots in accordance with the Management Plan and carry out and perform each Grower's obligations under the Licence and Joint Venture Agreement.
- F. Each Grower further wishes to engage the Responsible Entity to process the Crop and sell the Product or Crop on behalf of the Grower and for that purpose has authorised the Responsible Entity to enter into the Project Documents subject to the terms and conditions of this Deed.

- G. This Deed comprises the Constitution of the Project, as required under Part 5C.3 of Chapter 5C of the Corporations Act, and is made with the intent that it be legally enforceable as between the Responsible Entity and each several Grower.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Agency Account:	the bank account or accounts kept by the Responsible Entity in accordance with clause 12;
Agreements:	the Licence and Joint Venture Agreements and the Almondlot Management Agreements;
Almonds:	the almonds grown on the Orchard, and in relation to a Grower, means the almonds grown on the Grower's Almondlots, whether or not harvested;
Almond Trees:	the almond trees planted or to be planted on the Orchard;
Almondlot:	a discrete allotment of approximately 0.25 of one hectare 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, Almond Trees and the Water Licences attributed to the Project;
Grower's Almondlots or relevant Almondlots:	<p>the Almondlots licensed to a particular Grower under the provisions of the Licence and Joint Venture Agreement and which were allotted pursuant to the Prospectus, allocated to a Grower under paragraph 8.7(b) in substitution for other Almondlots or transmitted, transferred, mortgaged, assigned or otherwise disposed of from a predecessor in title, which predecessor in title or some earlier predecessor in title was allotted the Almondlots pursuant to the Prospectus and, where applicable, includes any rights, interests, powers, privileges, obligations and liabilities held by the Grower under this Deed and under each of the Agreements including without limitation:</p> <p>(a) any Application Money held on behalf of the Grower;</p> <p>(b) any Proceeds to which the Grower is entitled or which are held on behalf of the Grower in the Agency Account; and</p> <p>(c) any other rights, powers, authorities to which the Grower is entitled under this Deed or otherwise;</p>
Almondlot Management Agreement:	an agreement substantially in the form contained in the Second Schedule, but with the Schedule to that agreement completed by the Responsible Entity in such manner as it sees fit, or in such other form as the Responsible Entity substitutes prior to the issue of the Prospectus, or if the Project has commenced, as amended

	from time to time (until varied, replaced or cancelled);
Almondlot Statement:	the notice which the Responsible Entity is required to issue under clause 10.1 of this Deed;
Applicant:	a person who has applied to become a Grower in the Project by completing an Application form, but who is not yet a Grower;
Application:	an application pursuant to clause 6.3;
Application Money:	the application money each Applicant is required to pay for each Almondlot under paragraph 6.3(c), as set out in the First Schedule;
ASIC	the Australian Securities and Investments Commission;
Auditor:	the auditor or auditors for the time being of the Project duly appointed under the Corporations Act;
Authorised Investments:	<p>(a) money;</p> <p>(b) interest bearing deposits at call or for a term not exceeding 3 months with or without security with any Financial Institution or Bank;</p> <p>(c) negotiable certificates of deposit issued by or bills of exchange drawn, accepted or endorsed by any Bank; and</p> <p>(d) any deposit in the short term money market with any company that has been approved by the Reserve Bank of Australia, or by ASIC (pursuant to section 65(1)(a) of the Corporations Act), as an authorised dealer in that market,</p> <p>in each case subject to the restrictions in this Deed and the Corporations Act;</p>
Bank:	a bank licensed to carry on the business of banking in Australia under the Banking Act 1959 (Commonwealth) or otherwise lawfully carrying on the business of banking in Australia or any of its States or Territories;
Business Day:	a day other than a Saturday, Sunday or public holiday on which all trading banks are open for general banking business in Victoria;
Capital Works:	the infrastructure and capital works, including the planting of the Almond Trees, that the Land Owner has agreed to carry out and will continue to carry out as required on the Orchard;
Chargee:	any chargee or mortgagee of the Grower's Almondlots, the name and status of which as such chargee appears for the time being in the Register;
Constitution:	this Deed as may from time to time be amended and in force;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or if in the opinion of the Responsible Entity that index is no longer appropriate for

	calculating changes in the cost of living for the eight capital cities of Australia, such other index number as is recommended by the Auditor as most closely reflecting changes in the cost of living for the eight capital cities of Australia;
Crop:	the Almonds taken from the Almond Trees grown on the Growers' Almondlots;
Custodian:	Permanent Trustee Company Limited (ACN 000 000 993) of Level 5, 365 Collins Street, Melbourne, Victoria, and its successors and assigns, or any other person duly appointed by the Responsible Entity to provide custodial services in relation to the Project;
Deed:	this document including the Schedules to this document, comprising the Constitution for the Project, and such other deed or other instruments as may be in force for the time being amending or being supplemental to or collateral with this document or any of the foregoing components of this document;
Defaulting Grower:	a Grower who ceases to participate in the Project under paragraph 18.4(a);
Financial Institution:	has the same meaning as that given to the definition "transferring financial institution of this jurisdiction" in Schedule 4 of the Corporations Act excluding paragraphs (e), (f) and (g) of that definition;
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Deed and ending on 30 June 2003 and the period ending on the termination of this Deed and commencing on the preceding 1 July;
Government Agency:	a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration or any applicable law;
Grower:	<p>(a) each several person (or in the case of joint applicants or successors or permitted assigns, each of those persons) who becomes a party to this Deed (as a Grower) as a result of either:</p> <ul style="list-style-type: none"> (i) the allotment of Almondlots pursuant to an Application in the Prospectus; or (ii) a transmission, transfer, mortgage, assignment or other disposal pursuant to clause 20 of this Deed, <p>and who remains registered under this Deed as the holder for the time being of any Almondlots;</p> <p>(b) the expression "all Growers" means:</p> <ul style="list-style-type: none"> (i) all persons who have so become a party to this Deed as a Grower and remain the registered holder for the time being of relevant Almondlots; and (ii) includes the Land Owner, who as a consequence of entering into a Licence and Joint Venture Agreement is a joint venturer with

	<p>a Grower; and</p> <p>(c) where relevant:</p> <p>(i) the expression "Early Grower" means a person whose application was accepted on or before 30 June 2003; and</p> <p>(ii) the expression "Post 30 June Grower" means a person whose application was accepted on or before 30 June 2003;</p>
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:	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Indexed:	<p>the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;</p>
Land:	the land on which the Project will be conducted, as described in the Prospectus and such other land which is used in the Project;
Land Owner:	the registered proprietor for the time being of the Land, which at the date of this Deed is Almond Land Pty Ltd (ACN. 091 460 392);
Law:	includes any statute, enactment, code, ordinance, rule, regulation or by-law and any decree, order or judgment of any competent court whether in Australia or elsewhere;
Licence:	the licence granted to a Grower pursuant to a Licence and Joint Venture Agreement;
Licence Fees:	the fees payable by a Grower under the Licence and Joint Venture Agreement;

Licence and Joint Venture Agreement:	the agreement of that name between the Land Owner and each Grower, substantially in the form contained in the Third Schedule, or in such other form as the Responsible Entity substitutes prior to the issue of the Prospectus, or if the Project has commenced, as amended from time to time (until varied, replaced or cancelled);
Management Plan:	the management plan for the Financial Year prepared by the Responsible Entity;
Management Fees:	the fees payable by a Grower under an Almondlot Management Agreement;
Minimum Subscription:	the minimum number of Almondlots stated in the Prospectus, if any, that, in the opinion of the directors of the Responsible Entity, must be applied for to make the Project commercially viable;
month:	a calendar month;
Orchard:	all of the Almondlots;
Orchard Services:	the services and duties which the Grower is required to perform or carry out under the Licence and Joint Venture Agreement, but does not include the obligation to pay any Licence Fees under that Agreement;
Ordinary Resolution:	a resolution passed at a meeting of Growers concerned, duly convened and held in accordance with the provisions of clause 22 of this Deed, by a majority of the persons voting at that meeting upon a show of hands and if a poll is demanded then by a majority of the votes given on such a poll. Any resolution which may be put pursuant to this Deed is an Ordinary Resolution unless otherwise provided;
Participating Interest:	<p>(a) the entitlement of the Grower to the Project Property, the Crop, the Product and the Proceeds calculated in accordance with the formula:</p> <p style="text-align: center;">A/B</p> <p>where:</p> <p>A: is the area of Almondlots licensed to the Grower under the Licence and Joint Venture Agreement and used in the Project; and</p> <p>B: is the total area of Almondlots licensed to all of the Growers under the Licence and Joint Venture Agreement and used in the Project.</p> <p>(b) In the event that there is a reduction in the area of a Grower's Almondlot or Almondlots under clause 10.4 of the Licence and Joint Venture Agreement, the Participating Interest of each Grower will be recalculated in accordance with the formula in paragraph (a) of this definition. The recalculated Participating Interests will be applied from the date of the reduction in the area;</p>
party:	any of the Growers, the Growers, the Responsible Entity or any one or more of them as the context requires;
person:	includes company, firm or body of persons;

Proceeds:	<p>(a) interest received on moneys in the Agency Account;</p> <p>(b) any moneys payable to the Growers under any policy of insurance in relation to the Growers' Almondlots, the Crop, the Product or the Project subject to clause 13.9;</p> <p>(c) proceeds payable to Growers under the Almondlot Management Agreement from the sale of the Product or the Crop, where applicable, in accordance with this Deed; and</p> <p>(d) any other moneys payable to a Grower from or in relation to the Project;</p>
Product:	Almonds in a saleable condition;
Production Period:	the period of time from the day the Responsible Entity commences harvesting the Grower's Almondlots until the day all of the produce from the harvest of all Growers' Almondlots is processed and sold by the Responsible Entity;
Project:	the project of managing, cultivating and harvesting Almond Trees and the processing and sale of Almonds, known as the 2003 Timbercorp Almond Project and being the entire undertaking, scheme, enterprise or arrangement to which the Growers and the Growers' corresponding Almondlots relate being Almondlots that will be first offered in the financial year ending 30 June 2003;
Project Documents:	the agreements entered into by the Responsible Entity under clauses 13.3 and 13.4;
Project Property:	the funds for the time being in the Agency Account, all Authorised Investments, assets and any other property acquired throughout the term of the Project using the money or property contributed by Growers, including the Proceeds, but excluding any assets or other property vested directly in the Growers, such as the Crop or the Product;
Prospectus:	the prospectus (as defined in section 9 of the Corporations Act) in relation to the Project;
Register:	the register of Growers set up and established by the Responsible Entity under clause 10.3 of this Deed;
Responsible Entity:	the responsible entity for the time being under this Deed whether original or substituted;
Special Resolution:	has the meaning given to it in section 9 of the Corporations Act;
Water Licences:	the water licences owned or acquired by the Land Owner and attributed to the Project.

1.2 Construction

(a) Singular and plural

Words importing the singular number include the plural and vice versa.

(b) Gender

Words importing a gender include any gender.

(c) **Headings**

Headings are for ease of reference only and do not affect the construction of this Deed.

(d) **Definitions**

Where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase unless the context otherwise requires has a corresponding meaning.

(e) **References to statute**

A reference to a statute, ordinance, code or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof.

(f) **Conversion of foreign currency to Australian currency**

Whenever it is necessary for the calculation of any cost, value, price or any other amount under this Deed to convert a foreign currency into Australian currency, the Australian currency equivalent of the foreign currency will be determined at the spot telegraphic transfer buying rate of that foreign currency quoted by the Financial Institution or Bank that the Responsible Entity may at any time and from time to time nominate on the date of the calculation or, where the nominated Financial Institution or Bank is closed for business, on the date of calculation on the next day on which the nominated Financial Institution was open for business, or by such other method as the Responsible Entity considers prudent.

(g) **Deed includes Schedules**

A reference to this Deed includes a reference to an applicable Schedule.

(h) **Currency**

A reference to 'dollars' or '\$' is a reference to the lawful currency of Australia.

(i) **ASIC Instruments**

If relief from the provisions of the Corporations Act granted by an ASIC instrument requires that this Deed contain certain provisions, then those provisions are taken to be incorporated into this Deed at all times at which they are required to be included and prevail over any other provisions of this Deed to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Project) then the ASIC instrument (and the provisions it requires) will only be taken to be incorporated if the Responsible Entity declares in writing that this is the case.

(j) **Deed Binds Responsible Entity and Growers**

This Deed as amended from time to time binds the Responsible Entity and each Grower.

(k) **Grower and Deed**

(a) The term "Grower" in this Deed is a reference to the particular Grower and, unless the context otherwise requires, includes the Land Owner in respect of the Almondlot or Almondlots that have been licensed to it and a Grower as parties under a Licence and Joint Venture Agreement.

(b) The term "Growers" in this Deed is a reference to all Growers that hold Almondlots in the Project and according to the context, the term "Growers" may also include the Grower.

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- (c) This Deed is entered into in respect of the Grower's Almondlots referred to in the Licence and Joint Venture Agreement and must be read as if it were a separate Deed on the terms and conditions of this Deed in respect of each Almondlot held by the Grower.
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2. PROSPECTUS

The Responsible Entity will issue the Prospectus inviting or offering for subscription Almondlots in the Project at the application prices set out in the First Schedule for each Almondlot and on the terms and conditions set out in the Prospectus.

3. APPOINTMENT OF RESPONSIBLE ENTITY

Each Grower irrevocably appoints the Responsible Entity as its agent, representative and attorney in relation to the Project with the powers, rights, duties and indemnities set out in this Deed and the Responsible Entity accepts such appointment.

4. BARE TRUST

4.1 Bare Trust

Until the Minimum Subscription is reached under the Prospectus, the Responsible Entity must hold all Application Money as a bare trustee for the Applicant.

4.2 Special Trust Account

Any amounts paid by any Applicant in accordance with clauses 6.3 and 6.4 must be accounted for by the Responsible Entity in a special trust account and such amounts must be placed in one or more bank accounts kept solely for the purpose of depositing Application Money in relation to the Prospectus.

4.3 Pooling of Amounts

Any amounts paid by any Applicant may be pooled with any amounts paid by any other Applicant.

4.4 Interest

Subject to clauses 7.3 and 8.2, interest (if any) earned from Application Money of any special trust account provided for in clause 4.2 will, upon the Applicant becoming a Grower, be paid to the Responsible Entity as fees.

5. PROJECT PROPERTY

5.1 Responsible Entity to hold property for the Growers

Subject to clause 5.2, all Project Property will be held by the Responsible Entity for the Growers for the term of the Project. The Growers' interest in the Project Property will be in the proportions of their Participating Interests.

5.2 Dealing with and holding property

The Responsible Entity may appoint an agent to hold Project Property separately from any other property. The terms of the appointment will be determined by the Responsible Entity and the agent. However the terms must be consistent with the provisions of this Deed.

5.3 Giving directions to an agent

If the Responsible Entity has engaged an agent to hold Project Property then the Responsible Entity must direct the agent to invest and deal with Project Property in accordance with this Deed.

6. APPLICATION PROCEDURE

6.1 Oversubscriptions

The Responsible Entity reserves the right to accept Applications for Almondlots in excess of that number of Almondlots for which subscription or purchase or invitations to subscribe or apply for are sought under the Prospectus.

6.2 Receipt of Application

The Responsible Entity may itself or by its duly authorised agents or by any dealers or Australian financial services licensees licensed for the purpose receive Applications under the Prospectus.

6.3 How to Apply

Every Applicant must deliver to the Responsible Entity or to the duly authorised lawful agents of the Responsible Entity at the place set out in the Prospectus or any other place or places as the Responsible Entity may from time to time determine the following:

- (a) an Application for Almondlots, incorporating an offer to become a Grower under this Deed, being in the form attached to the Prospectus, and signed or executed by the Applicant;
- (b) a Power of Attorney, being in the form attached to the Prospectus, signed or executed by the Applicant, appointing the Custodian or the Responsible Entity (whichever is so authorised) to be the Applicant's attorney and, on the Applicant's behalf, to execute the Agreements and any other documents which are ancillary or related to the Agreements, or contemplated by the provisions of the Agreements; and
- (c) as required by the Prospectus but subject to clauses 6.4 and 6.5, a cheque for the Application Money for each Almondlot being the amount set out in the First Schedule.

6.4 Payment in Full or by Instalments

- (a) Subject to clauses 6.5 and 7.1 and subject to the Responsible Entity electing to make available to Applicants a facility to pay the Application Moneys by instalments, at the option of any Applicant, the Application Money for each Almondlot may be payable in full at the time of application or may be payable by instalments. If the Applicant elects to pay the Application Money by instalments, the Applicant must pay at the time of delivering of the Application

the amount shown in the application as the "DEPOSIT", and the balance of the Application Money must be paid by the Applicant (or Grower, if that Applicant has become a Grower in accordance with the provisions of this Deed), to the Responsible Entity by the date specified in the Application (if any) and if no such date is specified, by such date as the Responsible Entity may, in its absolute discretion, determine, provided that in its absolute discretion, the Responsible Entity may extend that date to such later day as the Responsible Entity determines.

- (b) If an Applicant, or Grower, whichever is the case, fails to pay the amount shown in the Application against the words "BALANCE" (or any part of it) by the day specified in the Application, or by any other date determined by the Responsible Entity, for payment of it, the Responsible Entity is authorised to exercise all or any of the remedies below (in addition to and without prejudice to any rights at law or in equity or pursuant to this Deed). The Responsible Entity is entitled to recover from the Applicant (or Grower, whichever is the case) the balance together with interest on the balance outstanding at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) as at the date specified in the Application for payment, from the day so specified in the Application until payment; and either
- (i) the Responsible Entity may sue the Applicant (or Grower, whichever is the case) for specific performance of its agreement; or
 - (ii) the Responsible Entity may terminate all the right, title and interest of the Applicant (or Grower, whichever is the case) pursuant to the provisions of this Deed and any Agreement and the Applicant (or Grower, whichever is the case) must forfeit the deposit money paid, provided the Responsible Entity has first given the Applicant (or Grower, whichever is the case) a notice in writing informing the Applicant (or Grower, whichever is the case) of the default and giving the Applicant (or Grower, whichever is the case) a period of TEN (10) days from the date of posting of the notice to remedy the breach.
- (c) If the Responsible Entity exercises its right under paragraph 6.4.2(b)(ii), then within 14 days of exercising that right, the Responsible Entity must make an appropriate notation in the Register.

6.5 Condition as to Finance

If an amount is shown in an Application against the words "LESS amount subject to finance" (if those words appear in the Application), the Application will only be accepted by the Responsible Entity on condition that a person (which person may include the Responsible Entity) agrees to lend that amount to the Applicant. The Responsible Entity does not warrant, undertake, covenant or agree that such finance will be provided or procured.

7. REFUSAL OF APPLICATIONS

7.1 Refusal of Application

The Responsible Entity may in its absolute discretion, but only within fifteen (15) Business Days after receipt of an Application, give notice in writing to any Applicant to the effect that its Application has been refused.

7.2 Notice of Refusal

The notice provided for in clause 7.1 may specify that the Application has been refused:

- (a) wholly in relation to the Application; or
- (b) partly, that is, with respect to a proportion of the Application Money contributed with the Application;

without giving any reasons for the refusal.

7.3 Repayment to Applicant

Upon the Responsible Entity having given notice to an Applicant that its Application has been refused, the Applicant will be entitled to be repaid the amount paid by the Applicant with respect to the Application so refused with interest (if any) earned in relation to that amount (each Applicant so refused receiving its share of the aggregate interest earned in relation to all relevant Applicants in the proportion that the money of the Applicant bears to the money held on behalf of all relevant Applicants calculated from day to day) and without any deduction except for bank fees and government charges.

7.4 Applicant ceases to be an Applicant

If any Application is wholly refused then upon repayment of any money payable to the Applicant under clause 7.3, the Applicant will also cease to be an Applicant under this Deed and have no rights or obligations in relation to this Deed in any respect.

8. ACCEPTANCE OF APPLICATIONS

8.1 Applicant to Become Grower on Acceptance

Upon an Application being accepted by the Responsible Entity in whole or part, and the Minimum Subscription, if any, being reached, the Applicant will become a Grower.

8.2 Minimum Subscription Not Reached

If Minimum Subscription is not reached within the time specified in the Prospectus, the Responsible Entity must within 7 days of the end of such period repay to each Applicant so much of the Application Money as has been paid by those Applicants with any interest earned in relation to that Application Money (each Applicant receiving its share of the aggregate interest earned in relation to all Applicants in the proportion that the money of the Applicant bears to the money held on behalf of all Applicants calculated from day to day) and without any deduction except for bank fees and government charges.

8.3 No Communication Necessary

Subject to clause 10.1, in no case will it be necessary to communicate the acceptance of an Application under this Deed to any Applicant who becomes a Grower and becomes bound to this Deed on the acceptance by the Responsible Entity of the Application.

8.4 Deemed Acceptance

An Application received pursuant to the Prospectus, and not refused under clause 7.1, will be deemed to have been accepted immediately upon receipt, subject to the

Application Money in respect of that Application being paid and the Minimum Subscription, if any, being reached.

8.5 Joint Applicants

In the absence of any express instructions to the contrary in or accompanying any Application or in any of the Agreement, any persons who jointly constitute the Grower hold their Almondlots and enter into the Agreements jointly and severally and as tenants in common.

8.6 Applicant Deemed to Enter this Deed

Upon an Application being accepted by the Responsible Entity in whole or in part, the Applicant is deemed to have contemporaneously become a party to this Deed as a Grower and thereby bound to the covenants and obligations on the part of each individual Grower provided for in this Deed.

8.7 Allocation and Allotment of Almondlots and Entry into Agreements

- (a) At the time or times specified in the Prospectus, the Responsible Entity, following the acceptance of an Application:
 - (i) must immediately allocate and allot an Almondlot or Almondlots to the Grower from the Land (of such location or locations within the Land as the Responsible Entity in its absolute discretion thinks fit) and the Responsible Entity must within 21 days thereafter register the name, number or other description of the Almondlot or Almondlots in the appropriate place in the Register in relation to the entry of that Grower; and
 - (ii) will either itself, or procure that the Custodian (which is so appointed), as attorney for and on behalf of the Grower, enter into the Agreements in relation to the Almondlots allocated to the Grower, and any other documents which are ancillary or related to the Agreements, or contemplated by the provisions of the Agreements.
- (b) The Responsible Entity may at any time after the Agreements described in paragraph 8.7(a)(ii) are entered into, allocate an Almondlot or Almondlots to a Grower, wherever situated on the Land as the Responsible Entity in its absolute discretion thinks fit, in substitution for an Almondlot or Almondlots allocated to a Grower. The allocation of an Almondlot or Almondlots in substitution for another Almondlot or Almondlots under this paragraph 8.7(b) does not affect, or detract from, any rights, interests, powers, privileges, obligations and liabilities held by the Grower under this Deed and under each of the Agreements, other than that the Grower with the Land Owner will as joint venturers cultivate and harvest Almonds on the replacement Almondlot or Almondlots on and from the date of substitution.
- (c) The Responsible Entity may enter into, or procure that the Custodian enters into, (each as attorney for and on behalf of the Grower) such documents, and the Responsible Entity may do such other things, as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to this clause 8.7, including but not limited to making amendments to any Agreement or Project Document, or any lease or sub-lease in respect of all or any part of the Land.

9. RESPONSIBLE ENTITY TO ENTER INTO AGREEMENTS

9.1 Preparation of Agreements

Following acceptance of an Application, the Responsible Entity will prepare the Agreements. The Agreements:

- (a) must be completed in accordance with the details specified in the Application; and
- (b) will commence from such date as is determined by the Responsible Entity.

9.2 Responsible Entity to be reasonably satisfied

Before release of moneys referred to in clause 9.3, the Responsible Entity must be reasonably satisfied that:

- (a) the Agreements are in the form required by this Deed and have been duly entered into by all parties;
- (b) the Land Owner has the capacity to grant the Licence;
- (c) all necessary consents to the grant of the Licence and entry into the Agreements have been obtained or will be obtained;
- (d) the Land the subject of the Licence and Joint Venture Agreement is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant and which is not disclosed in the Prospectus;
- (e) any other matter required to be attended to, which is necessary for the creation of the Licence and the effective vesting in the Grower of his Agreements, whether by reason of this Deed or otherwise, has been attended to; and
- (f) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Growers whose Application Money is to be allocated pursuant to clause 9.3.

9.3 Release of Application Money

(a) Release of Application Money

In relation to each Application which is either expressed to be not subject to finance or (if subject to finance) is unconditional because finance has been approved, the Responsible Entity must within 2 Business Days of the Responsible Entity being satisfied of the matters specified in clause 9.2, release the Application Money and apply it in payment of the fees payable under the Agreements provided that where a deposit has been paid as provided for in clause 6.4, the balance of the Application Money must be paid to the Responsible Entity in accordance with the requirements of clause 6.4.

(b) Refund if no release within 13 months

If the Grower's Application Money to be released pursuant to paragraph 9.3(a) is not released within a period of 13 months after the issue of the Prospectus to which it relates (other than by reason of the Applicant's default), then the Responsible Entity must, within 28 days, refund to the Grower the whole of the Application Money paid with any interest earned in relation to that Application Money (each Grower receiving its share of the aggregate interest earned in relation to all Growers in the proportion that the money of the Growers bears to the money held on behalf of all Growers calculated from day to day) and without any deduction except for bank fees and government charges.

(c) **Extinguishment of Agreements**

Upon the refund of the moneys referred to in paragraph 9.3(b), the Grower's Agreements will be extinguished and the Responsible Entity will make an entry in the Register noting the extinguishment.

(d) **Transfer Interest to Responsible Entity**

In accordance with clause 4.4, the Responsible Entity may transfer to itself the interest component (if any) from the Application Money at any time, but not before the first transfer of Application Money is made pursuant to paragraph 9.3(a).

10. ALMONDLOT STATEMENTS AND REGISTER

10.1 Issue of Almondlot Statements

Within 2 months after the allotment of Almondlots to a Grower, the allocation of Almondlots to a Grower under paragraph 8.7(b) in substitution for other Almondlots or when accounting to a Grower after any change in the holding of the Grower in the Register, the Responsible Entity must issue to the Grower an Almondlot Statement which must be substantially in the form set out in the Fourth Schedule or such other form as the Responsible Entity determines.

10.2 Almondlot Statements

- (a) Each Almondlot Statement must specify such information regarding the Almondlots held by the Grower as set out in the Fourth Schedule.
- (b) The Almondlot Statements may be prepared and printed as the Responsible Entity may from time to time determine and may be issued by computer or other mechanical means and must be signed on behalf of the Responsible Entity.
- (c) An Almondlot Statement is not a certificate of title to any Almondlot, but is merely a statement from the Responsible Entity as to the state of affairs of the Register (or part of it) as it affects the Grower at a particular time.

10.3 Register of Growers

The Responsible Entity must set up and maintain a Register of Growers in accordance with Chapter 2C of the Corporations Act.

10.4 Chargee

Any person may be registered as the Chargee of any relevant Almondlots if that person is named as such in the Application in relation to those Almondlots, or a direction to that effect is received from the person registered as the Grower (in the form set out in Item 1 of the Fifth Schedule as varied from time to time by the Responsible Entity), or the Responsible Entity is otherwise satisfied that the relevant Almondlots are subject to a mortgage or charge, provided that in no circumstances will the Responsible Entity be taken to have notice of (or be bound to enquire into) the terms of any mortgage or charge of the relevant Almondlots.

10.5 References to Chargees in Register

Upon the written request of a Chargee in the form set out in Item 2 of the Fifth Schedule as varied from time to time by the Responsible Entity, the Responsible Entity

must strike from the Register all reference to the Chargee in relation to the Almondlots referred to in the request.

11. RESPONSIBLE ENTITY'S POWERS

Each Grower agrees that the Responsible Entity has irrevocable power as the agent, representative and attorney of the Grower and whether in the name of the Grower or the Responsible Entity or both:

- (a) subject to the requirements of ASIC and of the Corporations Act, to receive and hold the Application Money;
- (b) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with clause 16;
- (c) to use the Application Money of the Grower in discharging the Grower's obligations under the Agreements or under this Deed;
- (d) to prepare reports and accounts in relation to the Orchard Services and in relation to the processing of Crop and the sale of Product or Crop;
- (e) to monitor the performance of all parties to the Project Documents;
- (f) to appoint agents to enter into the Project Documents on behalf of a Grower and to exercise all rights and powers of the Grower under any Project Document;
- (g) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Orchard Services on behalf of the Grower;
- (h) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Crop and Product from the Project;
- (i) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and bring legal or arbitration proceedings against any person who is a party to any Agreement or Project Document, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Grower or Growers and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Grower and relating to any Agreement;
- (j) to execute any deed, agreement, certificate or other document and to do all such things as are necessary or desirable further of the powers granted to the Responsible Entity in this clause 11, including for the purposes of protecting, insofar as is legally possible, the growers' tenure to its Almondlots; and
- (k) to lease the Land from, and sublease it to, the owner of the Land.

12. AGENCY ACCOUNT

12.1 Agency Account

The Responsible Entity must keep or cause to be kept a separate Agency Account or

Agency Accounts for the purpose of depositing the Proceeds and any other money that the Responsible Entity may hold for the Grower, other than Application Money and interest on Application Money.

12.2 Use of Moneys in Agency Account

Subject to clause 16.3, the Responsible Entity must hold the moneys standing to the credit of the Grower in the Agency Account for the Grower to be dealt with in accordance with the provisions of this Deed.

12.3 Bank Account May be Interest Earning

The bank account or accounts in which the Responsible Entity deposits moneys standing in any Agency Account may be interest earning. Any interest so earned will be treated as Proceeds.

12.4 Pooling of Moneys

Moneys held by the Responsible Entity for any of the Growers may be pooled in any one or more bank accounts with moneys held on behalf of any other Growers.

13. PROCESSING OF CROP AND SALE OF PRODUCT

13.1 Crop and Product of the Project

Subject to clause 13.2, the Grower is entitled to the whole of the Crop and Product in each Financial Year in proportion to the Grower's Participating Interest.

13.2 Crop and Product of Defaulting Grower

A Grower is not entitled to its Participating Interest in each Financial Year where the Grower is a Defaulting Grower, in which case that Grower's Participating Interest in the Crop and Product will be used to satisfy the Grower's obligations in the manner set out in clause 13.7.

13.3 Processing of Almonds

The Grower participates in the Project with the intention of having its Participating Interest in the Crop processed into Product. To this end, the Grower severally authorises and requests the Responsible Entity to store its Participating Interest in the Crop, procure the processing of its Participating Interest in the Crop and to enter into any processing agreement as agent and attorney for the Grower.

13.4 Sale of Product

- (a) The Grower further severally authorises and requests the Responsible Entity to sell its Participating Interest in the Product or Crop using its reasonable endeavours to maximise returns, and on such terms and conditions as the Responsible Entity in its absolute discretion determines and for this purpose to enter into any agreement for the sale of the Grower's Participating Interest in the Product or Crop as agent and attorney for the Grower.
- (b) Prior to the sale of the Product or Crop, the Responsible Entity may gather in all of the Growers' Product or Crop and the Responsible Entity may store, market and sell the Product or Crop gathered in without having regard to the quantity or quality of the particular Product or Crop from the particular Almondlots.

13.5 Records

The Responsible Entity must keep full and complete records of the sale of the Grower's Participating Interest in the Product or Crop and separately account to the Grower for the sale of the Grower's Participating Interest in the Product or Crop.

13.6 Payment into Agency Account

The Responsible Entity must pay into the Agency Account:

- (a) proceeds from the sale of Product produced from Crop, or of Crop, attributable to the Growers' Almondlots;
- (b) proceeds of any insurance policy to which the Growers are entitled to benefit; and
- (c) any other amount properly related to the proceeds from the Growers' Almondlots.

13.7 Grower's Entitlement

- (a) A Grower is entitled to the money in the Agency Account which represents his Participating Interest in the gross income from the sale of the Product or Crop for a particular Production Period less:
 - (i) any fees payable under the Grower's Licence and Joint Venture Agreement;
 - (ii) any fees payable under the Grower's Almondlot Management Agreement; and
 - (iii) any other amounts payable by the Grower under this Deed and the Agreements.
- (b) The Grower authorises the Responsible Entity to make the deductions listed in paragraph 13.7(a) and pay the deducted amounts to the persons entitled to them. The Responsible Entity may make these payments within 14 days of receiving the money into the Agency Account in respect of the relevant Grower.
- (c) If, in any Financial Year in which there is a Production Period, there is insufficient money to make all the required payments then the deductions to be made under paragraph 13.7(a) must be made in the priority in which they are listed.
- (d) The surplus available to each Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Grower. The payment must be made within five months after 30 June each year in which there is a Production Period.
- (f) If there are any accruals of amounts to be paid in any of the categories listed in the definitions of "Proceeds" then the accrual must be paid in the same order of preference as the items listed in paragraph 13.7(a).

13.8 Product Liability Insurance

The Responsible Entity must at all times keep current with a reputable insurance company a product liability policy in respect of all of the Product or Crop of the Grower which is sold by or on behalf of the Grower. The policy must be in the names of the Responsible Entity and the Grower.

13.9 Proceeds from Insurance

- (a) This clause 13.9 applies where insurance proceeds are paid in respect of some only of the Growers' Almondlots.
- (b) Where there is an event which only affects some Growers' Almondlots and insurance proceeds are paid in respect of that event, the proceeds are divided between those Growers only and according to the proportion that the area of each Growers' Almondlots affected bears to the total area of the Growers' Almondlots affected.
- (c) In the event this clause 13.9 is operative, the Growers who receive their proportion of the insurance proceeds are not to receive any part of the other Proceeds in respect of the Production Periods to which the claim relates and accordingly, the Participating Interest of each Grower in the other Proceeds is to be recalculated with the area of the affected Almondlots excluded.

13.10 Interim distribution of entitlements

Despite anything contained in this Deed, the Responsible Entity may from time to time and at any time make such interim distributions to Growers on account of their respective entitlements under this clause 13. The timing and the amount of the distributions is at the complete discretion of the Responsible Entity.

13.11 Deduction of Taxes

The Responsible Entity may, at its discretion, deduct or require to be deducted from any amounts payable to any Grower, the amount of any tax or duty which is paid or payable by the Responsible Entity in respect of the Grower.

13.12 Indemnity

The Responsible Entity is indemnified by each person who is or was at any time a Grower in respect of any tax or duty referred to in clause 13.11.

14. REMUNERATION OF THE RESPONSIBLE ENTITY

14.1 The Responsible Entity's Fees

The Responsible Entity will receive in respect of the Project by way of remuneration for carrying out its duties and obligations under this Deed, the Almondlot Management Agreement and the Project Documents and otherwise managing the Project, those fees provided for in this Deed and in the Almondlot Management Agreement. The rights of the Responsible Entity to receive the remuneration specified in this clause are available only in relation to the proper performance of the Responsible Entity's duties.

14.2 Further Fees

The Responsible Entity will be entitled to be paid any interest earned on Application Money (pursuant to clause 4.4) and to collect, receive, get in and retain all dividends, interest, rents and other income from the Authorised Investments from time to time comprised in or forming part of the Agency Account (pursuant to clause 16.3).

14.3 Payment of Expenses

Subject to, and without derogating from, the rights of the Responsible Entity's under the Almondlot Management Agreement, the Responsible Entity will be responsible for

payment of all expenses relating to the operation and administration of the Project up to the harvest stage.

15. USE OF MONEYS IN THE AGENCY ACCOUNT

15.1 Authority to Make Payments

The Responsible Entity must as the agent for each of the Growers pay moneys pursuant to any obligations on the part of the Grower under this Deed or under the provisions of the Agreements.

15.2 Expenditure to be shared between Growers

Expenditure will be shared between all of the Growers such that each Grower pays its Participating Interest in the aggregate expenditure.

16. INVESTMENT OF MONEYS BY RESPONSIBLE ENTITY

16.1 Power of Investment

The Responsible Entity may apply the whole or part of such moneys as are for the time being standing in any Agency Account in such Authorised Investments in the name of the Responsible Entity as the Responsible Entity sees fit.

16.2 Variation of Investments

Should the Responsible Entity at any time and from time to time consider it desirable in the interests of a Grower or of each of the Growers to sell or otherwise dispose of, exchange, vary, modify or otherwise change any investment made pursuant to clause 16.1, the Responsible Entity may at its absolute discretion do so.

16.3 Application of Income from the Authorised Investments

Any interest or other income earned from Authorised Investments will be paid to the Responsible Entity as part of its fees.

17. ANNUAL AND EXTRAORDINARY EXPENSES OF THE PROJECT

17.1 Contribution of Further Moneys

Each Grower agrees to contribute further moneys on the dates, in the amounts and in the manner set out in this Deed and the Agreements by making payment to, or at the direction of, the parties entitled to such payments. Except to the extent that any payment comprises Application Money, at least 1 month prior to any payment being due under this clause, the Responsible Entity must give written notice to each Grower as to the amount due.

18. THE AGREEMENTS

18.1 Status of Agreements

The Agreements entered into between the Responsible Entity and each of the Growers must be read subject to the terms of this Deed.

18.2 Retention of Agreements

The Responsible Entity will arrange for the Agreements to be stamped (if required) and then retain each in safe custody until the end of the Project. A Grower may obtain a copy of its Agreements by written request to the Responsible Entity.

18.3 Termination of Agreements

- (a) If any Grower's Agreements are terminated for whatever reason, then the parties (including the Growers) acknowledge that the Responsible Entity has rights in respect of all Almondlots (including those in respect of which Agreements have been terminated). The Responsible Entity reserves these rights in order to properly carry out its duties under the Agreements which have not been terminated. The Responsible Entity will not exercise its rights except for this purpose.
- (b) The Responsible Entity's rights include:
 - (i) rights of access to control pests, weeds, undergrowth or similar alien material;
 - (ii) rights to continue to fertilise and irrigate Almondlots;
 - (iii) rights to enter the Almondlots to inspect their condition and the condition of the plant life growing on the Almondlots; and
 - (iv) any other rights which the Responsible Entity must reasonably exercise to fulfil its obligations under this clause, and its obligations under the Agreements.
- (c) If, in exercising any of its rights, the Responsible Entity causes damage to any Growers' Almondlot, then the Responsible Entity must make good that damage.
- (d) If any Grower's actions cause damage to any Almondlot and the performance of the Project then the relevant Grower must make good that damage. The Grower's obligations in this respect are owed to the Responsible Entity.
- (e) This clause will survive the termination of the Agreements with the Grower.

18.4 Consequences of Default & Termination

(a) Grower in breach or ceases participation

If a Grower is in breach of any of the Agreements or this Deed or ceases to participate in the Project due to a breach of any of the Agreements or this Deed, including where any of the Agreements in respect of an Almondlot of a Grower are terminated, then this clause 18.4 applies.

(b) Responsible Entity may sue

The Responsible Entity may sue the Grower for any amount or amounts due under the Agreements.

(c) Responsible Entity may give notice

- (i) The Responsible Entity may give notice to the Grower that the

Grower is in default and that the Responsible Entity may exercise its right for and on behalf of the Grower to assign to the Land Owner or any other person nominated by the Responsible Entity all of the relevant Almondlots held by the defaulting Grower if payment of the amount or amounts due under the Agreements or this Deed, or other default thereunder, is not rectified within 30 days of the notice being so given to the defaulting Grower.

- (ii) In the event that notice is given as provided in paragraph 18.4(c)(i) and the defaulting Grower fails or neglects to remedy the default complained of, the Responsible Entity may, for and on behalf of the defaulting Grower, assign some or all of the relevant Almondlots to the Land Owner or any other person nominated by the Responsible Entity in accordance with paragraph 18.4(d).
- (iii) The Responsible Entity has no liability to the defaulting Grower in respect of such assignment.

(d) Responsible Entity may assign

- (i) If:
 - (A) the Responsible Entity has given a defaulting Grower a notice as provided in paragraph 18.4(c)(i) and the Grower has failed or neglected to remedy the default complained of, the defaulting Grower must, if the Responsible Entity requires, assign to the Land Owner or any other person nominated by the Responsible Entity its interests in the relevant Almondlots; or
 - (B) a Grower has ceased to participate in the Project in respect of a relevant Almondlot due to the termination of the Agreements, the Responsible Entity must procure an assignment of the Almondlot to the Land Owner or any other person nominated by the Responsible Entity by the later of:
 - (1) 6 months after the Agreements have been terminated; or
 - (2) 14 days after the independent valuer has determined the market value of the Relevant Almondlots.
- (ii) The consideration for the assignment of relevant Almondlots to the Land Owner or any other person nominated by the Responsible Entity in accordance with this paragraph 18.4(d) will be the market value of the relevant Almondlot determined by an independent valuer at the Grower's cost. The Responsible Entity and the Grower must jointly request the President of the Victorian Lawyers RPA Pty Limited (or, if such body has ceased to exist, then such other institute or body which carries out similar functions) to nominate a person to value the Almondlots for the purposes of this paragraph 18.4(d).
- (iii) The consideration for the assignment of any relevant Almondlots must be applied in the following order of priority:
 - (A) in payment of the costs of the valuer;
 - (B) in payment of the reasonable costs and expenses incurred by the Responsible Entity in connection with the Grower's default plus interest;
 - (C) in payment of any amounts owing by the Grower under the

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- Licence and Joint Venture Agreement plus interest;
 - (D) in payment of any amounts owing by the Grower under the Almondlot Management Agreement plus interest;
 - (E) in payment of any amounts owing by the Grower under this Deed plus interest;
 - (F) any residue is to be treated as Proceeds for the benefit of the Grower.
 - (iv) If there is insufficient money remaining from the proceeds of the sale of the Grower's Almondlots to pay all of the outstanding costs and liabilities set out in paragraph 18.4(d)(iii), then the Grower must make good that difference. The difference constitutes a debt owing by the Grower to the Responsible Entity.
 - (v) The Grower appoints the Responsible Entity its attorney to enter into and execute for and on behalf of the Grower such documents, and do such other things, as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to this paragraph 18.4(d).
 - (e) **Responsible Entity may continue to manage Almondlot**

After the Grower has ceased to participate in the Project in respect of a relevant Almondlot due to the termination of any of Agreements in respect of the relevant Almondlot:

 - (i) the Responsible Entity may continue to manage the Almondlot in accordance with this Deed and the Almondlot Management Agreement, in which case the Responsible Entity will be entitled to all amounts that it would have received under the Almondlot Management Agreement had it not been terminated in respect of the relevant Almondlot;
 - (ii) the Participating Interest in the gross income from the sale of the Product or Crop for a particular Production Period or any other Proceeds attributable to the relevant Almondlot of the Grower will be applied in the following order of priority:
 - (A) in payment of any amounts to the Land Owner to which its entitled under paragraph 18.4(d)(ii) plus interest;
 - (B) in payment of any amounts to the Responsible Entity to which its entitled under paragraph 18.4(d)(ii) plus interest;
 - (C) in payment of any amounts to the Responsible Entity to which its entitled under paragraph 18.4(e)(i) plus interest;
 - (D) any residue is to be treated as Proceeds for the benefit of the Land Owner.

(f) **Interest**

Interest under this clause 18.4 is to be calculated from the specified date for payment of the amount under the Deed or the Agreements to the time of actual payment, at rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) unless the relevant Agreement or a clause of this Deed specifies another interest rate.

18.5 Payment by Responsible Entity

- (a) Despite clause 18.4, the Responsible Entity may from its own funds pay any

person or itself on behalf of the Grower such amount of fees, expenses, rent, costs or other amounts as may for the time being and at any time thereafter be due by the Grower under the provisions of this Deed or under the provisions of any Agreement.

- (b) In the event that any amount is so paid by the Responsible Entity on behalf of the Grower, or in the event that any other expenses are reasonably and properly incurred (whether under paragraph 18.5(a) or otherwise) or are required to be incurred on behalf of the Grower in relation to the Project by the Responsible Entity, then the Responsible Entity may:
 - (i) require the amount or expenses to be paid from moneys (if any) in the Agency Account; and/or
 - (ii) pay for such expenses itself.
- (c) Subject to clause 24.1, in the event that the Responsible Entity pays for any amounts or expenses on behalf of a Grower or Growers in relation to the Project itself (other than expenses which it has contracted to incur pursuant to this Deed and the Almondlot Management Agreement), the Responsible Entity will be entitled to be reimbursed by the relevant Grower or Growers from the Agency Account in the amount of such expenses plus the rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) from the time of such payment by the Responsible Entity until the date of reimbursement, and in cases where reimbursement is from each of the relevant Growers, each of the Growers must pay a sum equal to its Participating Interest of the aggregate amounts of expenses including interest.

19. GROWER'S ALMONDLOTS

19.1 Right to Inspect Documents and Express Opinions

Each Grower has the right:

- (a) to inspect and copy any document or other information relevant to the activities of the Responsible Entity on its behalf (except for information which is confidential because its disclosure could in the reasonable opinion of the Responsible Entity assist competitors or otherwise prejudice the interests of all Growers), provided that on each occasion upon which the Grower seeks to exercise its right under this paragraph the Grower will sign a suitable undertaking to keep confidential the document or other information; and
- (b) to express opinions and to give recommendations relating to any matters the subject of the Agreements, and the Responsible Entity will give due consideration to any such opinions or recommendations received in writing.

19.2 Grower's Right regarding the Agency Account

No Grower will have the right to require payment to the Grower of that part of any money comprising the Agency Account to which it is beneficially entitled or entitled at law subject always to the rights of the Grower as expressly provided in this Deed.

19.3 Relationships Between each Grower

Other than as a joint venturer with the Land Owner:

- (a) no Grower will have any relationship with any other Grower (except as specifically provided in this Deed);

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- (b) the relationship between each Grower and each other Grower and between each Grower and the Responsible Entity is not intended to be, will not be deemed to be, and will not be treated as a partnership, limited partnership or a joint venture, or, limited company or association, nor will Growers or any Grower and the Responsible Entity for any purpose be or be deemed to be or be treated as in any way whatsoever liable or responsible under this Deed as partners or joint venturers;
 - (c) nothing in this Deed is, or is intended to be, or will be deemed to be a contract between Growers and each Grower will take and enjoy all its Almondlots and will incur all its liabilities and obligations under this Deed severally and independently of each other Grower, and none of the undertakings or conditions in this Deed on the part of any Grower will operate for the benefit of or be enforceable by any other Grower or Growers and no Grower has any right or claims against any other Grower or against any other Growers; and
 - (d) no Grower is, or is intended to be, or will be deemed to be the partner, agent, or legal representative of any other Grower or of the Responsible Entity, whether for the purpose of this Deed or otherwise, nor will any Grower have any authority or power to act for or to undertake any obligation or responsibility or incur any liability on behalf of any other Grower, nor will the Responsible Entity (except where expressly provided) have any authority to act for or to undertake any obligation or responsibility or incur any liability on behalf of any Grower.

19.4 Attorney

- (a) A Grower may by written notice to the Responsible Entity appoint a person to act on its behalf under this Deed as a representative or agent (in this clause 19.4 called an "**Attorney**") in relation to the relevant Almondlots held by that Grower with power in the name of the Grower to subscribe for, purchase, sell, mortgage, redeem, convert, transfer, transmit or otherwise deal with the Almondlots, and to give directions, authorities, requests and to receive payment in relation to the relevant Almondlots for and on behalf of that Grower.
- (b) The notice so appointing the Attorney must be in such form as the Responsible Entity may for the time being require or approve, must be signed or executed by the Grower, and must be delivered to the Responsible Entity prior to any dealing or transaction in respect of which it is to be so used.
- (c) A Grower may cancel any appointment of an Attorney by delivering a written notice to the Responsible Entity in such form as the Responsible Entity may for the time being require or approve, signed or executed by the Grower. Such cancellation is not to be effective until the written notice is in fact received by the Responsible Entity and the Responsible Entity will not be held liable in any way whatsoever with respect to any transactions which are entered into by the Attorney after the appointment of the Attorney has been cancelled but before the written cancellation has been received by the Responsible Entity.
- (d) The Responsible Entity may in its absolute discretion accept or refuse the appointment of an Attorney or refuse to accept or give effect to the exercise of any given authority of the Attorney, and the Responsible Entity will not be required to give any reason for such refusal.
- (e) Any direction or authority which the Responsible Entity reasonably believes to have been given by any partner or authorised officer of the Attorney is deemed to be a direction or authority validly given by the Attorney.

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- (f) Despite anything contained in this clause 19.4, the Responsible Entity must send to the Grower, within 2 months after any transaction or dealing is entered into by an Attorney on behalf of that Grower, details of the transaction or dealing. An Almondlot Statement is sufficient evidence of details of a transaction or dealing in the case of an Application or a partial redemption or a conversion.
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20. REGISTRATION OF ASSIGNMENTS AND TRANSMISSIONS

20.1 Assignments

- (a) No assignment that is permitted under paragraph 20.1(b) may be registered unless a deed of assignment has been delivered to the Responsible Entity.
- (b) The deed of assignment of any Almondlots must be in writing in the form set out in the Sixth Schedule and must be duly stamped with the necessary stamp duty applicable to the deed of assignment.
- (c) The deed of assignment of any Almondlots must be signed both by the assignor and the assignee and until such deed of assignment is registered and the name of the assignee is entered in the Register in respect of the Almondlots assigned the assignee will not be deemed the Grower in respect of such Almondlots.

20.2 Transmission

- (a) No transmission may be registered unless an instrument of transmission has been delivered to the Responsible Entity.
- (b) The instrument of transmission of any Almondlots must be in writing as set out in the Seventh Schedule and must be duly stamped with the necessary stamp duty applicable to the instrument of transmission.
- (c) The instrument of transmission of any Almondlot must be signed by the party to whom the Almondlots are being transmitted and, until such instrument of transmission is registered and the name of the transmittee is entered in the Register in respect of the Almondlots transmitted, the transmittee will not be deemed the Grower (or Chargee) in respect of such Almondlots.

20.3 Registration

- (a) Within 1 month after the date on which a deed of assignment or transmission with respect to any Almondlots is lodged with the Responsible Entity, the Responsible Entity must:
 - (i) complete and have ready for delivery to the assignee or transmittee an Almondlot Statement in connection with the assignment or transmission; and
 - (ii) unless otherwise instructed by the relevant person, send or deliver the completed Almondlot Statement to the relevant person or, where the relevant person has instructed the Responsible Entity in writing to send it to a nominated person, to that person.
- (b) In addition, the Responsible Entity, upon receipt of a deed of assignment or transmission of any Almondlots, must enter the assignee or transmittee in the Register as the holder of such Almondlots.

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- (c) If the Responsible Entity refuses to enter in the Register a deed of assignment or transmission of Almondlots, it must, within 2 months after the date on which the deed of assignment or transmission was lodged with it, send to the assignee or transmittee notice of the refusal.
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21. RESTRICTIONS ON ASSIGNMENT AND TRANSMISSION

21.1 Restrictions on Transfers, Mortgages, Assignments, etc.

No Grower may transfer, charge, mortgage, assign or otherwise dispose of the whole or part of its Almondlots without the consent of the Responsible Entity, which consent may be withheld in its absolute discretion, unless:

- (a) the Grower transfers, mortgages, assigns or otherwise disposes of (whichever is the case) those Almondlots individually;
- (b) the Grower transfers, mortgages, assigns or otherwise disposes of (whichever is the case) those Almondlots to the one person, unless the Responsible Entity otherwise agrees in its absolute discretion;
- (c) the person or persons benefiting from the transfer, mortgage, assignment or other disposal agrees to become a party to this Deed and to each of the Agreements as the Grower in respect of the rights and interests transferred, mortgaged, assigned or otherwise disposed of; and
- (d) the person or persons benefiting from the transfer, mortgage, assignment or other disposal will be deemed to have severally become a party as the Grower to each of the Agreements and to this Deed.

21.2 Death, Liquidation or Bankruptcy of Grower

Subject to the provisions of the Duties Act 2000 (Vic) or stamp duties legislation of another State or Territory, upon the death, liquidation or bankruptcy of any Grower, or otherwise upon any person becoming entitled in equity to all the Almondlots of a Grower for any lawful reason, then the Grower will be deemed to have at the same time assigned all its Almondlots to the person who becomes entitled to them to hold unto that person absolutely, conditional upon that person producing evidence to the Responsible Entity of its entitlement in respect of the Almondlots.

21.3 Executors, Administrators and Survivors

The executors or administrators of a deceased Grower will be the only persons recognised as having any title to the Grower's Almondlots, but in the case of death of any one or more Growers who hold their Almondlots as joint tenants, the survivors will be the only persons recognised as holding the Almondlots.

22. MEETINGS OF GROWERS

22.1 Convening of Meetings

The Responsible Entity may at any time convene a meeting of Growers and must convene a meeting of Growers when required to do so by the Corporations Act.

22.2 Calling and Holding Meetings

Meetings of Growers must be called and convened in accordance with Part 2G.4 of the Corporations Act, except that:

- (a) in relation to section 252R of the Corporations Act, no business will be transacted at any meetings of Growers unless a quorum is present when the meeting proceeds to business. The quorum necessary for a meeting at which an Ordinary Resolution is to be proposed is 5 persons holding or representing by proxy at least 10% of the aggregate number of relevant Almondlots for the time being issued to the Growers concerned, and for a meeting at which a Special Resolution is to be proposed, is 5 persons holding or representing by proxy at least 25% of the aggregate number of relevant Almondlots issued to the Growers concerned.
- (b) in relation to section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Grower and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual more than once.
- (c) in relation to section 252R(3) of the Corporations Act, a proxy is entitled to speak and vote for a Grower (to the extent allowed by the appointment) even if the Grower is present at the meeting (but only so long as the Grower does not speak or vote, as the case may be).
- (d) in relation to section 252Z(5) of the Corporations Act, the Responsible Entity may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any shorter period before the meeting.
- (e) in relation to section 253K(2) of the Corporations Act, a poll cannot be demanded on any resolution concerning:
 - (a) the election of the chair of a meeting; or
 - (b) the adjournment of a meeting.
- (f) in relation to section 253L(2) of the Corporations Act, at a meeting of Growers, a poll may be demanded by:
 - (a) at least 1 Grower concerned holding or representing by proxy at least 10% of the aggregate number of relevant Almondlots for the time being on issue to the Growers concerned and entitling the holders to vote on the resolution; or
 - (b) the chair.

23. LIABILITIES AND INDEMNITIES OF RESPONSIBLE ENTITY

23.1 Liability of Responsible Entity

- (a) To the extent permitted by the Corporations Act, the Responsible Entity is not liable for any loss or damage to any person (including any Grower) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Deed and its duties; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Deed and its duties.
- (b) In particular, the Responsible Entity is not liable for any loss or damage to any

person arising out of any matter where, in respect of that matter:

- (i) to the extent permitted by the Corporations Act, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity;
 - (ii) it acted as required by Law;
 - (iii) it relied in good faith upon any signature, marking or document; or
 - (iv) it followed a direction given to it by a resolution passed at a duly convened meeting of Growers.
- (c) The Responsible Entity may decide how and when to exercise its powers in its absolute discretion.

23.2 Indemnity of Responsible Entity

- (a) In addition to any indemnity under any Law, the Responsible Entity has a right of indemnity out of the Agency Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of its duties.
- (b) Such right of indemnity in respect of a matter ("**Indemnified Matter**") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of this Deed.
- (c) The right of indemnity continues to be available after the Responsible Entity retires or is removed as Responsible Entity.
- (d) The Responsible Entity may pay out of the Agency Account any amount for which the Responsible Entity would be entitled to be indemnified under paragraph 23.2(a).

24. LIABILITIES AND INDEMNITIES OF GROWERS

24.1 Liability Limited

Except as provided by any express indemnity given by any Grower to the Responsible Entity, and except as provided in clause 26.7, the entire liability of each Grower is limited to the balance of any Application Money owing (if any) and the Grower's Participating Interest in the Proceeds, and no Grower will have any liability to make any further contribution to the Project or payment to the Responsible Entity in respect of the Project, other than the payments required under clause 17.1.

24.2 Indemnity of each Grower by Responsible Entity

The Responsible Entity indemnifies each Grower against all debts and liabilities which may be incurred by the Grower at any time in relation to the Project or otherwise in any way as a result of or arising out of any act, default or omission of the Responsible Entity.

24.3 No Indemnity by any Grower

Despite any other provision of this Deed or provisions deemed to be included in this Deed, no Grower will, by reason of this Deed or by reason of the relationship created under this Deed with the Responsible Entity, be under any obligation personally to indemnify the Responsible Entity in the event of there being any deficiency in relation to the Project except, in respect of the relevant Almondlots, out of any Application

Money of the Grower or other moneys held in the Agency Account in relation to the Grower, or the payments required under clause 17.1.

25. COMPLAINTS PROCEDURE

25.1 Procedure

Subject to the guidelines of the external complaints resolution scheme of which the Responsible Entity is a member in accordance with paragraph 25.6(a), complaints made by any Grower in relation to the Project or the Responsible Entity ("**complaints**") must be dealt with in the manner set out in this clause.

25.2 Complaints Officer

- (a) The Responsible Entity must appoint an internal complaints officer ("**Complaints Officer**") with authority to review any complaints from Growers.
- (b) The roles and responsibilities of the Complaints Officer include:
 - (i) to receive and process verbal and written complaints from Growers, at no charge to Growers;
 - (ii) to review and properly consider complaints from Growers in a timely and efficient manner;
 - (iii) to communicate directly with Growers in relation to complaints;
 - (iv) to make readily available to Growers information on how, when, where and to whom to make complaints and any documented policies and procedures for the resolution of complaints;
 - (v) periodically to develop and review the Responsible Entity's policies and procedures for the resolution of complaints, in accordance with Australian Standard AS 4269:1995, Complaints Handling (as amended from time to time);
 - (vi) to provide information relating to the Responsible Entity's complaints handling procedures to employees of the Responsible Entity, in the form of training, brochures and the development of internal guidelines.

25.3 Receipt of Complaint

- (a) Upon receipt of a verbal complaint which cannot be resolved verbally, the Complaints Officer may request that the complainant provide:
 - (i) a written notice specifying the nature of the complaint, the desired outcome and what action the Grower thinks will settle the complaint; and
 - (ii) all relevant material to support the complaint.
- (b) Upon receipt of the written notice described in paragraph 25.3(a)(i) (or, if a written notice is not required, upon receipt of a verbal complaint) ("**Lodgement Date**"), the Complaints Officer must:
 - (i) within 7 days of the Lodgement Date, make a written record of the complaint setting out the following details:
 - (A) the name, address and telephone number of the complainant;

- (B) the date the complaint was received;
 - (C) the nature of the complaint; and
 - (D) any other information the Complaints Officer deems adequate;
- (ii) within 14 days of the Lodgement Date, provide the complainant with a written acknowledgement of receipt of the complaint and the time-frame in which the complaint will be considered;
- (iii) consider and investigate the circumstances surrounding the complaint;
- (iv) advise the complainant of the criteria and processes applied by the Responsible Entity in dealing with complaints;
- (v) upon request, provide the complainant with any relevant material (not being confidential material) relating to the complaint; and
- (vi) communicate directly with the complainant, with a view to resolving the complaint in a fair and timely manner.

25.4 Notification of Decision

- (a) If the complaint is not resolved within 45 days following the Lodgement Date, the Complaints Officer must inform the complainant of the reasons for the delay.
- (b) No later than 90 days following the Lodgement Date, the Complaints Officer must:
 - (i) notify the complainant, in writing, of the decision of the Responsible Entity in relation to the complaint;
 - (ii) provide the complainant with written reasons for the decision;
 - (iii) outline to the complainant the remedies, if any, available to the complainant; and
 - (iv) advise the complainant of any further avenues for complaint and the timeframes involved in those avenues.

25.5 Further Avenues

If the complainant is dissatisfied with the decision of the Responsible Entity in relation to the complaint, the complainant may take the following action:

- (a) if the Responsible Entity is a member of an external complaints resolution scheme approved by ASIC, the complainant may refer the complaint to that external complaints resolution scheme, for determination in accordance with the guidelines of that external complaints resolution scheme; or
- (b) if the Responsible Entity is not a member of an external complaints resolution scheme approved by ASIC, and only in that case, the complainant may take any appropriate lawful action.

25.6 External Complaints Resolution Scheme

- (a) For the purposes of paragraph 25.5(a), the Responsible Entity is a member of an external complaints resolution scheme approved by ASIC.
- (b) If the procedure set out in paragraph 25.5(a) is adopted, subject to any right of appeal contained in the guidelines of the relevant external complaints resolution scheme, the complainant and the Responsible Entity agree to

accept the determination of the external complaints resolution scheme as final and binding.

26. TERMINATION OF THE PROJECT

26.1 Completion of Obligations by Grower

The Project terminates upon the completion by the parties of their obligations under the Agreements and this Deed unless previously terminated under the provisions of this Deed or of the Agreements.

26.2 Extension of the Project

The Project may be extended for additional periods not exceeding 3 years each, as Growers may by Special Resolution agree.

26.3 Notice of Expiry

At least 3 months prior to the end of any additional period of extension under the preceding paragraph, each of the Growers must be duly notified by the Responsible Entity of the expiry date and the calling of a meeting of the Growers at which a resolution must be put to the effect that unless otherwise resolved by Special Resolution the Project will terminate on the expiry date.

26.4 Termination by Special Resolution

At any time in relation to the Project, a meeting of Growers may by Special Resolution resolve that the Project be terminated.

26.5 Consequences of Termination of the Project

- (a) On the termination of the Project, the following provisions apply.
- (b) The Responsible Entity must immediately following such termination as agent for the Grower sell, call in, convert and realise all assets for the time being in relation to the Project after paying all proper costs and disbursements, commissions, brokerage fees, legal fees and other outgoings. The Responsible Entity may but need not have regard to any contingency or outstanding matter and may if it sees fit to do so, settle or discharge any such contingencies as agent for the Grower or retain part or all of the assets by way of indemnity in respect thereof but such retention does not affect the release of the Responsible Entity's obligations under section 601FS of the Corporations Act.
- (c) The Responsible Entity must prepare final accounts of the Project and cause the Auditor to audit and report on those accounts.
- (d) The Responsible Entity may postpone the sale, calling in, conversion and realisation of any part of the assets for such time as it thinks it desirable so to do in the interests of the Grower and is not responsible for any loss attributable to such postponement.
- (e) The balance obtained after the sale of all assets in relation to the Project must be distributed by the Responsible Entity as if the balance represented the Proceeds payable under the Project Documents provided that if the aggregate amount to be distributed to all of the Growers in relation to the Project is less than one thousand dollars (\$1,000), Indexed from 30 June 2003, then at the

discretion of the Responsible Entity, the amount will be either distributed to Growers or on behalf of each of the Growers donated to the Salvation Army of Victoria.

26.6 Final Statement

Upon so distributing, the Responsible Entity must forward to the Grower a final statement setting out the details of the sale, calling in and conversion of the assets and the balance obtained in relation to the Project and the distribution and all payments otherwise made or allowed for, whereupon the Responsible Entity will be released from all further duties and obligations incurred under this Deed in relation to the Grower without prejudice to any liability of the Responsible Entity previously incurred under this Deed to the Grower for any breach of its duties imposed by Law or otherwise.

26.7 Release of Grower's Duties

Each of the Growers will be released from all further duties and obligations incurred under this Deed in relation to the Project, without prejudice to any liability of the Growers incurred under this Deed to any party to this Deed for any breach of its duties imposed by Law or otherwise.

27. MISCELLANEOUS

27.1 Notices

(a) Notices by Post, Facsimile or Other Electronic Means

Subject to the Corporations Act, any notice, report or other communication required to be given to any party under this Deed will be deemed to have been duly given if it is given in writing and either delivered or sent:

- (i) by post to any Applicant at his address appearing in the Application, to any Grower at its address appearing in the Register, to the Responsible Entity at the registered office for the time being and to any other party at their last known address; or
- (ii) by facsimile or other electronic transmission to any Applicant at his facsimile number or electronic address appearing in the Application, to any Grower at its facsimile number or electronic address appearing in the Register and to the Responsible Entity at the facsimile number or electronic address of its registered office and to any other person at their last known facsimile number or electronic address.

(b) Notice to Joint Applicants or Growers

In the case of joint Applicants or Growers a notice, report or other communication given to that joint Applicant or Grower whose name stands first on the Application or Register is sufficient notice to all such joint Applicants or Growers.

(c) Receipt of Notice

- (i) Any notice, report or other communication given by post will be deemed to have been received on the Business Day following the day when it was posted and in proving receipt it will be sufficient to prove that the envelope containing the notice was properly addressed and posted and a statement signed by the sender that it was so posted and when, will be conclusive of that fact.

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- (ii) Any notice, report or other communication given by facsimile or other electronic transmission will be deemed to have been given on the Business Day after it is sent and the transmission report will be sufficient evidence of receipt.

27.2 Payments to Applicants or Growers

Any money payable to any Applicant or Grower under the provisions of this Deed may be paid by crossed "not negotiable" cheque made payable to the Applicant or Grower or bearer and sent through the post in the case of the Applicants to the address of the Applicant appearing in the Application and in the case of each Grower to the registered address of each such Grower and in the case of joint Applicants or Growers made payable to the joint Applicants or Growers or bearer and sent to the address of that one of the joint Applicants or Growers who is first named on the Application or Register. Payment of every such cheque if duly presented and paid will be in full satisfaction of the money payable and will be a good discharge to the Responsible Entity provided that if the Responsible Entity is directed in writing by any Grower so to do, the Responsible Entity may pay any such money to the credit of an account in any bank and the receipt of such bank shall be a good discharge to the Responsible Entity.

27.3 Copies

A copy of this Deed will at times during the usual business hours be made available by the Responsible Entity at its office (whether registered or principal) in Melbourne for the inspection of each Grower who will be entitled to receive from the Responsible Entity a copy of this Deed and all supplemental Deeds (if any) on payment to the Responsible Entity of the sum of one hundred dollars (\$100.00) Indexed from 30 June 2003, or such lesser sum as the Responsible Entity may from time to time prescribe.

28. GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Deed 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 Deed, 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 (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 Deed.
- (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 a claim under or in connection with this Deed, 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 Government Agency orders that a payment be made to a party to satisfy a

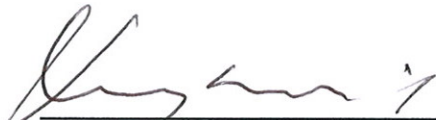
claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the parties authorise the Government Agency to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.

- (g) If a party has a claim under or in connection with this Deed 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 Deed 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.

Executed as a Deed

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


)
)
)
)
)



Signature

JOHN VAUGHAN
Full Name

DIRECTOR
Position Held



Signature

MARK PRYN
Full Name

COMPANY SECRETARY
Position Held

FIRST SCHEDULE

ITEM 1: Application Money for each Almondlot

Applications on or before 30 June 2003 [Early Growers]

\$6,065.00 which includes 551.36 GST, comprising the following fees for the period ending 30 June 2003:

- Licence Fee under the Licence and Joint Venture Agreement - \$865.00
- the Applicant's 90% share of the Management Fee under the Almondlot Management Agreement - \$5,200.00

Applications on or after 1 July 2003 [Post 30 June Growers]

\$6,065.00 which includes 551.36 GST, comprising the following fees for the period ending 30 June 2003:

- Licence Fee under the Licence and Joint Venture Agreement - \$865.00
- the Applicant's 90% share of the Management Fee under the Almondlot Management Agreement - \$5,200.00

SECOND SCHEDULE

ALMONDLOT MANAGEMENT AGREEMENT

**Almondlot Management
Agreement**

Timbercorp Securities Limited

Each Several Grower

2003 Timbercorp Almond Project

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 Almondlot Management 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 to this Agreement.

Parties to the Agreement:

1. Each several Grower named in the First Schedule to this Agreement together with the Land Owner as joint venturers
(Grower)
2. **TIMBERCORP SECURITIES LIMITED**
ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne Victoria 3000
(Responsible Entity)

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. Each Grower has been granted a licence by the Land Owner in respect of one or more Almondlots under the Licence and Joint Venture Agreement.
- C. The Licence and Joint Venture Agreement permits each several Grower to use its Almondlots for the purpose of growing and cultivating almonds and the harvesting of the almonds and each Grower intends to use its Almondlots for this purpose.
- D. Each Grower wishes to engage the Responsible Entity to cultivate and maintain Almond Trees on, and generally manage, the Almondlots in accordance with the Management Plan and carry out and perform each Grower's obligations under the Licence and Joint Venture Agreement.
- E. Each Grower further wishes to engage the Responsible Entity to procure the processing of the Almonds and sell them on behalf of the Grower and for that purpose has under the Constitution authorised the Responsible Entity to enter into the Project Documents subject to the terms and conditions of this Agreement.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context is clearly to the contrary, the following words have the meanings set out opposite them:

Accounts:	receipt and expenditure statements and balance sheets together with statements, reports and notes (including any notes of the Responsible Entity) attached to or intended to be read with any of those statements or balance sheets;
Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Agency Account:	the bank account or bank accounts kept and operated by the Responsible Entity as agent for the Growers in carrying out its duties under this Agreement with a bank nominated by the Responsible Entity;
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 Almond Trees, the Capital Works and the Water Licences attributed to the Project;
Almonds:	the almonds grown or growing on the Grower's Almondlots or the Orchard, whichever is applicable and whether harvested or unharvested;
Almond Trees:	the almond trees planted or to be planted on the Orchard;
ASIC:	the Australian Securities and Investments Commission;
Business Day:	a day other than a Saturday or Sunday or a public holiday on which all trading banks are open for general banking business in Melbourne, Victoria;
Capital Works:	the infrastructure and capital works that the Land Owner has agreed to carry out, and any other works that the Land Owner may be required in future to carry out, on the Orchard under the Licence and Joint Venture Agreement;
Commencement Date:	in respect of each several Grower, the date of this Agreement;
Constitution:	the constitution 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;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 11.4;
Crop:	the Almonds taken from the Almond Trees planted on the Growers' Almondlots;

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 2003 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Government Agency:	a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law;
Grower:	<p>a several person (or if more than one person, those persons jointly) who is named or otherwise described in the First Schedule together with the Land Owner, as joint venturers under the Licence and Joint Venture Agreement; and</p> <p>(a) the term "Early Grower" refers to a Grower whose application for Almondlots being offered under the Prospectus is accepted on or before 30 June 2003; and</p> <p>(b) the term "Post 30 June Grower" refers to a Grower whose application for Almondlots being offered under the Prospectus is accepted on or after 1 July 2003.</p>
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;
Incentive Fee Threshold:	the Net Proceeds estimated in the Prospectus to be received by the Grower in accordance with clause 13.7 of the Constitution in that Financial Year, as either an Early Grower or Post 30 June Grower, as the case requires, less any allowance for inflation made in the Prospectus in arriving at such estimate, but Indexed from 30 June 2003;
Indexed:	<p>the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_n" will be the CPI published for the full</p>

	calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;
Joint Venture:	the joint venture between the Grower and the Land Owner as constituted by the Licence and Joint Venture Agreement;
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;
Land Owner:	Almond Land Pty Ltd (ACN 091 460 392) of Level 8, 461 Bourke Street, Melbourne in the State of Victoria;
Licence and Joint Venture Agreement:	the agreement of that name between the Land Owner as licensor and joint venturer and the Grower as licensee and joint venturer in relation to the Grower's Almondlots;
Management Fee:	the fees payable to the Responsible Entity under clause 11;
Management Plan:	the management plan for a Financial Year prepared by, or on behalf of, the Responsible Entity;
month:	a calendar month;
Net Proceeds:	the proceeds to which a Grower is entitled in a Financial Year under clause 13.7 of the Constitution;
Orchard:	all of the Almondlots;
Orchard Services:	the services described in clauses 5 and 6;
Participating Interest:	<p>(a) the entitlement of the Grower to the Project assets, the Crop, the Product and the Proceeds calculated in accordance with the formula :</p> <p style="text-align: center;">A/B</p> <p>where:</p> <p>A: is the area of Almondlots licensed to the Grower under the Licence and Joint Venture Agreement and used in the Project Operations; and</p> <p>B: is the total area of Almondlots licensed to all of the Growers under the Licence and Joint Venture Agreement and used in the Project Operations.</p> <p>(b) In the event that there is a reduction in the area of a Grower's Almondlot or Almondlots under clause 10.4 of the Licence and Joint Venture Agreement, the Participating Interest of each Grower will be recalculated in accordance with the formula in paragraph (a) of this definition. The recalculated Participating Interest will be applied from the date of the reduction in the area;</p>
Party:	any of the Growers, the Growers, the Responsible Entity or any one or more of them as the context requires;

Proceeds:	<ul style="list-style-type: none"> (a) interest received on moneys in the Agency Account; (b) any moneys payable to a Grower under any policy of insurance in relation to the Grower's Almondlots, the Almonds or the Project; (c) proceeds from the sale of Crop; (d) proceeds from the sale of Product; and (e) any other monies payable to a Grower from or in relation to the Project;
Product:	Almonds in a saleable condition;
Project:	the 2003 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;
Project Documents:	the agreements entered into by the Responsible Entity under clauses 13.3 and 13.4 of the Constitution;
Project Operations:	the growing, cultivation and management of a commercial almond orchard and includes the Orchard Services, the harvesting and processing of the Almonds, delivery of the Almonds for distribution to or on behalf of the Growers in accordance with their Participating Interests and procuring the sale of Almonds;
Prospectus:	the prospectus lodged with ASIC under which the Responsible Entity offers for subscription interests in the Project;
Special Resolution:	a resolution passed at a meeting of Growers duly convened and held in accordance with this Agreement by a majority of Growers in number present in person or by representative, attorney or proxy whose total Participating Interests exceed 75%;
Term:	the term of this Agreement under clause 2.1;
Water Licences:	the water licences owned or acquired by the Land Owner and attributed to the Project as required from time to time, up to a maximum of 3 megalitres per Almondlot.

1.2 Construction

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

- (a) a reference to this or any other agreement 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) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
 - (j) 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;
 - (k) 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
 - (l) 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 of reference only and do not affect the interpretation of this Agreement.

1.4 Grower and Agreement

- (a) The term "**Grower**" in this Agreement is a reference to the particular Grower named in the Schedule to this Agreement and, unless the context otherwise requires, includes the Land Owner pursuant to the Joint Venture, in respect of the Almondlots that have been allotted to them.
- (b) The term "**Growers**" in this Agreement is a reference to all Growers that hold Almondlots in the Project in joint venture with the Land Owner and according to the context, the term "**Growers**" may also include the Grower.
- (c) This Agreement is entered into in respect of the Grower's Almondlots referred to in the First Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of each Almondlot held by the Grower.

1.5 Delegation

The Responsible Entity will be 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 Responsible Entity does not release the Responsible Entity from liability under this Agreement.

2. COMMENCEMENT AND TERM OF THIS AGREEMENT

2.1 Term

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 15.1 to 15.3, this Agreement will continue until the earlier of:

-
- (i) termination of the Grower's Participating Interest in the Project;
 - (ii) 30 June 2023; and
 - (iii) termination of the Project.
-

3. RELATIONSHIP OF THE PARTIES

3.1 No Partnership etc

The relationship amongst the Growers, between the Growers and the Responsible Entity and between the Grower and the Responsible Entity is not, is not intended to be, is not deemed to be and is not to be treated as, a partnership or association or, other than the relationship between the Land Owner and a Grower, a joint venture.

3.2 Project

The Parties expressly agree and acknowledge that:

- (a) the rights, duties, obligations and liabilities of the Growers are in every case several and not joint or joint and several;
 - (b) each Party is an independent contracting party; and
 - (c) no Party has any authority or power for or on behalf of any other Party to enter into any contract, to pledge any credit, to incur any liabilities, to assume any obligations or to make any warranties or representations whatsoever except as specifically provided by this Agreement.
-

4. APPOINTMENT OF THE RESPONSIBLE ENTITY

4.1 Engagement of Responsible Entity

The Grower engages the Responsible Entity on the terms and conditions set out in this Agreement generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Grower and perform the Orchard Services.

4.2 Responsible Entity to Carry out Orchard Services as Independent Contractor

The Parties agree that the Responsible Entity will carry out the Orchard Services as an independent contractor and not as agent of the Grower.

4.3 Authority to Act

The Responsible Entity does not have any authority to act for, or to assume any obligation or liability on behalf of, the Grower or the Growers except such authority as is conferred on the Responsible Entity by this Agreement or the Constitution.

4.4 Performance of Obligations

- (a) Subject to this Agreement, the Responsible Entity must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and conduct the Project Operations:

-
- (i) in a commercially reasonable manner;
 - (ii) honestly;
 - (iii) generally in accordance with good horticultural management and environmental practices which are generally recognised and adopted in Australia and are known and acceptable to the Responsible Entity and suitable for use on the Orchard; and
 - (iv) in the best interests of all the Growers and not in the interests of the Responsible Entity if those interests are not the same as those of the Growers.
- (b) The phrase "commercially reasonable manner" means, in any particular circumstances, a manner which the Responsible Entity honestly believes is commercially reasonable in those circumstances (having regard where appropriate to the fact that the Responsible Entity has to meet the costs of conducting the Project Operations out of the fees paid to it). Subject to paragraph 4.4(a)(iv), the phrase does not require the Responsible Entity to have regard to the interests of any person other than itself.

4.5 Additional Services

In addition to the activities set out in clause 4.1 and without limiting the generality of clause 4.1, the Responsible Entity must, at its own expense, provide all necessary administrative, supervisory and consulting services.

4.6 Acceptance of Engagement

The Responsible Entity accepts its engagement on the terms of this Agreement.

5. ORCHARD MANAGEMENT

5.1 Management Plan and Good Practices

The Responsible Entity will cultivate and manage the Orchard in accordance with:

- (a) the Management Plan; and
- (b) good horticultural and environmental practices.

The initial Management Plan for the Financial Year ended 30 June 2003 will be prepared on or about the Commencement Date or before 30 June 2003, whichever date is earlier and attached to this Agreement as the Second Schedule.

5.2 Activities

Without limiting the generality of clause 5.1, the Responsible Entity will carry out the following activities, to the extent necessary:

- (a) prune the Almond Trees by mechanical or other methods;
- (b) as permitted by law, eradicate vermin which have caused or may cause damage to the Almond Trees or the Grower's Almondlots and put in place measures to control such vermin;
- (c) provide the Orchard with necessary irrigation water made available by the Land Owner through the Water Licences and operate the irrigation system licensed to Growers on the Grower's Almondlots at various times in order to irrigate the Grower's Almondlots;

-
- (d) at its discretion, conduct tests to ascertain the availability of nutrients in the soil on the Grower's Almondlots and, based on the results, take whatever action is required to maintain the growth rate and productivity of the Almond Trees;
 - (e) fertilise the Grower's Almondlots as required, in accordance with good horticultural practices, to maintain satisfactory rates of growth and productivity of the Almond Trees;
 - (f) in its absolute discretion and without needing the Grower's consent, destroy any of the Almond Trees or Almonds which have contracted an exotic, noxious or incurable disease;
 - (g) keep the improvements on the Grower's Almondlots in good and substantial repair;
 - (h) maintain fire breaks in accordance with regulatory and insurance requirements and good horticultural practices;
 - (i) maintain the Grower's Almondlots in accordance with good horticultural practices including using soil management technique methods to reduce erosion and maintain soil quality;
 - (j) as far as reasonably possible, keep the Grower's Almondlots free from competitive weeds or other vegetation which may affect the growth or yield of the Almond Trees;
 - (k) protect the Almond Trees from insect infestation, disease and competition from competing growth using good horticultural practices, including applying herbicides or pesticides to the Grower's Almondlots and spraying under the Almond Trees as permitted by law;
 - (l) keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Grower's Almondlots or Almond Trees;
 - (m) regularly inspect and repair all stakes, fences and irrigation equipment on the Grower's Almondlots;
 - (n) inspect and, where appropriate, retie the Almond Trees to stakes and attach Almond Trees to trellising in accordance with good horticultural practices;
 - (o) replant any of the Almond Trees in need of replacement in accordance with the terms of any agreement made with suppliers of the Almond Trees;
 - (p) comply with the Grower's licence obligations under the Licence and Joint Venture Agreement (except for those relating to payment of fees);
 - (q) not discriminate between Growers in the supply of water under the Water Licences;
 - (r) if additional water in excess of 3 megalitres per Almondlot is required from time to time in order to irrigate the Orchard and such additional water can be reasonably procured by way of temporary water rights, procure such additional water and supply it to Growers, at a cost to Growers under paragraph 11.1(d) or 11.2(c) of this Agreement, calculated as the Responsible Entity's reasonable costs in operating the Almondlots of procuring the additional water;
 - (s) each Financial Year, commencing the Financial Year ending 30 June 2003, prepare, or arrange for the preparation of, the Management Plan for the Project, including a horticultural plan for the Orchard, horticultural program, operational plan and annual financial and operational budgets in relation to these horticultural matters, review the Management Plan and, if necessary, make amendments to it;

-
- (t) provide any other service or thing which, in the reasonable opinion of the Responsible Entity, is incidental or ancillary to the ongoing management of the Grower's Almondlots; and
 - (u) comply with all laws and regulations relating to the use and occupancy of the Grower's Almondlots.

5.3 No Unlawful Acts

The Responsible Entity must not do or allow any unlawful act to be done on or adjacent to the Orchard and nothing in this Agreement or in the Management Plan for any Financial Year will require the Responsible Entity to do so.

5.4 Notify Land Owner of Notices

The Responsible Entity must give the Land Owner a copy of any notice (other than rates notices), which it receives from any Government Agency with respect to the Grower's Almondlots or the Orchard within seven days after receipt of the notice.

5.5 Commencement of Orchard Services

The Responsible Entity must commence to carry out or cause the commencement of the carrying out of the Orchard Services on behalf of the Grower on the Commencement Date.

6. HARVESTING

6.1 Harvesting

Each year during the Term the Responsible Entity will, in accordance with good horticultural practices, test the maturity of the Almonds to determine whether the Almond Trees are ready for harvesting and, having done so, will harvest the mature Almond Trees.

6.2 Harvesting Method

Harvesting must be done by the Responsible Entity in accordance with good horticultural practices by any method (including machine harvesting) deemed appropriate by the Responsible Entity.

6.3 Delivery

The Responsible Entity will promptly deliver all harvested Almonds to a delivery point or points to enable the Almonds to be processed and sold.

6.4 Storage

Until the harvested Almonds are delivered, the Responsible Entity will store them in an appropriate manner to minimise the deterioration of the Almonds' quality. The Almonds may be stored on the Orchard or any other premises whether or not owned or operated by the Responsible Entity.

7. PROCESSING AND SALE

7.1 Processing of Almonds

The Responsible Entity will procure the processing of the Crop into Product and will enter into a Project Document as agent and attorney for the Grower.

7.2 Marketing and Sale

The Responsible Entity will:

- (a) sell the Product, using its reasonable endeavours to seek to maximise returns, and on such terms and conditions as the Responsible Entity in its absolute discretion determines and, for this purpose, will enter into a Project Document for the sale of the Product as agent and attorney for the Grower; and
- (b) in the event that Responsible Entity determines that any part of the Crop should not be processed into Product, put such Crop to commercial use, using its reasonable endeavours to seek to maximise returns, on such terms and conditions as the Responsible Entity determines in its absolute discretion and, for this purpose, will enter into any agreement as agent and attorney for the Grower.

7.3 Gather In Product or Crop

Prior to the sale of the Product or Crop, the Responsible Entity may gather in all of the Growers' Product or Crop and the Responsible Entity may store, market and sell the Product or Crop gathered in without having regard to the quantity or quality of the particular Product or Crop from the particular Almondlots. The proceeds of sale of the Product or Crop gathered in will be divided pro rata according to the Growers' Participating Interests in the Product or Crop.

7.4 Lien

- (a) The Grower acknowledges and agrees with the Responsible Entity that the Responsible Entity can call for a first and paramount lien at any time in respect of the Grower's Participating Interest in the Almonds until such time as any outstanding fees or expenses due and payable to the Responsible Entity under this Agreement have been paid.
- (b) The Responsible Entity is authorised to sell or cause to be sold any of the Grower's Participating Interest in the Almonds over which the Responsible Entity has the lien for the purpose of applying the sale proceeds in payment of any outstanding fees or expenses due to the Responsible Entity.

7.5 Action for Recovery of Sale Proceeds

In the event that a payment due by a purchaser of the Product or Crop under an agreement for the sale of the Product or Crop is overdue, the Grower authorises the Responsible Entity to take any action which it reasonably considers to be necessary for the purpose of recovering any such outstanding payments or any Product or Crop from the purchaser.

8. ADMINISTRATIVE SERVICES

8.1 Services

The Responsible Entity agrees to provide the following administrative services throughout the Term of the Agreement:

- (a) prepare reports to Growers on the allocation and location of Growers' Almondlots;
- (b) prepare reports to Growers detailing the work to be done on each Grower's Almondlot;
- (c) prepare reports to Growers on the matters described in clauses 13.5 and 13.6;
- (d) prepare a statement to the Grower to assist with income tax preparation;
- (e) record the Grower's transactions and make payments on behalf of the Grower;
- (f) general administrative management of the Project;
- (g) review the sales and marketing plan for the Project; and
- (h) co-ordinate visits of Growers to inspect their Almondlots.

9. ACCESS TO ORCHARD

9.1 Responsible Entity has Access

The Responsible Entity and its invitees will be entitled to such access to the Grower's Almondlots and Almond Trees as is necessary or desirable to perform the Responsible Entity's obligations under this Agreement.

9.2 Removal of Responsible Entity's Property after Termination

The Responsible Entity may remove from the Grower's Almondlots such plant and equipment, implements, furniture and other items brought onto the Grower's Almondlots within one month after the termination of this Agreement and may enter the Grower's Almondlots for the purpose of removing such items.

9.3 Roads and Tracks

- (a) The Responsible Entity is entitled (but has no obligation) to construct and maintain roads and tracks on the Grower's Almondlots primarily and principally to provide access to and from the Orchard from a public road for the:
 - (i) cultivation, maintenance and tending of the Almond Trees and the Almonds;
 - (ii) harvesting of the Almonds; and
 - (iii) removal of the Almonds.
- (b) Where the Responsible Entity has removed any material for road building purposes, the Responsible Entity must use reasonable endeavours to return the surface of the land to an appearance as close as possible to the appearance of the surface of surrounding land.

9.4 Grower's Access

Provided the Grower first gives the Responsible Entity 7 days' prior notice in writing,

the Responsible Entity must permit the Grower or its duly authorised representatives to have access, at the Grower's expense and risk, at all reasonable times to the Grower's Almondlots and the facilities located on them.

9.5 Warranty as to Access

The Grower warrants that it has the right to grant access to the Grower's Almondlots for the performance by the Responsible Entity of its obligations, and the exercise by the Responsible Entity of its rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the owner of the Land, any of the Growers or any person who derives title through or under the owner.

9.6 Failure to Perform if Access Denied

The Responsible Entity will not be liable for any failure to perform its obligations under this Agreement, which arises because it is denied access to, or possession or occupation of, the Orchard or any part of it.

10. NO LEASE OR LICENCE

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of the Responsible Entity concerning the Growers' Almondlots.

11. RESPONSIBLE ENTITY'S FEES

11.1 Annual Fee and Charges Payable by Early Growers

The Responsible Entity will be paid the following management fees and charges by Early Growers in respect of the Orchard Services and all other services to be provided under this Agreement as follows:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2003 an amount of \$5,252.52 per Almondlot payable in advance on or before the Commencement Date; and
- (b) in respect of services to be provided in the period 1 July 2003 to 30 June 2004 - \$1,888.88 per Almondlot payable on 31 October 2003; and
- (c) in respect of services to be provided in the period 1 July 2004 to 30 June 2005 - \$1,888.88 per Almondlot payable on 31 October 2004; and
- (d) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, an amount per Almondlot calculated by the Responsible Entity as the reasonable costs of managing the Almondlot payable on 31 October during that Financial Year.

11.2 Annual Fee and Charges Payable by Post 30 June Growers

The Responsible Entity will be paid the following management fees and charges by Post 30 June Growers in respect of the Orchard Services and all other services to be provided under this Agreement as follows:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2004 an amount of \$5,252.52 per Almondlot payable in advance on or before the Commencement Date; and
- (b) in respect of services to be provided in the period 1 July 2004 to 30 June 2005

-
- \$1,888.88 per Almondlot payable on 31 October 2004; and
- (c) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, an amount per Almondlot calculated by the Responsible Entity as the reasonable costs of managing the Almondlot payable on 31 October during that Financial Year.

11.3 Additional Management Fee Payable by all Growers

- (a) The Responsible Entity will be entitled to be paid in respect of all Grower's Almondlots the following additional management fees in a Financial Year out of, and immediately prior to, any distribution:
- (i) on and from 31 October 2005 and each subsequent 31 October in a Financial Year, the estimated costs of operating the Almondlots (which will include an allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$50 per Almondlot Indexed (adopting 30 June 2003 as the base date);
 - (ii) 3% of the proceeds of the sale of Crop and Product in that Financial Year; and
 - (iii) 25% of so much of the annual Net Proceeds in a Financial Year attributable to each Almondlot as exceeds the relevant Incentive Fee Threshold. But, if in the immediately preceding Financial Year, the Net Proceeds were less than the Incentive Fee Threshold the sum of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Responsible Entity under this paragraph in respect of the Financial Year to which reference is first made.
- (b) The Responsible Entity will, when notifying the Grower under paragraph 11.3(a)(i) of the projected costs for a Financial Year, notify the Grower of the actual costs of the Responsible Entity of operating the Almondlots for the preceding Financial Year, including overhead costs incurred by the Responsible Entity or its contractors, and either deduct the surplus per Almondlot from, or add the excess per Almondlot to, the fees payable for that Financial Year, depending on whether they are more or less than the costs calculated by the Responsible Entity under paragraph 11.3(a)(i) for the preceding Financial Year.

11.4 Discontinuance or suspension of CPI

If the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between the Responsible Entity and the Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as 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 will replace it as the new "CPI". The cost of any expert determination carried out under this clause must be borne equally between the Responsible Entity and the Grower.

12. INSURANCE

12.1 The Responsible Entity to Keep Insurance

The Responsible Entity will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Grower with a reputable insurer against damage to the Orchard, which is caused by fire or other insurable risks, including public risk and occupier's liability provided that the cost of any such insurance is economically justified and it does not include crop insurance (unless specifically agreed between the Responsible Entity and the Grower from year to year).

12.2 Names of Policies

All such policies of insurance must be in the names of or note the interests of the Responsible Entity, the Land Owner and the Grower.

12.3 No Party may Prejudice Insurance Policies

No Party will at any time during the Term permit or suffer to be done (and nothing in this Agreement will require the Responsible Entity to permit or suffer to be done) any act, matter or thing upon the Orchards whereby any insurances in respect of the Orchard or any Grower's Almondlots (or any part thereof) may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

13. MANAGEMENT PLAN AND REPORTS

13.1 Management Plan

- (a) In performing its obligations under this Agreement, the Responsible Entity must observe and act in accordance with, the Management Plan.
- (b) Despite the preceding paragraph, the Responsible Entity is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from the Grower under clause 13.2 requires the Responsible Entity to do something which is not in accordance with the Management Plan.

13.2 Recommendation or Direction by Grower

The Responsible Entity must consider any recommendation or direction made by a Grower and where it is satisfied that any such recommendation or direction is in the interests of the Growers and the Project generally, the Responsible Entity must use its best endeavours to carry out the recommendation or direction in accordance with the terms and conditions set out in this Agreement.

13.3 Changes to Management Plan

At any time during the Financial Year to which a Management Plan relates, the Responsible Entity may make changes to that Management Plan.

13.4 Performance of Management Services

The Responsible Entity will have complete discretion as to the manner and method of conducting the Project Operations, subject to the express terms of this Agreement.

13.5 Reports

Within 4 months after the end of each Financial Year during this Agreement the Responsible Entity will send a report to the Grower that addresses and contains information concerning the following matters:

- (a) the results of the harvest of Almonds;
- (b) the condition of the Orchard, the Grower's Almondlots and Almond Trees;
- (c) any other matters which the Responsible Entity considers material concerning the Orchard, the Grower's Almondlots or the Project and which ought reasonably to be made known to the Grower; and
- (d) any other matter reasonably requested by the Grower.

13.6 Statements of Income and Expenses

Within 4 months after the end of each Financial Year, commencing at the end of the Financial Year in which the Almond Trees start to produce Crop, the Responsible Entity will send to each Grower an annual statement of income and expenses relating to the management of the Almondlots and the sale of each Grower's Product or Crop during the relevant Financial Year.

14. DISTRIBUTIONS

14.1 Distribution of Proceeds to Growers

Subject to this Agreement, the Responsible Entity must pay to each Grower the amount of Proceeds standing to the credit of the Grower in the Agency Account in accordance with the Constitution.

15. TERMINATION AND DEFAULT

15.1 Termination by Grower

The Grower may terminate this Agreement by notice in writing to the Responsible Entity:

- (a) immediately, if the Responsible Entity:
 - (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 Responsible Entity 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 Responsible Entity of written notice from the Growers or a Grower specifying the default and requesting that the default be remedied (except where the Responsible Entity 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); or
- (b) 6 months (or such shorter period as the Responsible Entity and the Growers

agree) after the Growers by Special Resolution at a meeting of Growers resolve to terminate the engagement of the Responsible Entity under the Agreement.

15.2 Termination by Responsible Entity

- (a) The Responsible Entity may terminate this Agreement, with immediate effect, if the Grower fails to make a payment within the required time under this Agreement or the Constitution or commits a material breach of this Agreement or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after the Responsible Entity has served a written notice on the Grower specifying the breach and requiring the Grower to remedy the breach.
- (b) If this Agreement is terminated under paragraph 15.2(a) then:
 - (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 Responsible Entity, and
 - (iii) the procedure for the consequences of termination as set out in clause 18 of the Constitution must be followed.

15.3 Termination of Licence and Joint Venture Agreement

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

15.4 Responsible Entity to Relinquish Property and Books and Records

Provided that the Growers have paid all of the fees and other moneys due to the Responsible Entity and it is not otherwise in breach of any of its obligations under this Agreement, the Responsible Entity must relinquish custody and control to the Growers or as the Growers direct, of all property of the Growers held by the Responsible Entity under this Agreement and all books and records and documents kept under this Agreement upon cancellation of the engagement of the Responsible Entity or termination of this Agreement, other than those which the Responsible Entity is required by law to keep.

15.5 Effect of Termination

The termination of this Agreement (whether under this clause 15 or under any other clause) 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. The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.

16. EXCUSES FOR NON PERFORMANCE

16.1 Force Majeure

A Party will not 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.

16.2 Lack or unavailability of funds

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

16.3 Liability

A Party's failure to observe or comply with the terms of this Agreement will not give rise to any liability to the other 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.

16.4 Definition of Force Majeure

For the purposes of this Agreement, "Force Majeure" means any event or circumstance not reasonably within the control of the Responsible Entity or which the Responsible Entity is not reasonably able to prevent. It includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);
- (e) epidemic or quarantine;
- (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
- (g) delays in transportation or communication; and
- (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other.

17. LIMITATION OF GROWER'S LIABILITY

17.1 No obligation beyond Fees and Expenses

Despite anything else contained in this Agreement the Grower is not obliged to contribute any money in respect of the Project Operations beyond the fees and other amounts payable by the Grower under the Constitution, the Licence and Joint Venture Agreement and this Agreement.

17.2 Limitation of Liability

Despite anything else contained in this Agreement, the liability of the Grower is absolutely limited to the fees and other amounts paid or payable to the Responsible

Entity and the Land Owner under the Constitution, the Licence and Joint Venture Agreement and this Agreement and to any Proceeds of the Grower.

17.3 Responsible Entity to disclose

In any contract which the Responsible Entity enters into on behalf of the Grower, to the extent practicable, the Responsible Entity must disclose that:

- (a) it is contracting as agent for the Grower;
- (b) the liability of the Grower in respect of the Project Operations and the Licence and Joint Venture Agreement is limited to the amount of money contributed by the Grower as provided in clause 17.1; and
- (c) the Grower is under no liability to the other party to the contract or to any of its servants or agents, whether in contract or otherwise, beyond the money contributed by the Grower as provided in clause 17.1 and to any Proceeds of the Grower.

18. DISPUTES

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

19. COUNTERPARTS

- (a) This Agreement may consist of a number of counterparts and if so the counterparts taken together will constitute the one instrument.
- (b) The Grower covenants with the Responsible Entity that it will at the request of the Responsible Entity execute any further counterparts in the form or to the effect of this Agreement, which counterparts may include a lesser or greater number of Growers to those executing this instrument so long as in no circumstances will the rights or entitlement of any Grower be diminished.
- (c) The Parties agree that by their execution of any counterpart of this Agreement they will be and remain liable to each of the other Parties despite that any other person intended to be a Party does not sign or execute this or any other counterpart of the Agreement.

20. MISCELLANEOUS

20.1 Further Assurances

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

20.2 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, other than any agreement executed by the Parties that is clearly intended to be supplemental to this Agreement or in substitution

for it.

20.3 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 to exercise of any other right.
- (b) No Party is liable for any loss or expense of another Party caused or partly caused by the waiver, exercise or failure to exercise a right.

20.4 Parties to Give Effect to the Agreement

- (a) Each Party must exercise all powers as are available to it, do all such acts and things and sign, execute and deliver all documents as may be necessary or reasonably required to give full effect to this Agreement.
- (b) If any Party immediately after being requested by the other Parties, or those of them entitled to request fails to do the act or thing, the defaulting Party irrevocably appoints each of the other Parties as its attorney for the purpose of giving effect to this clause.
- (c) The defaulting Party indemnifies the other Parties and holds them harmless from and against all actions, suits, demands and claims consequent upon the exercise of the power granted under this Agreement.

20.5 Stamp Duty

The Responsible Entity will pay the stamp duty payable in relation to this Agreement. The Grower will pay any duty payable in proportion to its Participating Interest in relation to any Agreement executed pursuant to this Agreement.

20.6 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 20.6(c), 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 making any amendment under paragraph 20.6(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of Growers.
- (d) The Responsible Entity 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 Responsible Entity as its attorney to make amendments to this Agreement.
- (e) If the Responsible Entity cannot be satisfied that the amendments can be made in accordance with the paragraph 20.6(c), then amendments may only be made in accordance with paragraph 20.6(a).

20.7 Constitution

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

20.8 GST

- (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 20.8(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 20.8(b).
- (f) If a Government Agency 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 Government Agency 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, including a reduced input tax credit or an adjusted 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.

20.9 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.

21. NOTICES

21.1 Form of Notice

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

21.2 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.

22. ASSIGNMENT

22.1 Assignment by Responsible Entity

Subject to clause 22.2, the Responsible Entity may freely assign any of its rights and interests under this Agreement so long as the Responsible Entity does not assign its interest in this Agreement in any way without first entering a deed with the person with whom the 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 Licence and Joint Venture Agreement; and
- (b) required to be observed or performed by the Responsible Entity.

22.2 Agreements with Contractors

The Responsible Entity 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 Responsible Entity has delegated some or all of its obligations under this Agreement, and for this purpose, the Responsible Entity has obtained the written consent to the assignment from the contractor.

22.3 Responsible Entity or Grantee to pay for deed

The cost of any deed required under clause 22.1 must be paid by the Responsible Entity or the Grantee, but not the Grower.

22.4 Assignment by Grower

Subject to the requirements of the Constitution, the Grower may only assign its rights under this Agreement if the Grower:

- (a) first obtains a deed of covenant signed by the proposed assignee in favour of the Responsible Entity and the Land Owner 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 Licence and Joint Venture Agreement applying to the Grower; and
- (b) is not in default of any of its obligations under this Agreement, the Constitution and the Almondlot Management Agreement.

22.5 Release of liability of Grower

Once the Grower has perfected an assignment of its interest in this Agreement in accordance with clause 22.3, 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.

Executed as an Agreement

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

Signature

Full Name

Position Held

Signature

Full Name

Position Held

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

Signature

Full Name

Position Held

Signature

Full Name

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

Full Name

Position Held

Signature

Full Name

Position Held

FIRST SCHEDULE

GROWERS AND ALMONDLOTS

[illegible]

SECOND SCHEDULE

INITIAL MANAGEMENT PLAN

(Clause 5.1)

THIRD SCHEDULE

LICENCE AND JOINT VENTURE AGREEMENT

**Licence and Joint
Venture Agreement**

Almond Land Pty Ltd

Timbercorp Securities Limited

Each several Grower

2003 Timbercorp Almond Project

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 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 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 the Schedule 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 and the owner of the Almond Trees, 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 Almond Trees, 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 or public holiday on which all trading banks are open for general banking business in Melbourne, Victoria;
Capital Works:	the infrastructure and capital works that the Land Owner agrees to carry out, at its cost, on the Orchard under clause 2;
Commencement Date:	in respect of each several Grower 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;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 7.3;
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 2003 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Government Agency:	a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any

	applicable law;
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:	<p>a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule; and</p> <p>(a) the term "Early Grower" refers to a Grower whose application for Almondlots being offered under the Prospectus is accepted on or before 30 June 2003; and</p> <p>(b) the term "Post 30 June Grower" refers to a Grower whose application for Almondlots being offered under the Prospectus is accepted on or after 1 July 2003 and before the offer period closes;</p>
Indexed:	<p>the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;</p>
Internal Irrigation System:	the internal irrigation system that has been 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 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;
JV Almondlots:	the number of Almondlots allotted to the Joint Venture as set out in the Schedule;

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 2003 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;
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 as required from time to time, up to a maximum of 3 megalitres per Almondlot.

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,

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- 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;
 - (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 Grower and Agreement

- (a) The term "**Grower**" in this Agreement is a reference to the particular Grower named in the Schedule to this Agreement.
- (b) The term "**Growers**" in this Agreement is a reference to all Growers that hold JV Almondlots in the Project in joint venture with the Land Owner and according to the context, the term "**Growers**" may also include the Grower.
- (c) This Agreement is entered into in respect of the Grower's JV Almondlots referred to in the Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of each JV Almondlot held by the Grower.

1.4 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 will, at its own cost, establish, or procure the establishment of, the Almondlots on the Land in accordance with good horticultural and environmental practices and construct the necessary infrastructure and carry out the Capital Works, and without limiting the generality of this clause, it will:

- (a) Identify the relevant parts of the Land which are suitable for growing almonds based on soil types, soil depths and contours;
- (b) organise various soil surveys, including reconnaissance surveys, detailed soil

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- surveys and contour plans;
 - (c) organise block layout in relation to the Almondlots and the pegging of those blocks;
 - (d) acquire rights to, construct and install, as the case requires, the Internal Irrigation System and the Irrigation Infrastructure;
 - (e) carry out drainage work and work to help prevent soil erosion on all Land;
 - (f) clear any vegetation or trees from the Orchard, perform broadacre weed spraying, disc ploughing and ripping and mounding of tree rows, apply preplant fertiliser spreading and undertake discing, x-planning of tree rows and marking out of tree location; and
 - (g) plant almond trees on the Orchard during June 2003; and
 - (h) provide or undertake, as the case requires, such 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 paragraphs 2.1(a)-(g) above.

2.2 Timing of Works

The Land Owner will use best endeavours to complete the Capital Works and the planting of the Almond Trees by 30 June 2003 or such later date as may be agreed between the Land Owner and the Grower. The Land Owner will not be liable for any loss or damage incurred by the 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.

2.3 Acknowledgments

The Grower acknowledges that the Capital Works and the Almond Trees on the Grower's Almondlot, and the Water Licences attributed to the Project are, and will at all times remain, the property of the Land Owner.

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

- (a) The Land Owner must:
 - (i) do all things necessary to ensure that its rights under the Water Licences are fully exploited to maximise the use and enjoyment of them by the Grower;
 - (ii) take all steps to avoid interfering with the supply of water to the Grower's JV Almondlots and to avoid any actions that would prejudice the Grower's rights under this Agreement; and

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- (iii) purchase and maintain the Water Licences during the Project.
 - (b) The Grower acknowledges that:
 - (i) the Land Owner may purchase additional water licences and make them available to the Responsible Entity on a temporary basis for the Responsible Entity to meet its obligations under the Almondlot Management Agreement; and
 - (ii) such additional water licences or temporary water rights do not attach to the Grower's Almondlot, are not attributable to the Project and at all times remain the property of the Land Owner.
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4. TERM OF AGREEMENT

4.1 Term of Agreement

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 10.1 to 10.3 and clause 12, this Agreement will continue until the earlier of:
 - (i) termination of the Joint Venturers' Participating Interest in the Project;
 - (ii) 30 June 2023; 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 the 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 at the end or on termination of this Agreement.

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) An Early Grower must pay to the Land Owner a licence fee of \$786.36 per JV Almondlot for each of the following periods:
 - (i) from the Commencement Date until 30 June 2003 payable on or before the Commencement Date; and
 - (ii) in respect of each of the Financial Years ending 30 June 2004 and 30 June 2005, such licence fee being payable on 31 October 2003 and 31 October 2004 respectively.

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

- (b) A Post 30 June Grower must pay to the Land Owner a licence fee of \$786.36 per JV Almondlot for each of the following periods:
 - (i) from the Commencement date until 30 June 2004, payable on or before the Commencement Date;
 - (ii) in respect of the Financial Year ending 30 June 2005, payable on 31 October 2004.

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

- (c) 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 2005 in respect of the Financial Year ending 30 June 2006 and each 31 October thereafter in respect of each subsequent Financial Year 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, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between the Land Owner and the Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as 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 will replace it as the new "CPI". 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;

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- (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.

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

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- 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 the Constitution or commits a material breach of this Agreement or the Constitution, 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 jointly commissioned by the Grower, the Land Owner and the Responsible Entity 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 jointly by the Grower, the Land Owner and the Responsible Entity reasonably determines that part of the JV Almondlots is no longer commercially viable,

the Grower may terminate this Agreement in respect of that part of the JV Almondlots which is damaged or destroyed, 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 Effect of Termination

- (a) Termination of this Agreement under clauses 10.1, 10.2 or 10.3 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

- (a) 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:
 - (i) contained or implied in this Agreement and the Almondlot Management Agreement; and
 - (ii) required to be observed or performed by the Land Owner or the

Responsible Entity (as the case requires).

- (b) Paragraph 13.1(a)(i) 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 only assign its rights under this Agreement if the Grower:

- (a) 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; and
- (b) is not in default of any of its obligations under this Agreement, the Constitution and the Almondlot Management Agreement.

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 14(b).
- (f) If a Government Agency 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 Government Agency 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, including a reduced input tax credit or an adjusted 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 fees payable under this Agreement, its Prescribed Proportion of the fees and other amounts payable by the Joint Venture under the Almondlot Management Agreement, its Prescribed Proportion of the Joint Venture Proceeds and any other amounts payable by the Grower under the Constitution.

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

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- 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.
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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.
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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

Full Name

Position Held

Signature

Full Name

Position Held

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

Signature

Full Name

Position Held

Signature

Full Name

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

Full Name

Position Held

Signature

Full Name

Position Held

00002 00515 042 Licence and JV Agt (Final).doc

SCHEDULE

Grower Details

Name:

Address:

Contact Phone No:

Contact Fax No:

Contact Email Address:

Date Application Accepted:

JV Almondlot Details

Description of JV
Almondlots

FOURTH SCHEDULE

ALMONDLOT STATEMENT

(As at [Month] 20 [])

Date & Name of Prospectus:

Name of Grower:

Address of Grower:

Chargee (if any):

Date of Charge:

Anticipated date of Redemption of Charge:

Application Amount:

Date of Payment of Application:

Date Grower Registered:

Date Grower ceased being registered:

Description of Almondlots:

As at the [Month] [] the above particulars were registered in the Register of Growers at Level 8, 461 Bourke Street, Melbourne Victoria pursuant to clause 10.3 of the Constitution of the Project and replaces all previous statements sent to you.

Issued by:

TIMBERCORP SECURITIES LIMITED
ACN 092 311 469
(Responsible Entity)
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

This Almondlot Statement is not a Certificate of Title to any Almondlot but merely a Statement from the Responsible Entity as to the registration particulars of the Register of Growers as at the date of this Statement.

FIFTH SCHEDULE

Item 1:

NOTICE OF CHARGE

To: Timbercorp Securities Limited (ACN 092 311 469)
Level 8
461 Bourke Street
MELBOURNE VIC 3000

PARTICULARS OF CHARGE:

Grower:

Almondlot Details:

Date of Charge:

I/We (Grower)

of (Address of Grower)

REQUEST that (Chargee) of

..... (Address of Chargee)

be registered as Chargee of the above Almondlots pursuant to Charge dated day of
made between the Grower as Chargor and the Chargee.

Dated this day of .

.....
Grower

.....
Witness

Item 2:

NOTICE OF DISCHARGE OF CHARGE

To: Timbercorp Securities Limited (ACN 092 311 469)
Level 8
461 Bourke Street
MELBOURNE VIC 3000

PARTICULARS OF CHARGE:

Grower:

Address of Grower:

Almondlot Details:

Date of Charge:

I/We

of

DISCHARGE the above Almondlots from the whole of the principal, interest or other moneys secured by Charge dated day of 20 made between the Grower as Chargor and ourself/ourselves as Chargee.

Dated this day of 20 .

.....

Chargee

.....

Witness

SIXTH SCHEDULE

DEED OF ASSIGNMENT

I/We
of
in consideration of the sum of \$ paid to me/us by
..... of

("the Assignee") assign to the Assignee all my/our right title and interest in the Almondlots detailed in the Schedule and relevant to those Almondlots all my/our right title and interest in the Constitution of the Project dated [] made between Timbercorp Securities Limited ACN 092 311 469 as Responsible Entity ("the Responsible Entity") and each several Grower; the relevant Licence and Joint Venture Agreement and the relevant Almondlot Management Agreement; AND all the rights and obligations under or incurred pursuant to them.

The Assignee accepts the assignment and acknowledges and agrees to be bound by the terms and conditions of the Constitution; the relevant Licence and Joint Venture Agreement and the relevant Almondlot Management Agreement; AND all the rights and obligations under or incurred pursuant thereto as if the Assignee were named as one of the original parties to each of the Constitution and the Agreements.

The Responsible Entity acknowledges and confirms the terms of this Deed of Assignment.

Words and expressions used in this Deed of Assignment have the same meanings as in the Constitution unless the contrary requires.

SCHEDULE

Almondlot Details:

Dated this day of 20.....

EXECUTED as a Deed

.....
Signature of Assignors

Witness: Witness:

.....
Signature of Assignees

Witness: Witness:

EXECUTED for and on behalf of

TIMBERCORP SECURITIES LIMITED

(ACN 092 311 469) by:

Witness:

SEVENTH SCHEDULE

INSTRUMENT OF TRANSMISSION

To: Timbercorp Securities Limited (ACN 092 311 469)
Level 8
461 Bourke Street
MELBOURNE VIC 3000

Grower:

Address of Grower:

Almondlot Details:

Date of Death of Grower:

Administrator/Executor:

Address of Administrator/Executor:

I/We (Representative)

REQUEST that:

A. I/We be registered as the Grower of the above Almondlots pursuant to Grant of Probate/Letters of Administration dated day of 20

OR

B.of.....("New Grower")

be registered as Grower pursuant to Grant of Probate/Letters of Administration dated day of 20

The Administrator/Executor and/or the New Grower acknowledges and agrees to be bound by the terms and conditions of the Constitution of the Project dated [] made between Timbercorp Securities Limited ACN. 092 311 469 as Responsible Entity and each Grower; the relevant Licence and Joint Venture Agreement and the relevant Almondlot Management Agreement; AND all the rights and obligations under or incurred pursuant thereto as if the Assignee were named as one of the original parties to each of those Agreements.

Dated this day of 20

.....
Administrator/Executor

.....
Witness

.....
New Grower

.....
Witness

-
- A. Grant of Probate or Letters of Administration (or Certified Office Copy of same) AND
 - B. Death Certificate must accompany Transmission Application.