

2003 C14

## **Sub-lease Agreement**

**2003 Timbercorp Almond Project  
[Yungera Site]**

**Timbercorp Securities Limited**

**Almond Land Pty Limited**

## **Yungera Site**

**NM TAYLOR**  
L A W Y E R S

Level 7  
350 Collins Street  
MELBOURNE VIC 3000  
Telephone: 9600 3525  
Facsimile: 9600 3527

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## Details of this Sub-lease

### Date of the Sub-lease:

This Sub-lease is made on

11 March

2003

### Parties to this Sub-lease:

1. **TIMBERCORP SECURITIES LIMITED**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Sub-lessor)

2. **ALMOND LAND PTY LTD**  
ACN 091 460 392  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Sub-lessee)

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## Background

- A. The Sub-lessor has leased the Land from the Sub-lessee under the Head Lease.
- B. The Sub-lessor wishes to grant a sub-lease of the Land for the Term back to the Sub-Lessee on the terms and conditions contained in this Lease.

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## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>Almondlot Management Agreement:</b>	the agreement of that name as defined in the Constitution;
<b>Business Day:</b>	any other day other than a Saturday, Sunday or a public holiday on which banks are open for business with the public in Melbourne;
<b>Constitution:</b>	the constitution of the Project;

<b>Grower:</b>	the Grower as defined in the Constitution;
<b>GST:</b>	has the meaning given in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended);
<b>GST Law:</b>	the same as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended);
<b>Head Lease:</b>	the lease between Almond Land Pty Ltd as lessor and Timbercorp Securities Limited as lessee;
<b>Land:</b>	that part of the land described in the Schedule that will be used for the Project;
<b>Licence and Joint Venture Agreement:</b>	the agreement of that name as defined in the Constitution;
<b>Project:</b>	the 2003 Timbercorp Almond Project;
<b>Responsible Entity:</b>	the responsible entity for the time being under the Constitution, which is currently the Sub-lessor;
<b>Term:</b>	the term of this Sub-lease, as described in clause 2.

## 1.2 Interpretation

In this Sub-lease, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Sub-lease;
- (i) if a party comprises two or more persons, this Sub-lease binds them jointly and each of them severally
- (j) if any of the persons comprising the Grower is a trustee, this Sub-lease 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.

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### **1.3 Headings**

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

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## **2. TERM**

The Sub-lessor grants this Sub-lease to the Sub-lessee for a period commencing on the date of this Sub-lease and, subject to clause 8, expiring on 29 June 2023.

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## **3. RENT**

If demanded by the Sub-lessor, the Sub-lessee must pay to the Sub-lessor an amount of \$1.00 per annum for the term of this Sub-lease.

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## **4. USE OF LAND**

### **4.1 Use of Land by Sub-lessee**

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

### **4.2 No warranty as to use**

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

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## **5. QUIET ENJOYMENT**

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

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## **6. ASSIGNMENTS, SUBLEASES, MORTGAGES AND LICENCES**

### **6.1 Assignments, subleases, mortgage and licences by Sub-lessee**

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

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## **6.2 Where the Sub-lessee is a company**

Where the Sub-lessee is a company, other than a company listed on any recognised stock exchange, any change in the principal shareholding of or any change in the principal shareholding of any holding company of the Sub-lessee altering the effective control of the Sub-lessee, will (for the purpose of this clause), be deemed to be an assignment of this Sub-lease and must require the written consent of the Sub-lessor under clause 6.1.

## **6.3 The Sub-lessee must not mortgage its interest**

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

## **6.4 Right to occupy**

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

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# **7. DEFAULT AND RE-ENTRY**

## **7.1 Default and Re-Entry by Sub-lessor**

The Sub-lessor and the Sub-lessee covenant and agree that the Sub-lessor will have the right to re-enter upon the Land if:

- (a) the rent remains unpaid for a period of 28 days after payment was demanded by the Sub-lessor under clause 3.1; or
- (b) the Sub-lessee commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of its obligations of this Sub-lease or the Constitution; or
- (c) a receiver or receiver and manager has been appointed in respect of the Sub-lessee or the Sub-lessee's property or the Sub-lessee is liquidated, wound up, dissolved, is under administration, executes a deed of company arrangement, enters into a compromise or arrangement with another person or is otherwise unable to pay its debts in the ordinary course; or
- (d) an order is passed or a resolution is effectively passed to the effect of any of the matters referred to in paragraph (c) above.

## **7.2 Remedies not waived**

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

## **7.3 Discharge of Sub-lessor**

Where the Sub-lessor exercises its rights under clause 7.1, and upon re-entry by the Sub-lessor, the Sub-lessor will be freed and discharged from any action, suit, claim or

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demand by, or obligation, to the Sub-lessee under or by virtue of this Sub-lease.

#### **7.4 Sub-lessee not to remove fixtures**

As long as any rental or other money is due by the Sub-lessee to the Sub-lessor, or the Sub-lessee has committed any breach of the terms of this Sub-lease which has not been made good or remedied and whether the Sub-lessee is still in possession or not, the Sub-lessee must not remove any of its fixtures, fittings or plant from the Land and is not entitled to enter upon the Land for the purpose of removing any of its fixtures, fittings or plant.

#### **7.5 Waiver by Sub-lessor**

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

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### **8. TERMINATION**

#### **8.1 Termination of the Project**

If the Project ends then this Sub-lease is automatically terminated and the Sub-lessor and the Sub-lessee appoint each other as their attorney to do all things and sign all documents that are necessary to give effect to the termination of the Sub-lease under this clause 8.1.

#### **8.2 Termination of Head Lease**

If the Head Lease comes to an end for whatever reason in respect of all or part of the Land then this Sub-lease is automatically terminated.

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### **9. SUB-LESSEE WILL ASSUME ALL RISK**

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

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

### **10.1 Sub-lessee to pay legal costs**

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

### **10.2 Sub-lessee to pay legal costs in connection with litigation**

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

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## **11. CAPACITY AND LIABILITY OF THE SUB-LESSOR**

### **11.1 Capacity of Sub-lessor**

The parties acknowledge that:

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

### **11.2 Benefit to Sub-lessor**

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

### **11.3 Limitation of Liability**

The parties agree that the Sub-lessor will in no circumstances be required to satisfy any liability owed to the Sub-lessee for breach of any obligation pursuant to or in respect of this Sub-lease out of any funds, property or assets other than the assets held as the responsible entity under the Constitution under the Sub-lessor's control and in its possession and available to be properly resorted to by the Sub-lessor.

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## **12. NOTICES**

### **12.1 Form of Notice**

Any notice to be given under or in connection with this Sub-lease 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



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- (c) fax

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

## 12.2 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.

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## 13. PROPER LAW

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

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## 14. SEVERANCE

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

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## 15. ENTIRE AGREEMENT

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

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## 16. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Sub-lease 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 Sub-lease, the Supplier must pay to the Recipient 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 16(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

Sub-lease.

- (d) The right of a Supplier to payment under this clause 16 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 Sub-lease, 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 16(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Sub-lease, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Sub-lease 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 Sub-lease 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 an Agreement:

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

Signature

Sol Rabinowicz

Full Name

Director

Position Held

Signature

Mark H Pryn

Full Name

Secretary

Position Held

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

  
\_\_\_\_\_  
Signature  
(Sol Rabinowicz)

\_\_\_\_\_  
Full Name

Director  
\_\_\_\_\_  
Position Held

  
\_\_\_\_\_  
Signature  
Mark H Pryn

\_\_\_\_\_  
Full Name

Secretary  
\_\_\_\_\_  
Position Held

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## **SCHEDULE**

### **Description of Land (Clause 1.1)**

The land described as “Yungera” in the State of Victoria and being that part of the land delineated in colour on the attached plan, being Crown Allotments 26, 27 and 36 of the land described in Certificate of Title Volume 9481 Folio 888.