

First Supplemental Deed

for

**2007 Timbercorp Almond Project
by the responsible entity being**

**Timbercorp Securities Limited
(ACN 092 311 469)**

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Details of this First Supplemental Deed

Date of the Deed:

This Deed is made on 15 April 2008.

Party to the Deed:

1. **Timbercorp Securities Limited**
ACN 092 311 469
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

(Responsible Entity)

Background to the Deed

- A. The 2007 Timbercorp Almond Project (**Project**) is governed by a Constitution dated 2 November 2006 executed by the Responsible Entity with the intent that it be legally enforceable as between the Responsible Entity and each Grower (**Constitution**);
- B. Each Grower has been, or will be granted, a sub-lease by Timbercorp Securities Limited (**TSL**), in its personal capacity, in respect of one or more Almondlots, for the purpose of growing and cultivating Almonds and the harvesting of the Almonds.
- C. Each Grower has engaged, or will engage, TSL under the Almondlot Management Agreement to cultivate and maintain Almond Trees on, and generally manage, the Almondlots, carry out and perform each Grower's obligations under the Sub-leases and to procure the processing and sale of the Almonds and on behalf of the Grower.
- D. "Westmores" is a fully developed almond orchard, consisting of approximately 72 hectares of almond trees planted in June – September 2007, located in close proximity to the land presently used in the Project (**'Westmores'**);
- E. The Responsible Entity has resolved to vary the Project Land by adding Westmores;
- F. The Responsible Entity records that:
 - the offer of Almondlots to Early Growers closed on 15 June 2007;
 - the offer of Almondlots to Post 30 June Growers will close on or before 15 June 2008;
 - Almondlots established on Westmores are only available for issue to Post 30 June Growers;
 - the location of a Participant Grower's Almondlots within the Orchard is not determinative of the Participant Grower's Participating Interest in the Proceeds as, in accordance with clause 13.3 of the Constitution, the Almonds, Crop and/or Product are pooled prior to sale and in receiving and distributing

Proceeds the Responsible Entity does not have regard to the quantity or quality of the Almonds, Crop or Product from particular Almondlots.

- G. The relevant parties to the Sub-leases and the Almondlot Management Agreement wish to modify the documents attached to the Constitution to take into account, among other things, the change in area of Almondlots and the addition of Westmores.
- H. The Land Owner and TSL, with the written consent of the Responsible Entity, may amend the provisions of the Sub-leases to such extent as may be required to enable the provisions of the Sub-leases, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed provided the Responsible Entity is reasonably satisfied that the amendments to the Sub-leases do not adversely affect the rights of Growers.
- I. TSL, with the written consent of the Responsible Entity, may amend the provisions of the Almondlot Management Agreement to such extent as may be required to enable the provisions of the Almondlot Management Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed provided the Responsible Entity is reasonably satisfied that the amendments to the Almondlot Management Agreement do not adversely affect the rights of Growers.
- J. TSL may make the amendments to the documents described in paragraphs H and I above on behalf of itself, and the Responsible Entity on behalf of the Growers. Each of the Growers has appointed the Responsible Entity as its attorney to make amendments to the Sub-leases and the Almondlot Management Agreement.
- K. The Responsible Entity has satisfied itself that the modifications described above and attached to the annexures to this Deed do not adversely affect the rights of Growers and are required to enable the provisions of the Sub-leases, Almondlot Management Agreement, or the Project, to be more conveniently, advantageously, profitably and economically administered and managed.
- L. Section 601GC(1)(b) of the Corporations Act provides that the Responsible Entity may modify the Constitution if the Responsible Entity reasonably considers that the change will not adversely affect members' rights;
- M. The Responsible Entity wishes to modify the Constitution and has satisfied itself that the amendments contained in this Deed will not adversely affect the Growers' rights.

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

Words and expressions defined in the Constitution have the same meanings when used in this Deed, as modified or inserted by this Deed.

1.2 Construction

In this Deed:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in

-
- this Deed have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
 - (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this paragraph 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
 - (g) a reference to a paragraph, clause or schedule is a reference to a paragraph and clause of, and schedule to, this Deed and a reference to this Deed includes any schedule;
 - (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
 - (i) a reference to a party to a document includes that party's successors and permitted assigns; and
 - (j) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind.
-

2. AMENDMENTS AND MODIFICATIONS

2.1 Deed is Supplemental

This Deed is supplemental to the Constitution and, except as otherwise provided in this Deed, the Constitution remains in full force and effect.

2.2 Amendment to the Constitution

Subject to clause 2.4, the Responsible Entity modifies, alters, amends and adds to the provisions of the Constitution as follows:

- (a) The Second Schedule of the Constitution is varied by adding the document titled "Deed of Variation of Almondlot Management Agreement", attached to this Deed as Annexure 1, for the "Almondlot Management Agreement";
- (b) The Third Schedule of the Constitution is varied by adding the document titled "Deed of Variation of Sub-lease - Annuello Property", attached to this Deed as Annexure 2, for the "Sublease - Annuello Property";
- (c) The Third Schedule of the Constitution is varied by adding the document titled "Deed of Variation of Sub-lease - Menegazzo Property", attached to this Deed as Annexure 3, for the "Sublease - Menegazzo Property";
- (d) The Third Schedule of the Constitution is varied by adding the document titled "Westmores Sub-lease – Post 30 June Growers", attached to this Deed as Annexure 4.

2.3 Ratification and Confirmation

In all other respects, the Responsible Entity confirms and ratifies the terms and conditions of the Constitution.

2.4 Operative Date

The modifications made by way of addition of the documents described in clause 2.2 take effect on and from the date of lodgement of this Deed with the Australian

Securities and Investments Commission in accordance with section 601GC(2) of the Corporations Act.

Executed as a Deed

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

Signature

Mark Hamilton Pryn

Full Name

Secretary

Position Held

Signature

Sol Charles Rabinowicz

Full Name

Director

Position Held

ANNEXURE 1

Almondlot Management Agreement

Deed of Variation

**Modifying the Almondlot Management
Agreement Between:**

Timbercorp Securities Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Details of this Deed of Variation of Almondlot Management Agreement

Date of the Deed:

This Deed is made on .

Parties to the Deed:

1. TIMBERCORP SECURITIES LIMITED

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

(TSL)

2. Each several Grower named in the First Schedule to the Almondlot Management Agreement.

(Grower)

Background to the Deed

- A.** TSL is the responsible entity of the 2007 Timbercorp Almond Project (ARSN 112 511 040), being a project for the management of an almond orchard, the cultivation of Almond Trees and harvesting and processing of almonds for commercial gain.
- B.** Each Grower has been, or will be granted, a sub-lease by TSL in respect of one or more Almondlots under any one of more of the Sub-lease - Menegazzo Property, Sub-lease – Annuello Property and Sub-lease – Westmores Property. The Sub-leases permit each Grower to use its Almondlots for the purpose of growing and cultivating Almonds and the harvesting of the Almonds.
- C.** Each Grower has engaged TSL under the Almondlot Management Agreement to cultivate and maintain Almond Trees on, and generally manage, the Almondlots, carry out and perform each Grower's obligations under the Sub-leases and to procure the processing and sale of the Almonds and on behalf of the Grower.
- D.** The parties wish to modify the Almondlot Management Agreement to take into account, among other things, the addition of Westmores Property to the Land.
- E.** Clause 20.6(b) of the Almondlot Management Agreement states that TSL may amend the provisions of the Almondlot Management Agreement to such extent as may be required to enable the provisions of the Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed

provided the Responsible Entity is reasonably satisfied that the amendments do not adversely affect the rights of Growers.

- F. TSL may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Growers. Each of the Growers has appointed the Responsible Entity as its attorney to make amendments to the Almondlot Management Agreement.
- G. The Responsible Entity has satisfied itself that the modifications contained in this Deed do not adversely affect the rights of Growers and are required to enable the provisions of the Almondlot Management Agreement, or the Project, to be more conveniently, advantageously, profitably and economically administered and managed.
- H. Accordingly, TSL makes the amendments contained in this Deed on behalf of itself, and the Responsible Entity on behalf of the Growers.
-

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

- (a) In this Deed, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

First Supplemental Deed:	the deed of that name that amends, modifies or alters the Constitution of the Project;
Operative Date:	the date the First Supplemental Deed is lodged with the Australian Securities & Investments Commission;
Sub-lease – Annuello Property:	each of the separate Sub-lease – Annuello Property between TSL, the Land Owner and each several Grower in relation to the Project;
Sub-lease - Menegazzo Property:	each of the separate Sub-lease – Menegazzo Property between TSL, the Land Owner and each several Grower in relation to the Project;
Sub-lease – Westmores Property:	each of the separate Sub-lease – Westmores Property between TSL, the Land Owner and each several Grower in relation to the Project; and
Westmores Property:	the property known as “Westmores” and described in the PDS.

- (b) In this Deed, including the background and Schedule, unless a contrary intention is expressed or implied, words and expressions defined in the Almondlot Management Agreement, as modified or inserted by the Schedule to this Deed, have the same meanings when used in this Deed.

1.2 Construction

In this Deed, 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 Deed;
 - (j) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
 - (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 Deed.

1.4 Grower and Deed

- (a) The term "**Grower**" in this Deed is a reference to the particular Grower named in the First Schedule to the Almondlot Management Agreement.
- (b) This Deed is entered into in respect of the Grower's Almondlots referred to in the First Schedule to the Almondlot Management 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 Management Agreement entered into on behalf of the Grower.

2. AMENDMENTS

2.1 Deed is Supplemental

This Deed is supplemental to the Almondlot Management Agreement and except as otherwise provided in this Deed, the Almondlot Management Agreement remains in full force and effect.

2.2 Amendments to the Almondlot Management Agreement

Pursuant to clause 20.6 of the Almondlot Management Agreement, the Responsible Entity modifies, alters, amends and adds to the provisions of the Almondlot Management Agreement by replacing it with the document set out in the Schedule.

2.3 Ratification and Confirmation

In all other respects, the parties to the Almondlot Management Agreement confirm and ratify the terms and conditions of the Almondlot Management Agreement.

2.4 Operative Date

The alterations made by this Deed as set out in the Schedule take effect on and from the Operative Date.

3. MISCELLANEOUS

3.1 Counterparts

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

3.2 Parties to Give Effect to the Deed

Each party to this Deed 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 Deed in connection with any document being amended and varied to which it is also a party.

3.3 Governing Law And Jurisdiction

- (a) The laws of Victoria govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

Executed as a Deed

**EXECUTED by TIMBERCORP
SECURITIES LIMITED in accordance
with section 127(1) of the Corporations
Act by:**

)
)
)
)

Signature

Signature

Full Name

Full Name

Position Held

Position Held

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

)
)
)
)

Signature

Signature

Full Name

Full Name

Position Held

Position Held

SCHEDULE



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:	receipts and expenditure statements and balance sheets together with statements, reports and notes (including any notes of Timbercorp Securities) 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 Participant Grower in carrying out its duties under this Agreement and the Constitution with a bank nominated by the Responsible Entity;
Almondlot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, separately identifiable area of the Land comprising approximately 0.25 hectares on which a Participant Grower will conduct the Almondlot Operations and which includes the Almond Trees, the Capital Works and the Water Licences attributed to the Project;
Almondlot Operations:	the growing and cultivation of Almonds on, and management of, the relevant Almondlots for the production of Product for commercial gain;
Almonds:	the almonds grown or growing on the relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable, and whether harvested or unharvested;
Almond Trees:	the almond trees planted on relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable;
Best Horticultural Practices:	sound horticultural and environmental practices and industry practices for similar orchards;
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, at its cost, on the Orchard;
Commencement Date:	in respect of each several Participant Grower, the date of this Agreement;
Constitution:	the deed entered into by the Responsible Entity and all the Participant Growers and 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 11.6;
Crop:	the Almonds taken from the Almond Trees planted on all the Participant Grower's Almondlots or the Orchard, whichever is applicable;
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 2007 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;
Gross Proceeds:	Proceeds less the direct costs and expenses of marketing and selling the Product and any unprocessed Crop (including freight, export and other selling commissions, levies and bank charges) but not including marketing fees payable by the Grower, or Timbercorp Securities on behalf of the Grower, to Select Harvests Limited ACN 000 721 380);
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 for Participant Growers specified in the PDS as the incentive fee threshold for that Financial Year;
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> $A_t = A_0 \times CPI_t / CPI_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A₀ = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI₀ is published and the Adjustment Date, including CPI₀;</p> <p>CPI₀ = 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,</p>

	<p>"CPI₀" 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 Rate of Return (IRR):	<p>the IRR of Project Cashflows where:</p> <p style="padding-left: 40px;">IRR = the rate that:</p> <p style="padding-left: 80px;">(a) when used to discount the Project Cashflows gives a net present value of zero, and is calculated using Microsoft Excel or a similar program; and</p> <p style="padding-left: 80px;">(b) is not greater than 30%;</p> <p>Project Cashflows is the ungeared after tax cashflows set out in the Third Schedule which are in respect of a natural person resident Participating Grower who pays the highest marginal tax rate prevailing in the relevant Financial Year;</p>
Joint Venture:	the Participant Grower that is a joint venture, as constituted in the Constitution;
Joint Venturers:	participants in a Joint Venture;
Land:	the land on which the Project is conducted, as described in the PDS which land includes the properties known as 'Menegazzo', 'Annuello' and 'Westmores' and such other land that is used for the Project;
Land Owner:	Almond Land Pty Ltd (ACN 091 460 392);
Management Fee:	the fees payable to Timbercorp Securities under clause 11;
Management Plan:	the management plan for a Financial Year prepared by, or on behalf of, Timbercorp Securities and attached as the Second Schedule to this Agreement;
month:	a calendar month;
Net Proceeds:	the proceeds to which a Participant 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;
Part A Almondlot:	that part of an Early Grower's Almondlot that was fully planted by 23 June 2007 representing no less than 15% of the Early Grower's Almondlot;
Participant Grower:	<p>a several person (or if more than one person, those persons jointly) who is named or otherwise described in the First Schedule.</p> <p>The term "Early Grower" refers to a Participant Grower whose application under the PDS was accepted on or before 15 June 2007 and the term "Post 30 June Grower" refers to a</p>

	Participant Grower whose application under the PDS is accepted on or after 1 July 2007 and before the offer period closes;
Participating Interest:	<p>(a) the entitlement of the Participant 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 sub-leased to the Participant Grower under the Sub-lease(s) and used in the Project Operations; and</p> <p>B: is the total area of Almondlots sub-leased to all of the Participant Growers under the Sub-lease(s) and used in the Project Operations, including all Almondlots of Participant Growers that have ceased to participate in the Project and which have not been excluded from the Project by Timbercorp Securities in accordance with the Constitution.</p> <p>(b) In the event that there is a reduction in the area of a Participant Grower's Almondlot or Almondlots under clause 10.4 of the Sub-lease(s), the Participating Interest of each Participant 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 one or more of the Participant Grower and Timbercorp Securities, as the context requires;
PDS:	the product disclosure statement (as defined in section 761A of the Corporations Act) issued in relation to the Project, including any supplementary product disclosure statement issued in relation thereto;
Proceeds:	<p>(a) interest received on moneys in the Agency Account;</p> <p>(b) any moneys payable to the Participant Growers under any policy of insurance in relation to the relevant Almondlots, the Almonds, the Crop, the Product or the Project;</p> <p>(c) proceeds from the sale of Crop;</p> <p>(d) proceeds from the sale of Product; and</p> <p>(e) any other monies payable to a Participant Grower, from or in relation to, the Project;</p>
Product:	Almonds in a saleable condition from the relevant Participant Grower's Almondlots or the Orchard, whichever is applicable;
Project:	the 2007 Timbercorp Almond Project promoted by Timbercorp Securities 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 Timbercorp Securities under clauses 13.3 and 13.4 of the Constitution and clause 7.2 of this

	Agreement;
Project Operations:	the growing, cultivation and management of a commercial almond orchard on behalf of all the Participant Growers and includes the Orchard Services, the harvesting and processing of the Almonds, delivery of the Almonds for distribution to or on behalf of all the Participant Growers in accordance with their Participating Interests, and procuring the sale of Almonds;
Responsible Entity:	the responsible entity for the time being of the Project;
Special Resolution:	a resolution passed at a meeting of Participant Growers duly convened and held in accordance with this Agreement by a majority of Participant Growers in number present in person or by representative, attorney or proxy whose aggregate number of Almondlots on issue exceed 75%;
Sub-lease(s):	the sub-lease or sub-leases (or stapled sub-leases in the case of an Early Grower) between Timbercorp Securities as sub-lessor, the Participant Grower as sub-lessee and the Land Owner in relation to the Participant Grower's relevant Almondlots;
Term:	the term of this Agreement under clause 2.1; and
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 12.5 megalitres per planted hectare as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use.

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 Participant 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 Participant Grower and Agreement

- (a) The term "**Participant Grower**" in this Agreement is a reference to the particular Participant Grower named in the First Schedule to this Agreement in relation to the relevant Almondlots allocated to it from time to time.
- (b) The term "**Participant Growers**" in this Agreement is a reference to all Participant Growers that hold Almondlots in the Project and according to the context, the term "**Participant Growers**" may also include the particular Participant Grower.
- (c) This Agreement is entered into in respect of the Participant 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 the relevant Almondlots held by the Participant Grower.

1.5 Delegation

Timbercorp Securities 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 Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

1.6 Payments under this Agreement

The Participant Growers that are Joint Venturers agree and acknowledge that Timbercorp Securities granting time, waiver or other indulgence to, compounding or compromising with, or wholly or partially releasing, one of the Joint Venturers in any way, from any obligation under this Agreement does not:

- (a) cause the other Joint Venturers' obligations and liabilities under this Agreement to be reduced or avoided;
- (b) prejudicially affect Timbercorp Securities' rights against the other Joint Venturers' under this Agreement.

1.7 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.8 Almondlot Management Agreement is not Project Property

This Agreement does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. COMMENCEMENT AND TERM OF THIS AGREEMENT

2.1 Term

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clause 2.1(c) and clause 2.2, this Agreement will continue until the date on which the Responsible Entity completes of all of its contractual obligations to the Participant Grower in relation to the sale of the Almonds harvested in the financial year ending 30 June 2030.
- (c) Notwithstanding clause 2.1(b), this Agreement will terminate forthwith upon the occurrence of any of the following possible events:
 - (i) the Project is terminated;
 - (ii) the Participant Grower's participation in the Project is terminated;
 - (iii) any of the Sub-lease(s) is terminated;
 - (iv) the events specified in clauses 15.1 to 15.3.

2.2 Extension of Term

Timbercorp Securities may, by notice in writing to Participant Growers, extend the Term for a further period:

- (a) on the same terms and conditions as are contained in this Agreement other than this clause 2.2; and
 - (b) until the Responsible Entity completes of all of its contractual obligations to the Participant Grower in relation to the sale of the Almonds harvested in the financial year ending 30 June 2032,
if:
 - (c) before 30 June 2029, the Internal Rate of Return to a Participant Grower is not equal to or greater than 9.5% after tax; and
 - (d) the Project has not been terminated before 30 June 2030 in any manner contemplated in clause 2.1(c); and
 - (e) the Responsible Entity is reasonably satisfied that it is in the best interests of Participating Growers to extend the Term in the manner described above.
-

3. RELATIONSHIP OF THE PARTIES

3.1 No Partnership etc

The relationship amongst the Participant Growers and between the Participant Growers and Timbercorp Securities is not, is not intended to be, is not deemed to be and is not to be treated as, a partnership association or a joint venture, other than the Joint Venture which may comprise a Participant Grower.

3.2 Project

The parties expressly agree and acknowledge that:

- (a) each party is an independent contracting party; and

- (b) 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 TIMBERCORP SECURITIES

4.1 Engagement of Timbercorp Securities

The Participant Grower engages Timbercorp Securities 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 Participant Grower and perform the Orchard Services.

4.2 Timbercorp Securities to Carry out Orchard Services as Independent Contractor

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

4.3 Authority to Act

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

4.4 Performance of Obligations

- (a) Subject to this Agreement, Timbercorp Securities 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 Best Horticultural Practices which is generally recognised and adopted in Australia and is known and acceptable to Timbercorp Securities and suitable for use on the Orchard; and
 - (iv) in the best interests of all the Participant Growers and not in the interests of Timbercorp Securities if those interests are not the same as those of the Participant Growers.
- (b) The phrase "commercially reasonable manner" means, in any particular circumstances, a manner which Timbercorp Securities honestly believes is commercially reasonable in those circumstances (having regard where appropriate to the fact that Timbercorp Securities 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 Timbercorp Securities 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, Timbercorp Securities must, at its own expense, provide all necessary administrative, supervisory and consulting services.

4.6 Acceptance of Engagement

Timbercorp Securities accepts its engagement on the terms and conditions of this Agreement.

5. ORCHARD MANAGEMENT

5.1 Management Plan and Good Practices

Timbercorp Securities must cultivate and manage the Orchard in accordance with:

- (a) the Management Plan; and
- (b) Best Horticultural Practices.

The initial Management Plan was prepared and attached to this Agreement as the Second Schedule. The Management Plan includes the following:

- (c) a horticultural plan for the Orchard;
- (d) a horticultural program for the Financial Year ending 30 June 2007;
- (e) an operational plan including human resources requirements, machinery requirements and farm programs; and
- (f) annual financial and operational budgets in relation to these horticultural matters.

5.2 Services for period ending 30 June 2007

The Participant Grower acknowledges that Timbercorp Securities has carried out the following services in the period ending 30 June 2007 in accordance with Best Horticultural Practices.

Infrastructure Management Services

- (a) undertaking a comprehensive internal quality assurance audit in respect of the Capital Works carried out by the Land Owner under the Sub-lease(s), including but not limited to all irrigation infrastructure, valves, pumps, moisture monitoring equipment;
- (b) keeping the following in good repair and condition:
 - (i) any access road or roads within the Orchard, all waterways, dams, irrigation and pumping equipment within the Orchard, as necessary;
 - (ii) all fences, fire-breaks and other improvements within the Orchard, as necessary;
 - (iii) all farm equipment, plant and equipment, tractors, vehicles, protective gear and other things used to perform the services described in this clause 5.2;
- (c) as permitted by law, controlling or eradicating rabbits and other vermin which have caused or may cause damage to the Orchard by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments) and any other statutes, rules, regulations and by-laws relating to or affecting the Almondlots or the Participant Grower;
- (d) to the extent that any fertilisers, nutrients and other chemicals are used, keeping proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Orchard and storing the chemicals in accordance with all legal requirements;

- (e) using and applying appropriate soil management techniques and undertaking or procuring the carrying out of drainage works to reduce soil erosion, maintaining soil quality and carrying out or procuring the carrying out of drainage work and other works to control salinity levels; and
- (f) carrying out any other activity that was required to generally maintain the Orchard in accordance with Best Horticultural Practices or in respect of the provision of the services listed in paragraphs (a)-(e) above including:
 - (i) training of staff in use of equipment, infrastructure and performance of duties;
 - (ii) supervision of contractors performing any of the services; and
 - (iii) obtaining professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the services.

Administrative and other Management Services

The following services were also carried out by Timbercorp Securities from the Commencement Date until 30 June 2007:

- (g) preparing a market report to the Participating Grower detailing the following:
 - (i) world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
 - (ii) the Australian supply situation (covering the expected crop size for Australia);
 - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or other relevant periods);
 - (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or other relevant periods);
 - (v) information on Project crop (covering new or potential supply contracts and markets, key customers, promotional activities and other relevant matters);
 - (vi) a 12-month outlook (covering available information on the expected supply/demand and price trends over the upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters); medium-term outlook (covering a 2-5 year period);
 - (vii) any new articles in relation to the supply, consumption and pricing of almonds; and
 - (viii) any other relevant market information.
- (h) carrying out any other obligation to be performed by Timbercorp Securities under the terms and conditions of any agreement entered into by Timbercorp Securities;
- (i) procuring on behalf of the Participant Grower and keeping current with a reputable insurer the insurance policies described in clause 12 and all other activities in respect of arranging insurance of the Almonds and the Grower's almond growing activities;
- (j) preparing the reports and statements described in clauses 8 and 13 and providing the administrative services required to perform the above services;
- (k) complying with the Participant Grower's obligations under the Sub-lease(s) by ensuring that the Participant Grower carried out on the Land only those activities he or she was entitled to carry out under the Sub-lease(s) and then only subject to the terms and conditions of the Sub-lease(s);

- (l) reviewing the Management Plan and, making any necessary amendments to it in accordance with this Agreement; and
- (m) in accordance with clause 7, undertaking all marketing activities in respect of the future sale of Almonds, including without limitation entering into forward sales agreement in respect of Almonds and foreign exchange hedging agreements, as required, and monitoring and supervising the performance of all contractors in that regard.

Part A Almondlot - Almond Tree Management Services

The Participant Grower acknowledges that the following services were carried out by Timbercorp Securities from the completion of planting of Part A of the Grower's Almondlots until 30 June 2007. Those services were:

- (n) undertaking a comprehensive internal quality assurance audit in respect of the Almond Trees, stakes, and all infrastructure associated with the application of fertiliser and water to the Almond Trees including valves, dripper lines and other things;
- (o) obtaining a formal verification by 30 June 2007 from an expert that Part A of the Almondlots was of an appropriate standard and all required services had been performed were to an appropriate standard;
- (p) cultivating, tending, culling, replanting, spraying and otherwise caring for the Almond Trees, as necessary;
- (q) undertaking pest control, fungicide control and other almond tree disease preventative measures, as necessary;
- (r) operating the irrigation system at various times in order to irrigate the Almondlots;
- (s) fertilising the Almondlots as required, in accordance with Best Horticultural Practices, to maintain satisfactory rates of growth and productivity of the Almond Trees;
- (t) in its absolute discretion and without needing the Participant Grower's consent, destroying any of the Almond Trees which were damaged or which have contracted an exotic, noxious or incurable disease;
- (u) as far as reasonably possible, keeping the relevant Almondlots free from competitive weeds or other vegetation which might affect the growth or yield of the Almond Trees;
- (v) protecting the Almond Trees from insect infestation, disease and other matters using Best Horticultural Practices, including (as necessary) applying herbicides or pesticides to the relevant Almondlots and spraying under the Almond Trees as permitted by law;
- (w) regularly inspecting and repairing all stakes, fences and other equipment including plant and machinery, such as tractors and other vehicles used during the period ending 30 June 2007 to carry out tree maintenance services on the Almondlots;
- (x) inspecting and, where appropriate, retying the Almond Trees to stakes and attaching Almond Trees to trellising in accordance with Best Horticultural Practices; and
- (y) carrying out any other activity that might be required to generally maintain the Orchard in accordance with Best Horticultural Practices or in respect of the provision of the services listed in paragraphs (n)-(x) above including:
 - (i) training of staff in use of equipment, infrastructure and performance of duties;

- (ii) supervising of contractors performing any of the services; and
- (iii) obtaining professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the services.

5.2A Subsequent Year Services

Without limiting the generality of clause 5.1, commencing on the later of 1 July 2007 and completion of the planting of Almond Trees on the Participating Grower's Almondlots, and during each subsequent Financial Year during the term of the Project, Timbercorp Securities will carry out the following services on the Participant Grower's Almondlots. Timbercorp Securities may determine the most appropriate time to carry out the services. The services are:

- (a) intentionally left blank;
- (b) prepare a market report to the Participating Grower detailing the following:
 - (i) world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
 - (ii) the Australian supply situation (covering the expected crop size for Australia);
 - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
 - (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
 - (v) information on Project crop (covering new or potential supply contracts and markets, key customers, promotional activities and other relevant matters);
 - (vi) 12-month outlook (covering expected supply/demand and price trends over upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters);
 - (vii) medium-term outlook (covering a 2-5 year period);
 - (viii) any new articles in relation to the supply, consumption and pricing of almonds; and
 - (viii) other relevant market information.
- (c) in respect of the 2007 Financial Year only, following the completion of planting of all Almond Trees:
 - (i) undertake a further internal quality assurance audit in respect of the Almond Trees, stakes, and all infrastructure associated with the application of fertiliser and water including valves, pumps, dripper lines, moisture monitoring equipment; and
 - (ii) obtain a formal verification from an expert that the remaining part or all of the Almondlots (as the case may be) are of an appropriate standard and all required services have been performed and to an appropriate standard
- (d) prune the Almond Trees by mechanical or other methods;
- (e) as permitted by law, control or eradicate rabbits and other vermin which have caused or may cause damage to the Almond Trees or the relevant Almondlots by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments) and any other statutes, rules, regulations and by-laws relating to or affecting the Almondlots or the Participant Grower;

- (f) undertake pest control, fungicide control and other Almond Tree disease preventative measures, as necessary;
- (g) operate the irrigation system at various times in order to irrigate the relevant Almondlots;
- (h) at its discretion, conduct tests to ascertain the availability of nutrients in the soil on the Almondlots and, based on the results, take whatever action is required to maintain the growth rate and productivity of the Almond Trees;
- (i) fertilise the Almondlots as required, in accordance with Best Horticultural Practices;
- (j) in its absolute discretion and without needing the Participant Grower's consent, destroy any of the Almond Trees or Almonds which have contracted an exotic, noxious or incurable disease;
- (k) as necessary, keep in good repair and condition all fences, irrigation and adequate fire-breaks and other improvements within the Orchard;
- (l) keep the improvements on the Almondlots in good and substantial repair;
- (m) maintain fire breaks in accordance with regulatory and insurance requirements and Best Horticultural Practices;
- (n) maintain the relevant Almondlots in accordance with Best Horticultural Practices including using soil management technique methods to reduce erosion and maintain soil quality;
- (o) as far as reasonably possible, keep the relevant Almondlots free from competitive weeds or other vegetation which may affect the growth or yield of the Almond Trees;
- (p) protect the Almond Trees from insect infestation, disease and competition from competing growth using Best Horticultural Practices, including applying herbicides or pesticides to the relevant Almondlots and spraying under the Almond Trees as permitted by law;
- (q) keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the relevant Almondlots or Almond Trees;
- (r) regularly inspect and repair all stakes, fences and irrigation equipment on the relevant Almondlots;
- (s) properly maintain all plant and machinery used in the performance of the services;
- (t) inspect and, where appropriate, retie the Almond Trees to stakes and attach Almond Trees to trellising in accordance with Best Horticultural Practices;
- (u) replant any of the Almond Trees in need of replacement in accordance with the terms and conditions of any agreement made with suppliers of the Almond Trees;
- (v) comply with the Participant Grower's obligations under the Sub-lease(s) (except for those relating to payment of rent);
- (w) keep current with a reputable insurer the insurance policies described in clause 12 and carry out all other activities in respect of arranging insurance of the Almonds;
- (x) carry out any other obligation to be performed by Timbercorp Securities pursuant to the terms and conditions of any agreement entered into by Timbercorp Securities;
- (y) not discriminate between Participant Growers in the supply of water under the Water Licences;

- (z) if additional water in excess of 3.125 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 all Participant Growers, at a cost to the Participant Growers under clause 11.3 of this Agreement, calculated and to be taken into account as Timbercorp Securities' reasonable costs of procuring the additional water in operating the relevant Almondlots;
- (aa) review and update 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;
- (bb) obtain professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the maintenance of the Almondlots and the Almond Trees;
- (cc) prepare the reports and statements described in clauses 8 and 13 and provide the administrative services required to perform the above services;
- (dd) in accordance with clause 7, undertake all marketing activities in respect of the sale or future sale of Almonds, including without limitations, entering into forward sales in respect of Almonds and foreign exchange hedging agreements, as required, and monitor and supervise the performance of contractors in that regard;
- (ee) provide any other service or thing which, in the reasonable opinion of Timbercorp Securities, is incidental or ancillary to the ongoing management of the relevant Almondlots; and
- (ff) comply with all laws and regulations relating to the use of the relevant Almondlots.

5.3 No Unlawful Acts

Timbercorp Securities 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 Timbercorp Securities to do so.

5.4 Notify Land Owner of Notices

Timbercorp Securities 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 relevant Almondlots or the Orchard within seven days after receipt of the notice.

6. HARVESTING

6.1 Harvesting

Each year during the Term Timbercorp Securities will, in accordance with Best 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 Timbercorp Securities in accordance with Best

Horticultural Practices by any method (including machine harvesting) deemed appropriate by Timbercorp Securities.

6.3 Delivery

Timbercorp Securities will promptly deliver all harvested Almonds to a delivery point or points to enable the Almonds to be processed and sold.

6.4 Storage

- (a) Until the harvested Almonds are delivered, Timbercorp Securities will store the Participant Grower's Participating Interest in the Almonds in an appropriate manner to minimise the deterioration of the Almonds' quality.
- (b) The Participant Grower's Participating Interest in the Almonds may be stored on the Orchard or any other premises whether or not owned or operated by Timbercorp Securities.

6.5 Early Harvests

The Participant Grower agrees that until the relevant Almondlots enter commercial production, Timbercorp Securities may harvest immature Almonds from those Almondlots and use them for promotional and marketing purposes.

7. PROCESSING AND SALE

7.1 Processing of Almonds

Timbercorp Securities will procure the processing of the Participant Grower's Participating Interest in the Crop into Product and will enter into a Project Document as agent and attorney for the Participant Grower.

7.2 Marketing and Sale

Timbercorp Securities will:

- (a) sell the Participant Grower's Participating Interest in the Product, using its reasonable endeavours to seek to maximise returns, and on such terms and conditions as Timbercorp Securities in its absolute discretion determines and, for this purpose, it is authorised to and will enter into a Project Document for the sale of the Participant Grower's Participating Interest in the Product as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower; and
- (b) in the event that Responsible Entity determines that any part of the Participant Grower's Participating Interest in 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 Timbercorp Securities determines in its absolute discretion and, for this purpose, it is authorised to and will enter into any agreement as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower.

7.3 Acknowledgement by the Participant Grower

- (a) The Participant Grower acknowledges and agrees that the Almonds and Crop and the proceeds of sale of all the Product or Crop will be divided pro rata according to the Participating Interest of each of the Participating Growers in the Project in the Product or Crop.

- (b) The Participant Grower authorises and directs Timbercorp Securities to:
 - (i) gather in the Participant Grower's Participating Interest in the Almonds;
 - (ii) procure the processing of the Participant Grower's Participating Interest in the Crop; and
 - (iii) then store, market and sell the Participant Grower's Participating Interest in any unprocessed Crop and the Product,with those of other Participating Growers in the Project without having regard to the quantity or quality of the particular Almonds, Crop or Product from the particular Almondlots of any Participating Growers in the Project, and the Participating Grower authorises Timbercorp Securities to do so.

7.4 Lien

- (a) The Participant Grower acknowledges and agrees with Timbercorp Securities that Timbercorp Securities can call for a first and paramount lien at any time in respect of the Participant Grower's Participating Interest in the Almonds, Crop and Product until such time as any outstanding fees or expenses due and payable to Timbercorp Securities under this Agreement have been paid.
- (b) Timbercorp Securities is authorised to sell or cause to be sold any of the Participant Grower's Participating Interest in the Almonds, Crop and Product over which Timbercorp Securities has the lien for the purpose of applying the sale proceeds in payment of any outstanding fees or expenses due to Timbercorp Securities.
- (c) Nothing in this clause 7.4 is intended to create a charge.

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 Participant Grower authorises Timbercorp Securities 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

Timbercorp Securities agrees to provide the following administrative services throughout the Term of the Agreement:

- (a) prepare reports to Participant Growers on the allocation and location of Participant Growers' Almondlots;
- (b) prepare reports to Participant Growers detailing the work to be done on each Participant Grower's Almondlot;
- (c) prepare reports to Participant Growers on the matters described in clauses 13.5 and 13.6;
- (d) prepare a statement to the Participant Grower in each Financial Year to assist with the preparation of income tax returns;
- (e) record the Participant Grower's transactions and make payments on behalf of the Participant Grower;
- (f) provide general administrative management of the Project;

- (g) review the sales and marketing plan for the Project; and
 - (h) co-ordinate visits of Participant Growers to inspect their Almondlots.
-

9. ACCESS TO ORCHARD

9.1 Timbercorp Securities has Access

Timbercorp Securities and its invitees will be entitled to such access to the Almondlots and Almond Trees as is necessary or desirable to perform Timbercorp Securities' obligations under this Agreement, the Constitution and the agreements in respect of the Almondlots of all Participant Growers in the Project.

9.2 Removal of Timbercorp Securities' Property after Termination

Timbercorp Securities may remove from the Almondlots such plant and equipment, implements, furniture and other items brought onto the Almondlots within one month after the termination of this Agreement and may enter the Almondlots for the purpose of removing such items.

9.3 Roads and Tracks

- (a) Timbercorp Securities is entitled (but has no obligation) to construct and maintain roads and tracks on the 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 Timbercorp Securities has removed any material for road building purposes, Timbercorp Securities 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 Participant Grower's Access

Provided the Participant Grower first gives Timbercorp Securities 7 days' prior notice in writing, Timbercorp Securities must permit the Participant Grower or its duly authorised representatives to have access, at the Participant Grower's expense and risk, at all reasonable times to the relevant Almondlots and the facilities located on them.

9.5 Warranty as to Access

The Participant Grower warrants that:

- (a) it has the right to grant access to the relevant Almondlots for the performance by Timbercorp Securities of its obligations under this Agreement, the Constitution and the Project Documents in respect of the relevant Almondlots of all Participant Growers in the Project; and
- (b) the exercise by Timbercorp Securities of its rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the Land Owner, any of the other Participant Growers in the Project or any person who derives title through or under the Land Owner or any of the Participant Growers in the Project.

9.6 Failure to Perform if Access Denied

Timbercorp Securities 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 by any Participant Growers in the Project.

10. NO LEASE OR LICENCE

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of Timbercorp Securities concerning the relevant Almondlots.

11. TIMBERCORP SECURITIES' FEES

11.1 Annual Fee and Charges Payable by Early Participant Growers

A Participant Grower who is an **Early Grower** must pay Timbercorp Securities the following management fees and charges in respect of the Orchard Services and all other services to be provided under this Agreement:

- (a) in consideration of the Orchard Services and all other services to be provided under this Agreement in the period 1 July 2007 to 30 June 2008:
 - (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2007; and
 - (ii) for each Almondlot an amount equal to 3.25% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity;
- (b) in consideration of the Orchard Services and all other services to be provided under this Agreement in the period 1 July 2008 to 30 June 2009:
 - (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2008; and
 - (ii) for each Almondlot an amount equal to 3.5% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project from and including the 2013 Financial Year payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity; and
- (c) thereafter, in consideration of the Orchard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.2 Annual Fee and Charges Payable by Post 30 June Participant Growers

A Participant Grower who is a **Post 30 June Grower** must pay Timbercorp Securities the following management fees and charges in respect of the Orchard Services and all other services to be provided under this Agreement:

- (a) in consideration of the Orchard Services and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2008, an amount of \$7,727.27 per Almondlot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Orchard Services and all other services to be provided

under this Agreement in the period 1 July 2008 to 30 June 2009:

- (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2008; and
 - (ii) for each Almondlot an amount equal to 6.5% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity; and
- (c) thereafter, in consideration of the Orchard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.3 Management Fees Payable by all Participant Growers

- (a) For each Financial Year after 30 June 2009 commencing on 31 October 2009 and each subsequent 31 October thereafter, Timbercorp Securities will be entitled to be paid in respect of all the Participant Grower's relevant Almondlots for the relevant Financial Year, the estimated costs of operating the relevant Almondlot (which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$50 per relevant Almondlot, Indexed (adopting 30 June 2007 as the base date)), as adjusted under paragraph 11.3(b).
- (b) Timbercorp Securities will:
 - (i) when notifying the Participant Grower under paragraph 11.3(a) of the estimated costs of operating the relevant Almondlots, notify the Participant Grower of its Participating Interest of the actual costs of Timbercorp Securities operating the relevant Almondlots for the preceding Financial Year, including overhead costs incurred by Timbercorp Securities or its contractors; and
 - (ii) adjust the estimated costs of operating the relevant Almondlots for the current Financial Year by the difference between the actual costs and the costs estimated by Timbercorp Securities under paragraph 11.3(a) for the preceding financial year unless the surplus per relevant Almondlot has been added, or the excess per relevant Almondlot has been deducted, from any distribution of Proceeds made to the Participant Grower following the end of the preceding Financial Year.

11.4 Responsible Entity to make certain payments

The Participant Grower agrees and acknowledges that the Responsible Entity is authorised to:

- (a) deduct from the Proceeds to which the Participant Grower is entitled, any amounts payable by the Participant Grower under this Agreement, the Sub-lease(s), the Project Documents and the Constitution including any amounts which are outstanding and in arrears; and
- (b) pay the deducted amounts to the persons entitled to them.

11.5 Incentive Fee

- (a) Timbercorp Securities will be entitled to be paid as an incentive fee in a Financial Year by the Participant Grower out of, and immediately prior to, any distribution 25% of so much of the annual Net Proceeds received by the Participant Grower in a Financial Year as exceeds the Incentive Fee

Threshold.

- (b) But, if in the immediately preceding Financial Year, the Net Proceeds received by the Participant Grower were less than the Incentive Fee Threshold the amount of the deficit must be deducted from the Net Proceeds when calculating the fee payable to Timbercorp Securities under this clause in respect of the Financial Year to which reference is first made.

11.6 Discontinuance or suspension of CPI

- (a) If the CPI 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 Timbercorp Securities and the Participant 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**".
- (b) The cost of any expert determination carried out under this clause must be borne equally between Timbercorp Securities and the Participant Grower.

11.7 Capacity

All Management Fees and other amounts to be paid to Timbercorp Securities under this Agreement are paid to Timbercorp Securities in its personal capacity.

11.8 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 11.9, if the Participant Grower fails to make payment of any amount due under this Agreement, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed the amount so paid together with interest thereon calculated under clause 11.9 out of any Proceeds to which the Participant Grower is entitled.

11.9 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Agreement:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

12. INSURANCE

12.1 Timbercorp Securities to Keep Insurance

Timbercorp Securities will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Participant

Growers in the Project 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 Timbercorp Securities and the Participant Grower from year to year).

12.2 Names of Policies

All policies of insurance obtained by Timbercorp Securities in accordance with clause 12.1 must be in the names of or note the interests of Timbercorp Securities, the Land Owner and all the Participant Growers.

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 Timbercorp Securities 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 Participant 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, Timbercorp Securities must observe and act in accordance with, the Management Plan.
- (b) Despite the preceding paragraph, Timbercorp Securities is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from the Participant Grower under clause 13.2 requires Timbercorp Securities to do something which is not in accordance with the Management Plan.

13.2 Recommendation or Direction by the Participant Grower

Timbercorp Securities must consider any recommendation or direction made by a Participant Grower and where it is satisfied that any such recommendation or direction is in the interests of the Participant Growers and the Project generally, Timbercorp Securities 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, Timbercorp Securities may make changes to that Management Plan.

13.4 Performance of Management Services

Timbercorp Securities will have complete discretion as to the manner and method of conducting the Project Operations, subject to the express terms and conditions of this Agreement.

13.5 Reports

Within 5 months after the end of each Financial Year during this Agreement Timbercorp Securities will send a report to the Participant 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 Participant Grower's Almondlots and Almond Trees;
- (c) any other matters which Timbercorp Securities considers material concerning the Orchard, the relevant Almondlots or the Project and which ought reasonably to be made known to the Participant Grower; and
- (d) any other matter reasonably requested by the Participant 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, Timbercorp Securities will send to the Participant Grower an annual statement of income and expenses relating to the management of the relevant Almondlots and the sale of the Participant Grower's Participating Interest in the Product or Crop during the relevant Financial Year.

14. DISTRIBUTIONS

14.1 Distribution of Proceeds to the Participant Growers

Subject to this Agreement, Timbercorp Securities as the Responsible Entity must pay to the Participant Grower the amount of Proceeds standing to the credit of the Participant Grower in the Agency Account in accordance with the Constitution and comply with this Agreement in those respects in its personal capacity.

15 TERMINATION AND DEFAULT

15.1 Termination by the Participant Grower

The Participant Grower may terminate this Agreement by notice in writing to Timbercorp Securities:

- (a) immediately, if Timbercorp Securities:
 - (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 Timbercorp Securities or any part of its undertaking;
 - (ii) ceases to carry on business; or
 - (iii) fails or neglects to pay any moneys due to the Participant 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 Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied (except where Timbercorp Securities has advised the Participant Grower 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 Timbercorp Securities and the Participant Growers agree) after the Participant Growers by Special Resolution at a meeting of Participant Growers resolve to terminate the engagement of Timbercorp Securities under the Agreement.

15.2 Termination by Timbercorp Securities

- (a) Subject to paragraph 15.2(c) and without prejudice to Timbercorp Securities rights under this Agreement, Timbercorp Securities may terminate this Agreement, with immediate effect in respect of all the Almondlots of the Participant Grower, if the Participant Grower fails to make a payment within the required time under this Agreement in relation to any Almondlot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Almondlot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower specifying the breach and requiring the Participant Grower to remedy the breach.
- (b) If this Agreement is terminated under paragraph 15.2(a) or in accordance with clause 15.2(c), then:
 - (i) the Participant Grower loses all rights as a participant in the Project; and
 - (ii) the Participant Grower remains liable for payment of all fees in respect of work done by Timbercorp Securities.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

15.3 Termination of Sub-lease(s)

This Agreement terminates in respect of the relevant Almondlots immediately if the Sub-lease(s) are terminated in respect of the relevant Almondlots for any reason.

15.4 Timbercorp Securities to Relinquish Property and Books and Records

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

15.5 Effect of Termination

- (a) 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.
- (b) 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

Timbercorp Securities will not have any obligation to observe or comply with the terms

and conditions 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

Timbercorp Securities' failure to observe or comply with the terms and conditions of this Agreement will not give rise to any liability to the Participant Grower 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 Timbercorp Securities or which Timbercorp Securities 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 THE PARTICIPANT GROWER'S LIABILITY

17.1 No obligation beyond Fees and Expenses

Despite anything else contained in this Agreement, the Participant Grower is not obliged to contribute any money in respect of the Project Operations beyond the fees and other amounts payable by the Participant Grower under the Constitution, the Sub-lease(s) and this Agreement.

17.2 Limitation of Liability

Despite anything else contained in this Agreement, the liability of the Participant Grower is absolutely limited to the fees and other amounts paid or payable to Timbercorp Securities and the Land Owner under the Constitution, the Sub-lease(s) and this Agreement and to any Proceeds to which the Participant Grower is entitled.

17.3 Timbercorp Securities to disclose

In any contract, which Timbercorp Securities enters into on behalf of the Participant Grower, to the extent practicable, Timbercorp Securities must disclose that:

- (a) it is contracting as agent for the Participant Grower;
 - (b) the liability of the Participant Grower in respect of the Project Operations and the Sub-lease(s) is limited to the amount of money contributed by the Participant Grower as provided in clause 17.1; and
 - (c) the Participant 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 Participant Grower as provided in clause 17.1 and to any Proceeds to which the Participant Grower is entitled.
-

18 DISPUTES

18.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Agreement must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
 - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 18.1(a)(i),
the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
 - (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 18.1(a) as final and binding; and

- (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

18.2 Timbercorp Securities

- (a) Clause 18.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
 - (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (iii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Agreement to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
 - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 18.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
- (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 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 Participant Grower covenants with Timbercorp Securities that it will at the request of Timbercorp Securities execute any further counterparts in the form or to the effect of this Agreement, which counterparts may include a lesser or greater number of Participant Growers to those executing this instrument so long as in no circumstances will the rights or entitlement of any Participant Grower be diminished.
- (c) The Participant Grower and Timbercorp Securities agree that by their execution of any counterpart of this Agreement they will be and remain liable to each other 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

The Participant Grower and Timbercorp Securities 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 Participant Grower and

Timbercorp Securities 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 the PDS and any agreement executed by the Participant Grower and Timbercorp Securities that is clearly intended to be supplemental to this Agreement or in substitution for it.

20.3 Waiver and Exercise of Rights

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- (c) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

20.4 Parties to Give Effect to the Agreement

- (a) The Participant Grower and Timbercorp Securities 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 the Participant Grower immediately after being requested by Timbercorp Securities fails to do the act or thing, the Participant Grower irrevocably appoints Timbercorp Securities as its attorney for the purpose of giving effect to this clause.
- (c) The Participant Grower indemnifies Timbercorp Securities and holds it harmless from and against all actions, suits, demands and claims consequent upon the exercise of the power granted under this clause 20.4.

20.5 Stamp Duty

- (a) Timbercorp Securities will pay the stamp duty payable in relation to this Agreement.
- (b) The Participant Grower will pay any duty payable in proportion to its Participating Interest in relation to any agreement executed pursuant to this Agreement, including all Project Documents.

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), Timbercorp Securities 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 the Participant Growers.
- (d) Timbercorp Securities may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Participant Growers. To give effect to this clause, each of the Participant 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 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 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 Timbercorp Securities

Subject to clause 22.2, Timbercorp Securities may freely assign any of its rights and interests under this Agreement so long as Timbercorp Securities does not assign its interest in this Agreement in any way without first entering a deed with the person with whom Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

- (a) contained or implied in this Agreement and the Sub-lease(s); and
- (b) required to be observed or performed by Timbercorp Securities.

22.2 Agreements with Contractors

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

22.3 Timbercorp Securities or Grantee to pay for deed

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

22.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Agreement if the Participant Grower:
 - (i) 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 remainder of the Term observe and perform all and any of the terms and conditions of this Agreement, the Constitution and the Sub-lease(s) applying to the Participant Grower's Almondlots being assigned; and
 - (ii) is not in default of any of its obligations under this Agreement, the Constitution and the Sub-lease(s) applying to the relevant Almondlots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into an Almondlot Management Agreement and Sub-lease(s), with the same terms and conditions as those applying to the Almondlots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

22.5 Release of liability of the Participant Grower

Once the Participant Grower has perfected an assignment of its interest in this Agreement in accordance with clause 22.4, the Participant Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected in respect of the Almondlots assigned.

Executed as an Agreement

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

FIRST SCHEDULE

GROWERS AND ALMONDLOTS

Refer to Schedule of Growers in Sub lease(s)

SECOND SCHEDULE

INITIAL MANAGEMENT PLAN

(Clause 5.1)

THIRD SCHEDULE

PROJECT CASHFLOWS (Clause 1.1)

The ungeared after tax **Project Cashflows** for a natural person resident Participant Grower in the Project who pays the highest marginal tax rate prevailing in the relevant Financial Year will be determined on a per Almondlot basis as follows:

Project Year	Financial Year	Amount (\$)
(0)	2007	$-6,363.64 \times (1-MTR)$ – applies in respect of Early Growers only
(1)	2008	$-(1,363.64 + 454.55) \times (1-MTR)$ – Early Growers only $-(7,727.27 + 454.55) \times (1-MTR)$ – Post 30 June Growers only
(2)	2009	$-(1,363.64 + 454.55) \times (1-MTR) + (HD \times MTR)$
(3)	2010	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(4)	2011	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(5)	2012	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(6)	2013	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(7)	2014	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(8)	2015	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(9)	2016	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(10)	2017	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(11)	2018	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(12)	2019	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(13)	2020	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(14)	2021	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(15)	2022	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(16)	2023	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(17)	2024	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(18)	2025	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(19)	2026	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(20)	2027	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(21)	2028	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$
(22)	2029	$(Y - Fees) \times (1-MTR) + (HD \times MTR)$

Where:

-
- MTR** is the highest marginal tax rate prevailing in the relevant Financial Year for a resident Australian natural person taxpayer;
- Fees** are the following costs and fees (on a GST exclusive basis):
- (a) for an **Early Grower**, the rent payable under the Sub-lease(s) and fees and other costs payable under Clause 11.1 (a)(i), (b)(i) and 11.3(a)-(b) and Clause 11.5 of this Agreement; and
 - (b) for a **Post 30 June Grower**, the rent payable under the Sub-lease(s) and the fees and other costs payable under Clause 11.2 (a),(b)(i) and 11.3(a)-(b) and Clause 11.5 of this Agreement.
- X** is the Gross Proceeds paid to (or applied on behalf of) the Participant Grower in the Financial Year; except that in respect of the 2029 Financial Year only, includes Gross Proceeds paid to (or applied on behalf of) the Participant Grower during the 2030 Financial Year in respect of Almonds harvested during the 2029 Financial Year.
- Y** is:
1. in the case of an Early Grower in the 2010 to 2012 financial years, inclusive, X less $(3.25\% * X)$;
 2. in the case of an Early Grower in the 2013 and each subsequent financial year of the Term X less $(6.75\% * X)$;
 3. in the case of a Post 30 June Grower in the 2010 and each subsequent financial year of the Term X less $(6.5\% * X)$.
- HD** is the amount of horticultural depreciation, which the Grower is entitled to claim as a tax deduction in the relevant Financial Year.

ANNEXURE 2

Deed of Variation of Sub-lease - Annuello Property

Deed of Variation

**Modifying the Sub-lease - Annuello
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Details of this Deed of Variation of Sub-lease – Annuello Property

Date of the Deed:

This Deed is made on .

Parties to the Deed:

1. TIMBERCORP SECURITIES LIMITED

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

(TSL)

2. ALMOND LAND PTY LIMITED

ACN 091 311 469
Level 8, 461 Bourke Street
Melbourne Victoria 3000

(Land Owner)

3. Each several Grower named in the First Schedule to the Sub-lease - Annuello Property.

(Grower)

Background to the Deed

- A.** TSL is the responsible entity of the 2007 Timbercorp Almond Project (ARSN 112 511 040), being a project for the management of an almond orchard, the cultivation of Almond Trees and harvesting and processing of almonds for commercial gain.
- B.** Each Grower has been granted a sub-lease by TSL in respect of one or more Almondlots under the Sub-lease - Annuello Property. The Sub-lease - Annuello Property permits each Grower to use its Almondlots for the purpose of growing and cultivating Almonds and the harvesting of the Almonds.
- C.** Each Grower has engaged TSL under the Almondlot Management Agreement to cultivate and maintain Almond Trees on, and generally manage, the Almondlots, carry out and perform each Grower's obligations under the Sub-lease - Annuello Property and to procure the processing and sale of the Almonds and on behalf of the Grower.
- D.** The parties wish to modify the Sub-lease - Annuello Property to take into account,

among other things, the change in area of Almondlots.

- E. The Land Owner and TSL, with the written consent of the Responsible Entity, may amend the provisions of the Sub-lease - Annuello Property to such extent as may be required to enable the provisions of the Sub-lease - Annuello Property, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed provided the Responsible Entity is reasonably satisfied that the amendments do not adversely affect the rights of Growers.
- F. TSL may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Growers. Each of the Growers has appointed the Responsible Entity as its attorney to make amendments to the Sub-lease - Annuello Property.
- G. The Responsible Entity has satisfied itself that the modifications contained in this Deed do not adversely affect the rights of Growers and are required to enable the provisions of the Sub-lease - Annuello Property, and the Project, to be more conveniently, advantageously, profitably and economically administered and managed.
- H. Accordingly, TSL makes the amendments contained in this Deed on behalf of itself, and the Responsible Entity on behalf of the Growers.

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

- (a) In this Deed, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

First Supplemental Deed:	the deed of that name that amends, modifies or alters the Constitution of the Project;
Operative Date:	the date the First Supplemental Deed is lodged with the Australian Securities & Investments Commission; and
Sub-lease - Annuello Property:	each of the separate Sub-lease - Annuello Property between TSL, the Land Owner and each several Grower in relation to the Project.

- (b) In this Deed, including the background and Schedule, unless a contrary intention is expressed or implied, words and expressions defined in the Sub-lease - Annuello Property, as modified or inserted by the Schedule to this Deed, have the same meanings when used in this Deed.

1.2 Construction

In this Deed, 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 Deed;
 - (j) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
 - (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 Deed.

1.4 Grower and Deed

- (a) The term "**Grower**" in this Deed is a reference to the particular Grower named in the First Schedule to the Sub-lease - Annuello Property.
- (b) This Deed is entered into in respect of each separate Sub-lease - Annuello Property entered into in respect of the Grower's Almondlots referred to in the First Schedule to the Sub-lease - Annuello Property and, must be read as if it were a separate Deed on the terms and conditions of this Deed in respect of each Sub-lease - Annuello Property entered into on behalf of the Grower.

2. AMENDMENTS

2.1 Deed is Supplemental

This Deed is supplemental to the Sub-lease - Annuello Property and except as otherwise provided in this Deed, the Sub-lease - Annuello Property remains in full force and effect.

2.2 Amendments to the Sub-lease - Annuello Property

Pursuant to clause 18 of the Sub-lease – Annuello Property, the Responsible Entity modifies, alters, amends and adds to the provisions of the Sub-lease - Annuello Property by replacing it with the document set out in the Schedule.

2.3 Ratification and Confirmation

In all other respects, the parties to the Sub-lease - Annuello Property confirm and ratify the terms and conditions of the Sub-lease - Annuello Property.

2.4 Operative Date

The alterations made by this Deed as set out in the Schedule take effect on and from the Operative Date.

3. MISCELLANEOUS

3.1 Counterparts

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

3.2 Parties to Give Effect to the Deed

Each party to this Deed 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 Deed in connection with any document being amended and varied to which it is also a party.

3.3 Governing Law And Jurisdiction

- (a) The laws of Victoria govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

Executed as a Deed

EXECUTED by ALMOND LAND PTY
LIMITED in accordance with section
127(1) of the Corporations Act by:

)
)
)

Signature

Signature

Full Name

Full Name

Position Held

Position Held

EXECUTED by TIMBERCORP)
SECURITIES LIMITED in accordance)
with section 127(1) of the Corporations)
Act by:)

Signature

Signature

Full Name

Full Name

Position Held

Position Held

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

Signature

Signature

Full Name

Full Name

Position Held

Position Held

SCHEDULE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Almondlot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each stapled and separately identifiable area of the Annuello Land and the Menegazzo Land comprising approximately 0.25 hectares (consisting of approximately 0.1755 hectares of the Annuello Land and 0.0745 hectares of the Menegazzo Land), on which a Participant Grower will conduct the Almondlot Operations and which includes the Almond Trees, the Capital Works and the Water Licences attributed to the Project;
Almondlot Management Agreement:	the agreement of that name for the management of the Almondlot Operations conducted on the relevant Almondlots between Timbercorp Securities and the Participant Grower;
Almondlot Operations:	the growing and cultivation of Almonds on, and management of, the relevant Almondlots for the production of Product for commercial gain;
Almonds:	the almonds grown or growing on the relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable, and whether harvested or unharvested;
Almond Trees:	the almond trees planted on relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable;
Annuello Land Lot:	that part of an Almondlot that is situated on the Annuello Land consisting of approximately 0.1755 hectares;
Annuello Land:	that part of the land known as 'Annuello' on which part of the Project is conducted as described in the PDS and which is subject to this Sub-lease;
Annuello Proportion	the proportion (expressed as a percentage) which the plantable area of the Orchard on the Annuello Land bears to the plantable area of whole of the Orchard;
Best Horticultural Practice:	sound horticultural and environmental practices and industry practices for similar orchards;
Business Day:	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
Capital Works:	the infrastructure and capital works that the Land Owner has carried out, and any other works that the Land Owner may be required in future to carry out, at its cost, on the Orchard;
Commencement Date:	in respect of each Participant Grower, the date of this Deed;
Constitution:	the deed for the Project entered into by the Responsible Entity

	and all the Participant Growers;
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 7.2;
Crop:	the Almonds taken from the Almond Trees planted on all the Participant Grower's Almondlots or the Orchard, whichever is applicable;
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 2007 and the period ending on the termination of this Deed and commencing on the preceding 1 July;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Head Lease:	the lease made between Timbercorp Securities, as lessee, and the Land Owner, as lessor, whereby Timbercorp Securities has been granted a lease of the Annuello Land;
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>A₀ = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI₀ is published and the Adjustment Date, including CPI₀;</p> <p>CPI₀ = 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, "CPI₀" 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	the internal irrigation system installed by the Land Owner on the

Irrigation Equipment:	Orchard for the purpose of enabling and facilitating the irrigation and delivery of water within the Annuello Land Lots;
Irrigation Infrastructure:	the pipeline (including the mainline), dam, pump and other equipment which are installed and owned by the Land Owner, or to which the Land Owner has rights under and which it already services or will be able to service adequately that part of the Orchard situated on the Annuello Land by enabling and facilitating the irrigation and delivery of the necessary water to the Annuello Land Lots;
Menegazzo Land:	that part of the land known as 'Menegazzo' on which part of the Project will be conducted as described in the PDS;
Orchard:	that part of the orchard established on the Menegazzo Land and that part of the orchard established on the Annuello Land, that is used in the Project and, where the context requires, the orchard established on either parcel of land;
Participant Grower:	a several person (or if more than one person, those persons jointly) named or otherwise described in the Schedule whose application under the PDS was accepted on or before 15 June 2007;
Participating Interest:	has the same meaning as in the Almondlot Management Agreement;
PDS:	has the same meaning as in the Constitution;
Proceeds:	has the meaning given in the Almondlot Management Agreement;
Product:	Almonds produced in a saleable condition from the Participant Grower's Almondlots or the Orchard, whichever is applicable;
Project:	the 2007 Timbercorp Almond Project promoted by Timbercorp Securities relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain;
Responsible Entity:	means the responsible entity of the Project;
Term:	the term of this Deed set out in clause 4.1; and
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 12.5 megalitres per planted hectare as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use.

1.2 Interpretation

In this Deed, 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 Deed;
- (i) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
- (j) if any of the persons comprising the Participant Grower is a trustee, this Deed 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.

1.3 Headings

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

1.4 Grower and Deed

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

1.5 Delegation

Timbercorp Securities and the Land Owner are each entitled to:

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

its employees, agents and contractors, but any delegation by Timbercorp Securities or the Land Owner does not release Timbercorp Securities or the Land Owner, as the case requires, from liability under this Deed.

1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Deed in its personal capacity.

1.7 Sub-lease is not Scheme Property

This Deed does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. ESTABLISHMENT OF ORCHARD

2.1 Warranty by Land Owner as to the Almondlots

The Land Owner warrants to the Participant Grower that the Land Owner has, at its own cost and in accordance with Best Horticultural Practice, has carried out and completed all capital works required to establish that part of the Orchard on the Annuello Land, including the planting of Almond Trees, prior to 30 September 2007.

2.2 Acknowledgments by the Participant Grower

- (a) The Participant Grower acknowledges that the Capital Works and Almond Trees on, and the Water Licences attaching to, the Participant Growers' Almondlots are, and will at all times remain, the property of the Land Owner.
 - (b) The Participant Grower agrees and acknowledges Timbercorp Securities will not be liable for any loss or damage incurred by the Participant Grower arising out of or in connection with any act or omission of the Land Owner or its officers, directors, employees, agents or agents under this Deed, whether or not constituting negligence, misconduct, dishonesty or fraud.
-

3. GRANT OF SUB-LEASE

3.1 Grant of Sub-lease

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a sub-lease, effective from the Commencement Date, to use and occupy the relevant Annuello Land Lots for the sole purpose of conducting the Almondlot Operations.
- (b) Timbercorp Securities represents and warrants that:
 - (i) as at the date of execution of this Deed, the Head Lease is valid and subsisting;
 - (ii) Timbercorp Securities is entitled under the Head Lease to grant the sub-lease under this Deed; and
 - (iii) any consents which may be required to the granting of the sub-lease under this Deed have been obtained.

3.2 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 Timbercorp Securities for the benefit of all the Participant Growers in the Project under and in accordance with the provisions of the Almondlot Management Agreement;
 - (ii) take all steps to avoid interfering with the supply of water to the relevant Annuello Land Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Deed; and
 - (iii) purchase and maintain the Water Licences during the term of the Project.
- (b) The Participant Grower acknowledges that:
 - (i) the Land Owner may purchase water licences and provide water to Timbercorp Securities to meet its obligations under the Almondlot Management Agreement; and

- (ii) such additional water licences do not attach to the Annuello Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Annuello Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Annuello Land Lots to their original condition.
 - (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Annuello Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Annuello Land Lots at the time will become the absolute property of the Land Owner.
 - (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Annuello Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
 - (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Annuello Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Annuello Land Lots;
- (b) allow the Participant Grower to peaceably and quietly hold and enjoy the Annuello Land Lots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, Crops or water reserves on the Annuello Land Lots;
- (d) comply with the provisions of the Head Lease;
- (e) not create any encumbrances over the Annuello Land or the Annuello Land Lots or any part of the Annuello Land or the Annuello Land Lots ranking in priority to the interests of the Participant Growers under this Deed other than the Deeds referred to in clause 6.1;
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised; and
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities.

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed and the Almondlot Management Agreement with or without vehicles to the Annuello Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers which gives access to the Annuello Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Annuello Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Annuello Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Almondlot Management Agreement with Timbercorp Securities;
- (b) Timbercorp Securities entering into the Head Lease with the Land Owner;
- (c) the contemporaneous execution of the Sub-lease in respect of the Menegazzo Land Lots,

on or before the Commencement Date in respect of the relevant Annuello Land Lots.

6.2 Reasonable Endeavours

Each of Timbercorp Securities, the Land Owner and the Participant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 6.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

7. RENT

7.1 Rent

- (a) A Participant Grower must pay to Timbercorp Securities the following rent per Annuello Land Lot:
 - (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Annuello Proportion payable on 31 October 2007 and 2008;
 - (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Annuello Proportion payable on 31 October 2009, 2010 and 2011;
 - (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64 multiplied by the Annuello Proportion, payable on 31 October 2012; and
 - (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI 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 Timbercorp Securities and the Participant 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".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

All rent and other amounts paid to Timbercorp Securities under this Deed are paid to Timbercorp Securities in its personal capacity.

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
 - (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
 - (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.
-

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Annuello Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Annuello Land Lots;
- (b) use the relevant Annuello Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Annuello Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Annuello Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Annuello Land Lots from time to time with or without equipment for the purposes of observing the state of the Annuello Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Annuello Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Annuello Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Annuello Land Lots adjoining the Annuello Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Annuello Land Lots, but such rights of access are limited to the unimpeded use of any

existing access roads, pathways or fire-breaks on or about the Annuello Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 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 the Annuello Land; and
- (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner.

9.2 Rights

The Land Owner:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed with or without vehicles to the Annuello Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person which gives access to the Annuello Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Annuello Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person.

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

The Participant Grower may terminate this Deed by notice in writing to Timbercorp Securities immediately, if:

- (a) Timbercorp Securities 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 Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of

written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.1A Deemed termination

This Deed will terminate with immediate effect if the Sub-lease in respect of the Menegazzo Land is terminated other than as a result of circumstances described in clauses 10.3 and 10.4 of that sub-lease.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Annuello Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Annuello Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Annuello Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Annuello Land Lots

If, in respect of the relevant Annuello Land Lots:

- (a) the whole or a substantial part of the relevant Annuello Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that the whole or a substantial part of the relevant Annuello Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of the relevant Annuello Land Lots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. 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 Annuello Land Lots

If, in respect of the relevant Annuello Land Lots:

- (a) part of the relevant Annuello Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that part of the relevant Annuello Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of that part of the relevant Annuello Land Lots which is damaged or destroyed, by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. 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 Deed under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Annuello Land Lots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Deed in respect of any number of all of the relevant Annuello Land Lots or part of the relevant Annuello Land Lots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Annuello Land Lots or any other part of the reduced relevant Annuello Land Lots.
- (c) If this Deed is terminated under clause 10.2 in relation to all of the Annuello Land Lots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project.
- (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

Timbercorp Securities and the Land Owner will not have any obligation to observe or comply with the terms and conditions of this Deed to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

11.2 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.

11.3 Liability

The failure by Timbercorp Securities or the Land Owner to observe or comply with the terms and conditions of this Deed will not give rise to any liability to any 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.

11.4 Definition of Force Majeure

For the purposes of this Deed, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or the Land Owner, as the case requires, or which Timbercorp Securities or the Land Owner, as the case requires, 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.

12. INTENTIONALLY DELETED

13. ASSIGNMENT

13.1 Assignment by Land Owner or Timbercorp Securities

- (a) Subject to clause 13.2, the Land Owner and Timbercorp Securities may freely assign any of their rights and interests under this Deed so long as the Land Owner or Timbercorp Securities (as the case requires) does not assign its interest in this Deed in any way without first entering a deed with the person with whom the Land Owner or Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:
 - (i) contained or implied in this Deed and the Almondlot Management Agreement; and
 - (ii) required to be observed or performed by the Land Owner or Timbercorp Securities (as the case requires).
- (b) Paragraph 13.1(a)(i) also applies if the Land Owner sells the Annuello Land and the obligations of the Land Owner are read as applying to the purchaser of the Annuello Land.

13.2 Agreements with Contractors

The Land Owner or Timbercorp Securities may only assign their rights and interests in this Deed 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 Deed, and for this purpose, the Land Owner or Timbercorp Securities has obtained the written consent to the assignment from the contractor.

13.3 Land Owner, Timbercorp Securities or Grantee to pay for deed

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

13.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Deed if the Participant Grower contemporaneously assigns its rights under the Sub-lease for the Menegazzo Land Lots and then only if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner and Timbercorp Securities stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Deed, the Sub-lease in respect of the Menegazzo Land Lots and of the Almondlot Management Agreement applying to the Participant Grower's Annuello Land Lots being assigned; and

- (ii) is not in default of any of its obligations under this Deed, the Constitution, the Sub-lease for the Menegazzo Land Lots and the Almondlot Management Agreement applying to the relevant Annuello Land Lots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into an Almondlot Management Agreement, a Sub-lease in respect of the Menegazzo Land Lots and this Deed, with the same terms and conditions as those applying to the Annuello Land Lots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

13.5 Release of liability of Grower

Once the Participant Grower has perfected an assignment of its interest in this Deed in accordance with clause 13.4, the Participant Grower no longer remains liable under this Deed in respect of any act done or omitted to be done after the assignment is effected in respect of the Annuello Land Lots assigned.

14. GOODS AND SERVICES TAX

- (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.
- (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 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 14(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 Deed, 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 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, 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 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.

15. LIMITATION OF LIABILITY OF GROWER

Subject to clause 7.4, in no circumstances will the Participant Grower be obliged to incur any liability under this Deed in excess of the annual rent payable under this Deed, the fees and expenses payable by the Participant Grower under the Almondlot Management Agreement in relation to the relevant Almondlots and its Participating Interest in the Proceeds.

16. NOTICE

16.1 Form of Notice

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

16.2 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.
-

17. PROPER LAW

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

18. AMENDMENTS

- (a) This Deed may be amended by another document in writing and duly signed by the parties to this Deed.
- (b) Subject to paragraph 18(c), the Land Owner and Timbercorp Securities, may amend the provisions of this Deed 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 Deed, or the Project, to be more

conveniently, advantageously, profitably or economically administered or managed.

- (c) Before the Land Owner and Timbercorp Securities may amend the Deed as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.
- (d) Timbercorp Securities may make the amendments on behalf of itself, and then on behalf of the Participant Grower. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Deed.
- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a) of this clause.

19. DISPUTES

19.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Deed must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
 - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),
the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
 - (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

19.2 Timbercorp Securities

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:

- (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Deed to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
 - (b) The Participant Grower and Timbercorp Securities:
 - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
 - (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.
-

20. CONSTITUTION

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

21. TRANSFER OF LAND ACT

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1958 are expressly excluded from this Deed.

22. PROPERTY LAW ACT

The provisions of section 144(1) of the Property Law Act 1958 do not apply to this Deed.

23. CAVEAT

- (a) The Participant Grower may at its own expense lodge a caveat at the Land Titles Office in respect of its interest under this Deed.
- (b) Timbercorp Securities agrees to provide to the Participant Grower all plans and other details reasonably necessary to enable the Participant Grower to lodge a caveat.
- (c) Upon the expiration or earlier termination of this Deed, the Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23.
- (d) Upon the allocation to a Participant Grower of Almondlots under paragraph 8.7(b) of the Constitution in substitution for its current Almondlots, the

Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23 in respect of the Almondlots being substituted.

- (e) The Participant Grower irrevocably appoints Timbercorp Securities its attorney to execute a withdrawal of any caveat required to be withdrawn by the Participant Grower pursuant to paragraphs 23(c) and (d) in the event of the Participant Grower failing promptly to do so.
- (f) The Participant Grower agrees to ratify anything done by the attorney in accordance with paragraphs 23(c) and (d).

24. INSURANCE

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Annuello Land Lots or the Almond Trees or result in the premiums for such insurances being increased.

25. FURTHER ASSURANCES

Each party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other party to give effect to this Deed.

26. SEVERABILITY

If any provision of this Deed is or becomes void or unforeseeable, that provision will be severed from this Deed to the intent that the remaining provisions of this Deed will continue in full force and effect.

27. WAIVER AND EXERCISE OF RIGHTS

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Deed, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed or default under this Deed as constituting a waiver of that right, power, authority, discretion or remedy.
- (c) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

Executed as a Deed

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

SCHEDULE

Schedule of Growers follows

ANNEXURE 3

Deed of Variation of Sub-lease - Menegazzo Property

Deed of Variation

**Modifying the Sub-lease - Menegazzo
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Details of this Deed of Variation of Sub-lease – Menegazzo Property

Date of the Deed:

This Deed is made on

Parties to the Deed:

1. TIMBERCORP SECURITIES LIMITED

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

(TSL)

2. ALMOND LAND PTY LIMITED

ACN 091 311 469
Level 8, 461 Bourke Street
Melbourne Victoria 3000

(Land Owner)

3. Each several Grower named in the First Schedule to the Sub-lease - Menegazzo Property.

(Grower)

Background to the Deed

- A.** TSL is the responsible entity of the 2007 Timbercorp Almond Project (ARSN 112 511 040), being a project for the management of an almond orchard, the cultivation of Almond Trees and harvesting and processing of almonds for commercial gain.
- B.** Each Grower has been granted a sub-lease by TSL in respect of one or more Almondlots under the Sub-lease - Menegazzo Property. The Sub-lease - Menegazzo Property permits each Grower to use its Almondlots for the purpose of growing and cultivating Almonds and the harvesting of the Almonds.
- C.** Each Grower has engaged TSL under the Almondlot Management Agreement to cultivate and maintain Almond Trees on, and generally manage, the Almondlots, carry out and perform each Grower's obligations under the Sub-lease - Menegazzo Property and to procure the processing and sale of the Almonds and on behalf of the Grower.

- D. The parties wish to modify the Sub-lease - Menegazzo Property to take into account, among other things, the change in area of Almondlots.
- E. The Land Owner and TSL, with the written consent of the Responsible Entity, may amend the provisions of the Sub-lease - Menegazzo Property to such extent as may be required to enable the provisions of the Sub-lease - Menegazzo Property, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed provided the Responsible Entity is reasonably satisfied that the amendments do not adversely affect the rights of Growers.
- F. TSL may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Growers. Each of the Growers has appointed the Responsible Entity as its attorney to make amendments to the Sub-lease - Menegazzo Property.
- G. The Responsible Entity has satisfied itself that the modifications contained in this Deed do not adversely affect the rights of Growers and are required to enable the provisions of the Sub-lease - Menegazzo Property, and the Project, to be more conveniently, advantageously, profitably and economically administered and managed.
- H. Accordingly, TSL makes the amendments contained in this Deed on behalf of itself, and the Responsible Entity on behalf of the Growers.

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

- (a) In this Deed, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

First Supplemental Deed:	the deed of that name that amends, modifies or alters the Constitution of the Project;
Operative Date:	the date the First Supplemental Deed is lodged with the Australian Securities & Investments Commission; and
Sub-lease - Menegazzo Property:	each of the separate Sub-lease – Menegazzo Property between TSL, the Land Owner and each several Grower in relation to the Project.

- (b) In this Deed, including the background and Schedule, unless a contrary intention is expressed or implied, words and expressions defined in the Sub-lease - Menegazzo Property, as modified or inserted by the Schedule to this Deed, have the same meanings when used in this Deed.

1.2 Construction

In this Deed, 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 Deed;
 - (j) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
 - (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 Deed.

1.4 Grower and Deed

- (a) The term "**Grower**" in this Deed is a reference to the particular Grower named in the First Schedule to the Sub-lease - Menegazzo Property.
- (b) This Deed is entered into in respect of each separate Sub-lease - Menegazzo Property entered into in respect of the Grower's Almond lots referred to in the First Schedule to the Sub-lease - Menegazzo Property and, must be read as if it were a separate Deed on the terms and conditions of this Deed in respect of each Sub-lease - Menegazzo Property entered into on behalf of the Grower.

2. AMENDMENTS

2.1 Deed is Supplemental

This Deed is supplemental to the Sub-lease - Menegazzo Property and except as otherwise provided in this Deed, the Sub-lease - Menegazzo Property remains in full force and effect.

2.2 Amendments to the Sub-lease - Menegazzo Property

Pursuant to clause 18 of the Sub-lease – Menegazzo Property, the Responsible Entity modifies, alters, amends and adds to the provisions of the Sub-lease - Menegazzo Property by replacing it with the documents set out in the Schedule.

2.3 Ratification and Confirmation

In all other respects, the parties to the Sub-lease - Menegazzo Property confirm and ratify the terms and conditions of the Sub-lease - Menegazzo Property.

2.4 Operative Date

The alterations made by this Deed as set out in the Schedule take effect on and from the Operative Date.

3. MISCELLANEOUS

3.1 Counterparts

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

3.2 Parties to Give Effect to the Deed

Each party to this Deed 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 Deed in connection with any document being amended and varied to which it is also a party.

3.3 Governing Law And Jurisdiction

- (a) The laws of Victoria govern this Agreement.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

Executed as a Deed

EXECUTED by ALMOND LAND PTY)
LIMITED in accordance with section)
127(1) of the Corporations Act by:)

Signature

Signature

Full Name

Full Name

Position Held

Position Held

**EXECUTED by TIMBERCORP)
SECURITIES LIMITED in accordance)
with section 127(1) of the Corporations)
Act by:)**

Signature

Signature

Full Name

Full Name

Position Held

Position Held

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

Signature

Signature

Full Name

Full Name

Position Held

Position Held

SCHEDULE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Almondlot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each stapled and separately identifiable area of the Menegazzo Land and the Annuello Land comprising approximately 0.25 hectares (consisting of approximately 0.0745 hectares of the Menegazzo Land and 0.1755 hectares of the Annuello Land), on which a Participant Grower will conduct the Almondlot Operations and which includes the Almond Trees, the Capital Works and the Water Licences attributed to the Project;
Almondlot Management Agreement:	the agreement of that name for the management of the Almondlot Operations conducted on the relevant Almondlots between Timbercorp Securities and the Participant Grower;
Almondlot Operations:	the growing and cultivation of Almonds on, and management of, the relevant Almondlots for the production of Product for commercial gain;
Almonds:	the almonds grown or growing on the relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable, and whether harvested or unharvested;
Almond Trees:	the almond trees planted on relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable;
Best Horticultural Practice:	sound horticultural and environmental practices and industry practices for similar orchards;
Business Day:	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
Capital Works:	the infrastructure and capital works that the Land Owner has carried out, and any other works that the Land Owner may be required in future to carry out, at its cost, on the Orchard;
Commencement Date:	in respect of each Participant Grower, the date of this Deed;
Constitution:	the deed for the Project entered into by the Responsible Entity and all the Participant Growers;
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 7.2;
Crop:	the Almonds taken from the Almond Trees planted on all the Participant Grower's Almondlots or the Orchard, whichever is applicable;
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 2007 and the period ending on the termination of this Deed and commencing on the preceding 1 July;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Head Lease:	the lease made between Timbercorp Securities, as lessee, and the Land Owner, as lessor, whereby Timbercorp Securities has been granted a lease of the Menegazzo Land;
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>A₀ = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI₀ is published and the Adjustment Date, including CPI₀;</p> <p>CPI₀ = 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, "CPI₀" 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 Equipment:	the internal irrigation system installed by the Land Owner on the Orchard for the purpose of enabling and facilitating the irrigation and delivery of water within the Menegazzo Land Lots;
Irrigation Infrastructure:	the pipeline (including the mainline), dam, pump and other equipment which are installed and owned by the Land Owner, or to which the Land Owner has rights under and which it already services or will be able to service adequately that part of the Orchard situated on the Menegazzo Land by enabling and facilitating the irrigation and delivery of the necessary water to the Menegazzo Land Lots;

Annuello Land:	that part of the land known as 'Annuello' on which part of the Project is conducted as described in the PDS;
Menegazzo Land Lot:	that part of an Almondlot that is situated on the Menegazzo Land consisting of approximately 0.0745 hectares;
Menegazzo Land:	that part of the land known as 'Menegazzo' on which part of the Project is conducted as described in the PDS and which is subject to this Sub-lease;
Menegazzo Proportion:	the proportion (expressed as a percentage) which the plantable area of the Orchard on the Menegazzo Land bears to the plantable area of whole of the Orchard;
Orchard:	that part of the orchard established on the Menegazzo Land and that part of the orchard established on the Annuello Land, that is used in the Project and, where the context requires, the orchard established on either parcel of land;
Participant Grower:	a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule whose application under the PDS was accepted on or before 15 June 2007;
Participating Interest:	has the same meaning as in the Almondlot Management Agreement;
PDS:	has the same meaning as in the Constitution;
Proceeds:	has the meaning given in the Almondlot Management Agreement;
Product:	Almonds produced in a saleable condition from the Participant Grower's Almondlots or the Orchard, whichever is applicable;
Project:	the 2007 Timbercorp Almond Project promoted by Timbercorp Securities relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain;
Responsible Entity:	the responsible entity of the Project;
Term:	the term of this Deed set out in clause 4.1; and
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 12.5 megalitres per planted hectare as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use.

1.2 Interpretation

In this Deed, 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 Deed;
- (i) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
- (j) if any of the persons comprising the Participant Grower is a trustee, this Deed 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.

1.3 Headings

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

1.4 Grower and Deed

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

1.5 Delegation

Timbercorp Securities and the Land Owner are each entitled to:

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

its employees, agents and contractors, but any delegation by Timbercorp Securities or the Land Owner does not release Timbercorp Securities or the Land Owner, as the case requires, from liability under this Deed.

1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Deed in its personal capacity.

1.7 Sub-lease is not Scheme Property

This Deed does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. ESTABLISHMENT OF ORCHARD

2.1 Warranty by Land Owner as to the Almondlots

The Land Owner warrants to the Participant Grower that the Land Owner has, at its own cost and in accordance with Best Horticultural Practice, has carried out and completed all capital works required to establish that part of the Orchard on the Menegazzo Land, including the planting of Almond Trees, prior to 30 September 2007.

2.2 Acknowledgments by the Participant Grower

- (a) The Participant Grower acknowledges that the Capital Works and Almond Trees on, and the Water Licences attaching to, the Participant Growers' Almondlots are, and will at all times remain, the property of the Land Owner.
 - (b) The Participant Grower agrees and acknowledges Timbercorp Securities will not be liable for any loss or damage incurred by the Participant Grower arising out of or in connection with any act or omission of the Land Owner or its officers, directors, employees, agents or agents under this Deed, whether or not constituting negligence, misconduct, dishonesty or fraud.
-

3. GRANT OF SUB-LEASE

3.1 Grant of Sub-lease

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a sub-lease, effective from the Commencement Date, to use and occupy the relevant Menegazzo Land Lots for the sole purpose of conducting the Almondlot Operations.
- (b) Timbercorp Securities represents and warrants that:
 - (i) as at the date of execution of this Deed, the Head Lease is valid and subsisting;
 - (ii) Timbercorp Securities is entitled under the Head Lease to grant the sub-lease under this Deed; and
 - (iii) any consents which may be required to the granting of the sub-lease under this Deed have been obtained.

3.2 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 Timbercorp Securities for the benefit of all the Participant Growers in the Project under and in accordance with the provisions of the Almondlot Management Agreement;
 - (ii) take all steps to avoid interfering with the supply of water to the relevant Menegazzo Land Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Deed; and
 - (iii) purchase and maintain the Water Licences during the term of the Project.
- (b) The Participant Grower acknowledges that:
 - (i) the Land Owner may purchase water licences and provide water to Timbercorp Securities to meet its obligations under the Almondlot Management Agreement; and

- (ii) such additional water licences do not attach to the Menegazzo Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Menegazzo Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Menegazzo Land Lots to their original condition.
 - (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Menegazzo Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Menegazzo Land Lots at the time will become the absolute property of the Land Owner.
 - (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
 - (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Menegazzo Land Lots;
- (b) allow the Participant Grower to peaceably and quietly hold and enjoy the Menegazzo Land Lots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, Crops or water reserves on the Menegazzo Land Lots;
- (d) comply with the provisions of the Head Lease;
- (e) not create any encumbrances over the Menegazzo Land or the Menegazzo Land Lots or any part of the Menegazzo Land or the Menegazzo Land Lots ranking in priority to the interests of the Participant Growers under this Deed other than the Deeds referred to in clause 6.1;
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised; and
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities.

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed and the Almondlot Management Agreement with or without vehicles to the Menegazzo Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers which gives access to the Menegazzo Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Menegazzo Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Menegazzo Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Almondlot Management Agreement with Timbercorp Securities;
- (b) Timbercorp Securities entering into the Head Lease with the Land Owner;
- (c) the contemporaneous execution of the Sub-lease in respect of the Annuello Land Lots,

on or before the Commencement Date in respect of the relevant Menegazzo Land Lots.

6.2 Reasonable Endeavours

Each of Timbercorp Securities, the Land Owner and the Participant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 6.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

7. RENT

7.1 Rent

- (a) A Participant Grower must pay to Timbercorp Securities the following rent per Menegazzo Land Lot:
 - (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Menegazzo Proportion payable on 31 October 2007 and 2008;
 - (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Menegazzo Proportion payable on 31 October 2009, 2010 and 2011;
 - (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64 multiplied by the Menegazzo Proportion, payable on 31 October 2012; and
 - (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI 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 Timbercorp Securities and the Participant 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**".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

All rent and other amounts paid to Timbercorp Securities under this Deed are paid to Timbercorp Securities in its personal capacity.

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Menegazzo Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Menegazzo Land Lots;
- (b) use the relevant Menegazzo Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Menegazzo Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Menegazzo Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Menegazzo Land Lots from time to time with or without equipment for the purposes of observing the state of the Menegazzo Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Menegazzo Land Lots adjoining the Menegazzo Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Menegazzo Land Lots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 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 the Menegazzo Land; and
- (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner.

9.2 Rights

The Land Owner:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed with or without vehicles to the Menegazzo Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person which gives access to the Menegazzo Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Menegazzo Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person.

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

The Participant Grower may terminate this Deed by notice in writing to Timbercorp Securities immediately, if:

- (a) Timbercorp Securities 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 Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and

requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.1A Deemed termination

This Deed will terminate with immediate effect if the Sub-lease in respect of the Annuello Land is terminated other than as a result of circumstances described in clauses 10.3 and 10.4 of that sub-lease.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Menegazzo Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

- (a) the whole or a substantial part of the relevant Menegazzo Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that the whole or a substantial part of the relevant Menegazzo Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of the relevant Menegazzo Land Lots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. 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 Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

- (a) part of the relevant Menegazzo Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that part of the relevant Menegazzo Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of that part of the relevant Menegazzo Land Lots which is damaged or destroyed, by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. 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 Deed under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Menegazzo Land Lots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Deed in respect of any number of all of the relevant Menegazzo Land Lots or part of the relevant Menegazzo Land Lots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Menegazzo Land Lots or any other part of the reduced relevant Menegazzo Land Lots.
- (c) If this Deed is terminated under clause 10.2 in relation to all of the Menegazzo Land Lots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project.
- (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

Timbercorp Securities and the Land Owner will not have any obligation to observe or comply with the terms and conditions of this Deed to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

11.2 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.

11.3 Liability

The failure by Timbercorp Securities or the Land Owner to observe or comply with the terms and conditions of this Deed will not give rise to any liability to any 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.

11.4 Definition of Force Majeure

For the purposes of this Deed, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or the Land Owner, as the case requires, or which Timbercorp Securities or the Land Owner, as the case requires, 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.

12. INTENTIONALLY DELETED

13. ASSIGNMENT

13.1 Assignment by Land Owner or Timbercorp Securities

- (a) Subject to clause 13.2, the Land Owner and Timbercorp Securities may freely assign any of their rights and interests under this Deed so long as the Land Owner or Timbercorp Securities (as the case requires) does not assign its interest in this Deed in any way without first entering a deed with the person with whom the Land Owner or Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:
 - (i) contained or implied in this Deed and the Almondlot Management Agreement; and
 - (ii) required to be observed or performed by the Land Owner or Timbercorp Securities (as the case requires).
- (b) Paragraph 13.1(a)(i) also applies if the Land Owner sells the Menegazzo Land and the obligations of the Land Owner are read as applying to the purchaser of the Menegazzo Land.

13.2 Agreements with Contractors

The Land Owner or Timbercorp Securities may only assign their rights and interests in this Deed 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 Deed, and for this purpose, the Land Owner or Timbercorp Securities has obtained the written consent to the assignment from the contractor.

13.3 Land Owner, Timbercorp Securities or Grantee to pay for deed

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

13.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Deed if the Participant Grower contemporaneously assigns its rights under the Sub-lease for the Annuello Land Lots and then only if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner and Timbercorp Securities stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Deed, the Sub-lease in respect of the Annuello Land Lots and of the Almondlot Management Agreement applying to the Participant Grower's Menegazzo Land Lots being assigned; and

- (ii) is not in default of any of its obligations under this Deed, the Constitution, the Sub-lease for the Annuello Land Lots and the Almondlot Management Agreement applying to the relevant Menegazzo Land Lots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into an Almondlot Management Agreement, a Sub-lease in respect of the Annuello Land Lots and this Deed, with the same terms and conditions as those applying to the Menegazzo Land Lots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

13.5 Release of liability of Grower

Once the Participant Grower has perfected an assignment of its interest in this Deed in accordance with clause 13.4, the Participant Grower no longer remains liable under this Deed in respect of any act done or omitted to be done after the assignment is effected in respect of the Menegazzo Land Lots assigned.

14. GOODS AND SERVICES TAX

- (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.
- (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 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 14(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 Deed, 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 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, 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 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.

15. LIMITATION OF LIABILITY OF GROWER

Subject to clause 7.4, in no circumstances will the Participant Grower be obliged to incur any liability under this Deed in excess of the annual rent payable under this Deed, the fees and expenses payable by the Participant Grower under the Almondlot Management Agreement in relation to the relevant Almondlots and its Participating Interest in the Proceeds.

16. NOTICE

16.1 Form of Notice

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

16.2 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.
-

17. PROPER LAW

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

18. AMENDMENTS

- (a) This Deed may be amended by another document in writing and duly signed by the parties to this Deed.
- (b) Subject to paragraph 18(c), the Land Owner and Timbercorp Securities, may amend the provisions of this Deed 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 Deed, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
 - (c) Before the Land Owner and Timbercorp Securities may amend the Deed as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.
 - (d) Timbercorp Securities may make the amendments on behalf of itself, and then on behalf of the Participant Grower. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Deed.
 - (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a) of this clause.
-

19. DISPUTES

19.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Deed must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
 - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),
the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
 - (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

19.2 Timbercorp Securities

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:

- (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Deed to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
 - (b) The Participant Grower and Timbercorp Securities:
 - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
 - (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.
-

20. CONSTITUTION

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

21. TRANSFER OF LAND ACT

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1958 are expressly excluded from this Deed.

22. PROPERTY LAW ACT

The provisions of section 144(1) of the Property Law Act 1958 do not apply to this Deed.

23. CAVEAT

- (a) The Participant Grower may at its own expense lodge a caveat at the Land Titles Office in respect of its interest under this Deed.
- (b) Timbercorp Securities agrees to provide to the Participant Grower all plans and other details reasonably necessary to enable the Participant Grower to lodge a caveat.
- (c) Upon the expiration or earlier termination of this Deed, the Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23.
- (d) Upon the allocation to a Participant Grower of Almondlots under paragraph 8.7(b) of the Constitution in substitution for its current Almondlots, the

Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23 in respect of the Almondlots being substituted.

- (e) The Participant Grower irrevocably appoints Timbercorp Securities its attorney to execute a withdrawal of any caveat required to be withdrawn by the Participant Grower pursuant to paragraphs 23(c) and (d) in the event of the Participant Grower failing promptly to do so.
- (f) The Participant Grower agrees to ratify anything done by the attorney in accordance with paragraphs 23(c) and (d).

24. INSURANCE

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Menegazzo Land Lots or the Almond Trees or result in the premiums for such insurances being increased.

25. FURTHER ASSURANCES

Each party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other party to give effect to this Deed.

26. SEVERABILITY

If any provision of this Deed is or becomes void or unforeseeable, that provision will be severed from this Deed to the intent that the remaining provisions of this Deed will continue in full force and effect.

27. WAIVER AND EXERCISE OF RIGHTS

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Deed, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed or default under this Deed as constituting a waiver of that right, power, authority, discretion or remedy.
- (c) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

Executed as a Deed

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

SCHEDULE

Schedule of Growers follows

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Almondlot:	each separately identifiable area of approximately 0.25 hectares of the Project Land allocated to the Participant Grower by Timbercorp Securities for the purposes of the Project together with the right to conduct Almondlot Operations and use the Almond Trees and Capital Works thereon and the Water Licences attributed thereto
Almondlot Management Agreement:	the agreement of that name between Timbercorp Securities and the Participant Grower for the management of Almondlot Operations conducted on the Almondlots;
Almondlot Operations:	the growing and cultivation of Almonds on, and management of, the Almondlots for the production of Product for commercial gain;
Almonds:	the almonds grown or growing on the Almondlots of the Participant Grower or the Orchard, whichever is applicable, and whether harvested or unharvested;
Almond Trees:	the almond trees planted on Almondlots of the Participant Grower or the Orchard, whichever is applicable;
Best Horticultural Practice:	sound horticultural and environmental practices and industry practices for similar orchards;
Business Day:	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
Capital Works:	the infrastructure and capital works that the Land Owner has carried out, and any other works that the Land Owner may be required in future to carry out, at its cost, on the Orchard;
Commencement Date:	in respect of each Participant Grower, the date of this Deed;
Constitution:	the deed for the Project entered into by the Responsible Entity and all the Participant Growers;
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 7.2;
Crop:	the Almonds taken from the Almond Trees planted on all the Participant Grower's Almondlots or the Orchard, whichever is

	applicable;
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 2007 and the period ending on the termination of this Deed and commencing on the preceding 1 July;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Head Lease:	the lease made between Timbercorp Securities, as lessee, and the Land Owner, as lessor, whereby Timbercorp Securities has been, or will be, granted a lease of the Menegazzo Land;
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>A₀ = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI₀ is published and the Adjustment Date, including CPI₀;</p> <p>CPI₀ = 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, "CPI₀" 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 Equipment:	the internal irrigation system installed by the Land Owner on the Orchard for the purpose of enabling and facilitating the irrigation and delivery of water within the Menegazzo Land;
Irrigation Infrastructure:	the pipeline (including the mainline), dam, pump and other equipment which are installed and owned by the Land Owner, or to which the Land Owner has rights under and which it already services or will be able to service adequately that part of the Orchard situated on the Menegazzo Land by enabling and facilitating the irrigation and delivery of the necessary water to the Almondlots ;
Menegazzo Land:	the property known as 'Menegazzo' as described in the PDS;
Menegazzo	an Almondlot located on Menegazzo Land;

Land Lot:	
Orchard:	the orchard established for the Project on the Project Land including on the Menegazzo Land;
Participant Grower:	a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule being a person whose application under the PDS is accepted on or after 1 July 2007 and before the offer period closes;
Participating Interest:	has the same meaning as in the Almondlot Management Agreement;
PDS:	has the same meaning as in the Constitution;
Proceeds:	has the meaning given in the Almondlot Management Agreement;
Product:	Almonds produced in a saleable condition from the Participant Grower's Almondlots or the Orchard, whichever is applicable;
Project:	the 2007 Timbercorp Almond Project promoted by Timbercorp Securities relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain;
Project Land:	the land to be utilised for the Project as described in the PDS, of which the Menegazzo Land forms part;
Responsible Entity:	the responsible entity of the Project;
Term:	the term of this Deed set out in clause 4.1;and
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 12.5 megalitres per planted hectare as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use.

1.2 Interpretation

In this Deed, 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 Deed;

- (i) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
- (j) if any of the persons comprising the Participant Grower is a trustee, this Deed 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.

1.3 Headings

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

1.4 Grower and Deed

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

1.5 Delegation

Timbercorp Securities and the Land Owner are each entitled to:

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

its employees, agents and contractors, but any delegation by Timbercorp Securities or the Land Owner does not release Timbercorp Securities or the Land Owner, as the case requires, from liability under this Deed.

1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Deed in its personal capacity.

1.7 Sub-lease is not Scheme Property

This Deed does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. ESTABLISHMENT OF ORCHARD

2.1 Warranty by Land Owner as to the Almondlots

- (a) The Land Owner warrants to the Participant Grower that the Land Owner, at its own cost and in accordance with Best Horticultural Practice, has carried out and completed all capital works required to establish that part of the Orchard on the Menegazzo Land, including the planting of the Almond Trees, prior to 30 September 2007.

2.2 Acknowledgments by the Participant Grower

- (a) The Participant Grower acknowledges that the Capital Works and Almond Trees on, and the Water Licences attaching to, the Participant Growers' Almondlots are, and will at all times remain, the property of the Land Owner.
 - (b) The Participant Grower agrees and acknowledges Timbercorp Securities will not be liable for any loss or damage incurred by the Participant Grower arising out of or in connection with any act or omission of the Land Owner or its officers, directors, employees, agents or agents under this Deed, whether or not constituting negligence, misconduct, dishonesty or fraud.
-

3. GRANT OF SUB-LEASE

3.1 Grant of Sub-lease

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a sub-lease, effective from the Commencement Date, to use and occupy the relevant Menegazzo Land Lots for the sole purpose of conducting the Almondlot Operations.
- (b) Timbercorp Securities represents and warrants that:
 - (i) as at the date of execution of this Deed, the Head Lease is valid and subsisting;
 - (ii) Timbercorp Securities is entitled under the Head Lease to grant the sub-lease under this Deed; and
 - (iii) any consents which may be required to the granting of the sub-lease under this Deed have been obtained.

3.2 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 Timbercorp Securities for the benefit of all the Participant Growers in the Project under and in accordance with the provisions of the Almondlot Management Agreement;
 - (ii) take all steps to avoid interfering with the supply of water to the relevant Menegazzo Land Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Deed; and
 - (iii) purchase and maintain the Water Licences during the term of the Project.
 - (b) The Participant Grower acknowledges that:
 - (i) the Land Owner may purchase water licences and provide water to Timbercorp Securities to meet its obligations under the Almondlot Management Agreement; and
 - (ii) such additional water licences do not attach to the Menegazzo Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.

- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Menegazzo Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Menegazzo Land Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Menegazzo Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Menegazzo Land Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Menegazzo Land Lots;
- (b) allow the Participant Grower to peaceably and quietly hold and enjoy the Menegazzo Land Lots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation,

- Crops or water reserves on the Menegazzo Land Lots;
- (d) comply with the provisions of the Head Lease;
 - (e) not create any encumbrances over the Menegazzo Land or the Menegazzo Land Lots or any part of the Menegazzo Land or the Menegazzo Land Lots ranking in priority to the interests of the Participant Growers under this Deed other than the Deeds referred to in clause 6.1;
 - (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised; and
 - (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities.

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed and the Almondlot Management Agreement with or without vehicles to the Menegazzo Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers which gives access to the Menegazzo Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Menegazzo Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Menegazzo Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Almondlot Management Agreement with Timbercorp Securities;
 - (b) Timbercorp Securities entering into the Head Lease with the Land Owner;
- on or before the Commencement Date in respect of the relevant Menegazzo Land Lots.

6.2 Reasonable Endeavours

Each of Timbercorp Securities, the Land Owner and the Participant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 6.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

7. RENT

7.1 Rent

A Participant Grower must pay to Timbercorp Securities the following rent per

Menegazzo Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 payable on or before the Commencement Date and 31 October 2008 respectively;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI 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 Timbercorp Securities and the Participant 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**".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

All rent and other amounts paid to Timbercorp Securities under this Deed are paid to Timbercorp Securities in its personal capacity.

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
 - (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
 - (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.
-

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Menegazzo Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Menegazzo Land Lots;
- (b) use the relevant Menegazzo Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Menegazzo Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Menegazzo Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Menegazzo Land Lots from time to time with or without equipment for the purposes of observing the state of the Menegazzo Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Menegazzo Land Lots adjoining the Menegazzo Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Menegazzo Land Lots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the Menegazzo Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 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 the Menegazzo Land; and
- (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner.

9.2 Rights

The Land Owner:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed with or without vehicles to the Menegazzo Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person which gives access to the Menegazzo Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Menegazzo Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person.

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

The Participant Grower may terminate this Deed by notice in writing to Timbercorp Securities immediately, if:

- (a) Timbercorp Securities 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 Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Menegazzo Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation

in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.

- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

- (a) the whole or a substantial part of the relevant Menegazzo Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that the whole or a substantial part of the relevant Menegazzo Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of the relevant Menegazzo Land Lots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. 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 Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

- (a) part of the relevant Menegazzo Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that part of the relevant Menegazzo Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of that part of the relevant Menegazzo Land Lots which is damaged or destroyed, by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. 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 Deed under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Menegazzo Land Lots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
 - (b) Termination of this Deed in respect of any number of all of the relevant Menegazzo Land Lots or part of the relevant Menegazzo Land Lots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Menegazzo Land Lots or any other part of the reduced relevant Menegazzo Land Lots.
 - (c) If this Deed is terminated under clause 10.2 in relation to all of the Menegazzo Land Lots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project.
 - (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.
-

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

Timbercorp Securities and the Land Owner will not have any obligation to observe or comply with the terms and conditions of this Deed to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

11.2 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.

11.3 Liability

The failure by Timbercorp Securities or the Land Owner to observe or comply with the terms and conditions of this Deed will not give rise to any liability to any 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.

11.4 Definition of Force Majeure

For the purposes of this Deed, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or the Land Owner, as the case requires, or which Timbercorp Securities or the Land Owner, as the case requires, 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.

12. INTENTIONALLY DELETED

13. ASSIGNMENT

13.1 Assignment by Land Owner or Timbercorp Securities

- (a) Subject to clause 13.2, the Land Owner and Timbercorp Securities may freely

assign any of their rights and interests under this Deed so long as the Land Owner or Timbercorp Securities (as the case requires) does not assign its interest in this Deed in any way without first entering a deed with the person with whom the Land Owner or Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

- (i) contained or implied in this Deed and the Almondlot Management Agreement; and
 - (ii) required to be observed or performed by the Land Owner or Timbercorp Securities (as the case requires).
- (b) Paragraph 13.1(a)(i) also applies if the Land Owner sells the Menegazzo Land and the obligations of the Land Owner are read as applying to the purchaser of the Menegazzo Land.

13.2 Agreements with Contractors

The Land Owner or Timbercorp Securities may only assign their rights and interests in this Deed 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 Deed, and for this purpose, the Land Owner or Timbercorp Securities has obtained the written consent to the assignment from the contractor.

13.3 Land Owner, Timbercorp Securities or Grantee to pay for deed

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

13.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Deed if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner and Timbercorp Securities stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Deed, and of the Almondlot Management Agreement applying to the Participant Grower's Menegazzo Land Lots being assigned; and
 - (ii) is not in default of any of its obligations under this Deed, the Constitution, or the Almondlot Management Agreement applying to the relevant Menegazzo Land Lots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into an Almondlot Management Agreement and this Deed with the same terms and conditions as those applying to the Menegazzo Land Lots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

13.5 Release of liability of Grower

Once the Participant Grower has perfected an assignment of its interest in this Deed in accordance with clause 13.4, the Participant Grower no longer remains liable under this Deed in respect of any act done or omitted to be done after the assignment is effected in respect of the Menegazzo Land Lots assigned.

14. GOODS AND SERVICES TAX

- (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.
- (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 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 14(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 Deed, 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 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, 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 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.

15. LIMITATION OF LIABILITY OF GROWER

Subject to clause 7.4, in no circumstances will the Participant Grower be obliged to incur any liability under this Deed in excess of the annual rent payable under this Deed, the fees and expenses payable by the Participant Grower under the Almondlot Management Agreement in relation to the relevant Almondlots and its Participating Interest in the Proceeds.

16. NOTICE

16.1 Form of Notice

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

16.2 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.

17. PROPER LAW

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

18. AMENDMENTS

- (a) This Deed may be amended by another document in writing and duly signed by the parties to this Deed.
- (b) Subject to paragraph 18(c), the Land Owner and Timbercorp Securities, may amend the provisions of this Deed 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 Deed, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Before the Land Owner and Timbercorp Securities may amend the Deed as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.
- (d) Timbercorp Securities may make the amendments on behalf of itself, and then on behalf of the Participant Grower. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Deed.
- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a) of this clause.

19. DISPUTES

19.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Deed must be dealt with by the Participant Grower as follows in the event that the dispute or

difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:

- (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

19.2 Timbercorp Securities

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
- (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Deed to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
- (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.

20. CONSTITUTION

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

21. TRANSFER OF LAND ACT

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1958 are expressly excluded from this Deed.

22. PROPERTY LAW ACT

The provisions of section 144(1) of the Property Law Act 1958 do not apply to this Deed.

23. CAVEAT

- (a) The Participant Grower may at its own expense lodge a caveat at the Land Titles Office in respect of its interest under this Deed.
 - (b) Timbercorp Securities agrees to provide to the Participant Grower all plans and other details reasonably necessary to enable the Participant Grower to lodge a caveat.
 - (c) Upon the expiration or earlier termination of this Deed, the Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23.
 - (d) Upon the allocation to a Participant Grower of Almondlots under paragraph 8.7(b) of the Constitution in substitution for its current Almondlots, the Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23 in respect of the Almondlots being substituted.
 - (e) The Participant Grower irrevocably appoints Timbercorp Securities its attorney to execute a withdrawal of any caveat required to be withdrawn by the Participant Grower pursuant to paragraphs 23(c) and (d) in the event of the Participant Grower failing promptly to do so.
 - (f) The Participant Grower agrees to ratify anything done by the attorney in accordance with paragraphs 23(c) and (d).
-

24. INSURANCE

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Menegazzo Land Lots or the Almond Trees or result in the premiums for such insurances being increased.

25. FURTHER ASSURANCES

Each party agrees to sign such documents and do all such acts, matters and things as

may be reasonably required by any other party to give effect to this Deed.

26. SEVERABILITY

If any provision of this Deed is or becomes void or unforeseeable, that provision will be severed from this Deed to the intent that the remaining provisions of this Deed will continue in full force and effect.

27. WAIVER AND EXERCISE OF RIGHTS

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Deed, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed or default under this Deed as constituting a waiver of that right, power, authority, discretion or remedy.
- (c) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

Executed as a Deed

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

)
)
)
)

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

SCHEDULE

Schedule of Growers follows

ANNEXURE 4

Westmores Sub-lease – Post 30 June Growers

Sub-lease

Almond Land Pty Ltd

Timbercorp Securities Limited

**Each several Participant Grower
named in Schedule to this Deed**

2007 Timbercorp Almond Project

[Westmores Sub-lease – Post 30 June Growers]

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Table of Contents

DETAILS OF THIS SUB-LEASE.....	1
1. DEFINITIONS AND INTERPRETATION.....	2
1.1 DEFINITIONS	2
1.2 INTERPRETATION	4
1.3 HEADINGS	5
1.4 GROWER AND DEED	5
1.5 DELEGATION	5
1.6 CAPACITY OF TIMBERCORP SECURITIES	5
1.7 SUB-LEASE IS NOT SCHEME PROPERTY	5
2. ESTABLISHMENT OF ORCHARD.....	6
2.1 WARRANTY BY LAND OWNER AS TO THE ALMONDLOTS	6
2.2 ACKNOWLEDGMENTS BY THE PARTICIPANT GROWER	6
3. GRANT OF SUB-LEASE	6
3.1 GRANT OF SUB-LEASE	6
3.2 WATER LICENCES	6
4. TERM7	
4.1 TERM	7
4.2 EXTENSION OF TERM	7
4.3 GROWER'S OBLIGATIONS UPON TERMINATION	7
5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS.....	8
5.1 OBLIGATIONS	8
5.2 RIGHTS	8
6. CONDITIONS PRECEDENT	8
6.1 CONDITIONS PRECEDENT	8
6.2 REASONABLE ENDEAVOURS	9
7. RENT9	
7.1 RENT	9
7.2 DISCONTINUANCE OR SUSPENSION OF CPI	9
7.3 CAPACITY	9
7.4 TIMBERCORP SECURITIES MAY PAY ON BEHALF OF DEFAULTING GROWERS	9
7.5 INTEREST	9
8. GROWER'S OBLIGATIONS	10
8.1 PERMITTED USE	10
8.2 GROWER'S DUTIES	10
8.3 DELEGATION BY THE PARTICIPANT GROWER	11
8.4 DELEGATION DOES NOT LIMIT GROWER'S LIABILITY	11
9. LAND OWNER'S OBLIGATIONS AND RIGHTS.....	11
9.1 OBLIGATIONS	11
9.2 RIGHTS	11
10. TERMINATION OF DEED	11
10.1 TERMINATION BY THE PARTICIPANT GROWER	11
10.2 TERMINATION BY TIMBERCORP SECURITIES	12
10.3 DAMAGE TO WESTMORES LAND LOTS	12
10.4 REDUCTION OF WESTMORES LAND LOTS	12
10.5 EFFECT OF TERMINATION	13
11. EXCUSES FOR NON PERFORMANCE.....	13

11.1	FORCE MAJEURE	13
11.2	LACK OR UNAVAILABILITY OF FUNDS	13
11.3	LIABILITY	13
11.4	DEFINITION OF FORCE MAJEURE	13
12.	INTENTIONALLY DELETED.....	14
13.	ASSIGNMENT	14
13.1	ASSIGNMENT BY LAND OWNER OR TIMBERCORP SECURITIES	14
13.2	AGREEMENTS WITH CONTRACTORS	14
13.3	LAND OWNER, TIMBERCORP SECURITIES OR GRANTEE TO PAY FOR DEED	14
13.4	ASSIGNMENT BY THE PARTICIPANT GROWER	14
13.5	RELEASE OF LIABILITY OF GROWER	15
14.	GOODS AND SERVICES TAX.....	15
15.	LIMITATION OF LIABILITY OF GROWER.....	16
16.	NOTICE	16
16.1	FORM OF NOTICE	16
16.2	RECEIPT OF NOTICE	16
17.	PROPER LAW.....	16
18.	AMENDMENTS.....	16
19.	DISPUTES	17
19.1	REFERRAL BY THE PARTICIPANT GROWER	17
19.2	TIMBERCORP SECURITIES	18
20.	CONSTITUTION.....	18
21.	TRANSFER OF LAND ACT	18
22.	PROPERTY LAW ACT	18
23.	CAVEAT	18
24.	INSURANCE	19
25.	FURTHER ASSURANCES.....	19
26.	SEVERABILITY	19
27.	WAIVER AND EXERCISE OF RIGHTS.....	19
SCHEDULE 1		

Details of this Sub-lease

Date of this Deed:

In respect of each several Participant Grower means the date on which Timbercorp Securities has accepted the Participant Grower's application for Almondlots being offered under the PDS as specified in the Schedule.

Parties to the Deed:

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

(Timbercorp Securities)

3. The Participant Grower named in the Schedule to this Deed in relation to the Almondlots.

(Participant Grower)

Background to the Deed

- A.** Timbercorp Securities has established a project for the management of an almond orchard, the cultivation of almond trees and harvesting and processing of almonds for commercial gain.
- B.** Under the project Participant Growers will be granted a sub-lease or sub-leases to use Almondlots for the cultivation of Almond Trees and the harvesting and processing of their Almonds.
- C.** The Land Owner is the registered proprietor of the Westmores Land and the owner of the Almond Trees, the Water Licences and the Capital Works and any other capital works that may be established on the Westmores Land.
- D.** The Land Owner has leased, or will lease, the Westmores Land to Timbercorp Securities.
- E.** Timbercorp Securities has agreed to grant a sub-lease to the Participant Grower to use and occupy the Westmores Land Lots for the cultivation of Almond Trees and the harvesting and processing of Almonds, subject to the terms and conditions of this Deed.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Almondlot:	each separately identifiable area of approximately 0.25 hectares of the Project Land allocated to the Participant Grower by Timbercorp Securities for the purposes of the Project together with the right to conduct Almondlot Operations and use the Almond Trees and Capital Works thereon and the Water Licences attributed thereto
Almondlot Management Agreement:	the agreement of that name between Timbercorp Securities and the Participant Grower for the management of Almondlot Operations conducted on the Almondlots;
Almondlot Operations:	the growing and cultivation of Almonds on, and management of, the Almondlots for the production of Product for commercial gain;
Almonds:	the almonds grown or growing on the Almondlots of the Participant Grower or the Orchard, whichever is applicable, and whether harvested or unharvested;
Almond Trees:	the almond trees planted on Almondlots of the Participant Grower or the Orchard, whichever is applicable;
Best Horticultural Practice:	sound horticultural and environmental practices and industry practices for similar orchards;
Business Day:	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
Capital Works:	the infrastructure and capital works that the Land Owner has carried out, and any other works that the Land Owner may be required in future to carry out, at its cost, on the Orchard;
Commencement Date:	in respect of each Participant Grower, the date of this Deed;
Constitution:	the deed for the Project entered into by the Responsible Entity and all the Participant Growers;
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 7.2;
Crop:	the Almonds taken from the Almond Trees planted on all the Participant Grower's Almondlots or the Orchard, whichever is applicable;
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 2007 and the period ending on the termination of this Deed and commencing on the preceding 1 July;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Head Lease:	the lease made between Timbercorp Securities, as lessee, and the Land Owner, as lessor, whereby Timbercorp Securities has been, or will be, granted a lease of the Westmores Land;
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>A₀ = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI₀ is published and the Adjustment Date, including CPI₀;</p> <p>CPI₀ = 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, "CPI₀" 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 Equipment:	the internal irrigation system installed by the Land Owner on the Orchard for the purpose of enabling and facilitating the irrigation and delivery of water within the Westmores Land;
Irrigation Infrastructure:	the pipeline (including the mainline), dam, pump and other equipment which are installed and owned by the Land Owner, or to which the Land Owner has rights under and which it already services or will be able to service adequately that part of the

	Orchard situated on the Westmores Land by enabling and facilitating the irrigation and delivery of the necessary water to the Almondlots ;
Orchard:	the orchard established for the Project on the Project Land including on the Westmores Land;
Participant Grower:	a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule being a person whose application under the PDS is accepted on or after 1 July 2007 and before the offer period closes;
Participating Interest:	has the same meaning as in the Almondlot Management Agreement;
PDS:	has the same meaning as in the Constitution;
Proceeds:	has the meaning given in the Almondlot Management Agreement;
Product:	Almonds produced in a saleable condition from the Participant Grower's Almondlots or the Orchard, whichever is applicable;
Project:	the 2007 Timbercorp Almond Project promoted by Timbercorp Securities relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain;
Project Land	the land to be utilised for the Project as described in the PDS, of which the Westmores Land forms part;
Responsible Entity:	the responsible entity of the Project;
Term:	the term of this Deed 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 12.5 megalitres per planted hectare as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use
Westmores Land:	the property known as 'Westmores' as described in the PDS; and
Westmores Land Lot:	an Almondlot located on Westmores Land.

1.2 Interpretation

In this Deed, 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 Deed;
 - (i) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
 - (j) if any of the persons comprising the Participant Grower is a trustee, this Deed 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.

1.3 Headings

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

1.4 Grower and Deed

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

1.5 Delegation

Timbercorp Securities and the Land Owner are each entitled to:

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

its employees, agents and contractors, but any delegation by Timbercorp Securities or the Land Owner does not release Timbercorp Securities or the Land Owner, as the case requires, from liability under this Deed.

1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Deed in its personal capacity.

1.7 Sub-lease is not Scheme Property

This Deed does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. ESTABLISHMENT OF ORCHARD

2.1 Warranty by Land Owner as to the Almondlots

The Land Owner warrants to the Participant Grower that the Land Owner, at its own cost and in accordance with Best Horticultural Practice, has carried out and completed all capital works required to establish that part of the Orchard on the Westmores Land, including the planting of the Almond Trees, prior to 30 September 2007.

2.2 Acknowledgments by the Participant Grower

- (a) The Participant Grower acknowledges that the Capital Works and Almond Trees on, and the Water Licences attaching to, the Participant Growers' Almondlots are, and will at all times remain, the property of the Land Owner.
- (b) The Participant Grower agrees and acknowledges Timbercorp Securities will not be liable for any loss or damage incurred by the Participant Grower arising out of or in connection with any act or omission of the Land Owner or its officers, directors, employees, agents or agents under this Deed, whether or not constituting negligence, misconduct, dishonesty or fraud.

3. GRANT OF SUB-LEASE

3.1 Grant of Sub-lease

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a sub-lease, effective from the Commencement Date, to use and occupy the relevant Westmores Land Lots for the sole purpose of conducting the Almondlot Operations.
- (b) Timbercorp Securities represents and warrants that:
 - (i) as at the date of execution of this Deed, the Head Lease is valid and subsisting;
 - (ii) Timbercorp Securities is entitled under the Head Lease to grant the sub-lease under this Deed; and
 - (iii) any consents which may be required to the granting of the sub-lease under this Deed have been obtained.

3.2 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 Timbercorp Securities for the benefit of all the Participant Growers in the Project under and in accordance with the provisions of the Almondlot Management Agreement;
 - (ii) take all steps to avoid interfering with the supply of water to the relevant Westmores Land Lots and to avoid any actions that would prejudice the Participant Grower's rights under this Deed; and
 - (iii) purchase and maintain the Water Licences during the term of the Project.
- (b) The Participant Grower acknowledges that:
 - (i) the Land Owner may purchase water licences and provide water to Timbercorp Securities to meet its obligations under the Almondlot Management Agreement; and

-
- (ii) such additional water licences do not attach to the Westmores Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Westmores Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Westmores Land Lots to their original condition.
 - (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Westmores Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Westmores Land Lots at the time will become the absolute property of the Land Owner.
 - (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Westmores Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
 - (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Westmores Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Westmores Land Lots;
- (b) allow the Participant Grower to peaceably and quietly hold and enjoy the Westmores Land Lots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, Crops or water reserves on the Westmores Land Lots;
- (d) comply with the provisions of the Head Lease;
- (e) not create any encumbrances over the Westmores Land or the Westmores Land Lots or any part of the Westmores Land or the Westmores Land Lots ranking in priority to the interests of the Participant Growers under this Deed other than the Deeds referred to in clause 6.1;
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised; and
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities.

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed and the Almondlot Management Agreement with or without vehicles to the Westmores Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers which gives access to the Westmores Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Westmores Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Westmores Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Almondlot Management Agreement with Timbercorp Securities;
- (b) Timbercorp Securities entering into the Head Lease with the Land Owner;

on or before the Commencement Date in respect of the relevant Westmores Land Lots.

6.2 Reasonable Endeavours

Each of Timbercorp Securities, the Land Owner and the Participant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 6.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

7. RENT

7.1 Rent

A Participant Grower must pay to Timbercorp Securities the following rent per Westmores Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 payable on or before the Commencement Date and 31 October 2008 respectively;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI 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 Timbercorp Securities and the Participant 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".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

All rent and other amounts paid to Timbercorp Securities under this Deed are paid to Timbercorp Securities in its personal capacity.

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Westmores Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Westmores Land Lots;
- (b) use the relevant Westmores Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Westmores Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Westmores Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Westmores Land Lots from time to time with or without equipment for the purposes of observing the state of the Westmores Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Westmores Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Westmores Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Westmores Land Lots adjoining the Westmores Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their

Westmores Land Lots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the Westmores Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 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 the Westmores Land; and
- (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner.

9.2 Rights

The Land Owner:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed with or without vehicles to the Westmores Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person which gives access to the Westmores Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Westmores Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner, other Participant Growers or any other person.

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

The Participant Grower may terminate this Deed by notice in writing to Timbercorp Securities immediately, if:

- (a) Timbercorp Securities 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 Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material

obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Westmores Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Westmores Land Lots

If, in respect of the relevant Westmores Land Lots:

- (a) the whole or a substantial part of the relevant Westmores Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that the whole or a substantial part of the relevant Westmores Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of the relevant Westmores Land Lots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. 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 Westmores Land Lots

If, in respect of the relevant Westmores Land Lots:

- (a) part of the relevant Westmores Land Lots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that part of the relevant Westmores Land Lots is no longer commercially viable,

the Participant Grower may terminate this Deed in respect of that part of the relevant Westmores Land Lots which is damaged or destroyed, by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. 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 Deed under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Westmores Land Lots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Deed in respect of any number of all of the relevant Westmores Land Lots or part of the relevant Westmores Land Lots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Westmores Land Lots or any other part of the reduced relevant Westmores Land Lots.
- (c) If this Deed is terminated under clause 10.2 in relation to all of the Westmores Land Lots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project.
- (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

Timbercorp Securities and the Land Owner will not have any obligation to observe or comply with the terms and conditions of this Deed to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

11.2 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.

11.3 Liability

The failure by Timbercorp Securities or the Land Owner to observe or comply with the terms and conditions of this Deed will not give rise to any liability to any 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.

11.4 Definition of Force Majeure

For the purposes of this Deed, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or the Land Owner, as the case requires, or which Timbercorp Securities or the Land Owner, as the case requires, 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.

12. INTENTIONALLY DELETED

13. ASSIGNMENT

13.1 Assignment by Land Owner or Timbercorp Securities

- (a) Subject to clause 13.2, the Land Owner and Timbercorp Securities may freely assign any of their rights and interests under this Deed so long as the Land Owner or Timbercorp Securities (as the case requires) does not assign its interest in this Deed in any way without first entering a deed with the person with whom the Land Owner or Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:
 - (i) contained or implied in this Deed and the Almondlot Management Agreement; and
 - (ii) required to be observed or performed by the Land Owner or Timbercorp Securities (as the case requires).
- (b) Paragraph 13.1(a)(i) also applies if the Land Owner sells the Westmores Land and the obligations of the Land Owner are read as applying to the purchaser of the Westmores Land.

13.2 Agreements with Contractors

The Land Owner or Timbercorp Securities may only assign their rights and interests in this Deed 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 Deed, and for this purpose, the Land Owner or Timbercorp Securities has obtained the written consent to the assignment from the contractor.

13.3 Land Owner, Timbercorp Securities or Grantee to pay for deed

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

13.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Deed if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner and Timbercorp Securities stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Deed, and of the Almondlot Management Agreement applying to the Participant

Grower's Westmores Land Lots being assigned; and

- (ii) is not in default of any of its obligations under this Deed, the Constitution, or the Almondlot Management Agreement applying to the relevant Westmores Land Lots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into an Almondlot Management Agreement and this Deed with the same terms and conditions as those applying to the Westmores Land Lots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

13.5 Release of liability of Grower

Once the Participant Grower has perfected an assignment of its interest in this Deed in accordance with clause 13.4, the Participant Grower no longer remains liable under this Deed in respect of any act done or omitted to be done after the assignment is effected in respect of the Westmores Land Lots assigned.

14. GOODS AND SERVICES TAX

- (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.
- (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 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 14(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 Deed, 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 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, 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 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.
-

15. LIMITATION OF LIABILITY OF GROWER

Subject to clause 7.4, in no circumstances will the Participant Grower be obliged to incur any liability under this Deed in excess of the annual rent payable under this Deed, the fees and expenses payable by the Participant Grower under the Almondlot Management Agreement in relation to the relevant Almondlots and its Participating Interest in the Proceeds.

16. NOTICE

16.1 Form of Notice

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

16.2 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.
-

17. PROPER LAW

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

18. AMENDMENTS

- (a) This Deed may be amended by another document in writing and duly signed by the parties to this Deed.
- (b) Subject to paragraph 18(c), the Land Owner and Timbercorp Securities, may

-
- amend the provisions of this Deed 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 Deed, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Before the Land Owner and Timbercorp Securities may amend the Deed as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.
- (d) Timbercorp Securities may make the amendments on behalf of itself, and then on behalf of the Participant Grower. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Deed.
- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a) of this clause.
-

19. DISPUTES

19.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Deed must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
- (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**)¹, the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and

-
- (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

19.2 Timbercorp Securities

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
 - (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Deed to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
 - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
- (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.

20. CONSTITUTION

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

21. TRANSFER OF LAND ACT

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1958 are expressly excluded from this Deed.

22. PROPERTY LAW ACT

The provisions of section 144(1) of the Property Law Act 1958 do not apply to this Deed.

23. CAVEAT

- (a) The Participant Grower may at its own expense lodge a caveat at the Land Titles Office in respect of its interest under this Deed.
- (b) Timbercorp Securities agrees to provide to the Participant Grower all plans

and other details reasonably necessary to enable the Participant Grower to lodge a caveat.

- (c) Upon the expiration or earlier termination of this Deed, the Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23.
- (d) Upon the allocation to a Participant Grower of Almondlots under paragraph 8.7(b) of the Constitution in substitution for its current Almondlots, the Participant Grower must promptly withdraw at its own expense any caveat lodged under this clause 23 in respect of the Almondlots being substituted.
- (e) The Participant Grower irrevocably appoints Timbercorp Securities its attorney to execute a withdrawal of any caveat required to be withdrawn by the Participant Grower pursuant to paragraphs 23(c) and (d) in the event of the Participant Grower failing promptly to do so.
- (f) The Participant Grower agrees to ratify anything done by the attorney in accordance with paragraphs 23(c) and (d).

24. INSURANCE

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Westmores Land Lots or the Almond Trees or result in the premiums for such insurances being increased.

25. FURTHER ASSURANCES

Each party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other party to give effect to this Deed.

26. SEVERABILITY

If any provision of this Deed is or becomes void or unforeseeable, that provision will be severed from this Deed to the intent that the remaining provisions of this Deed will continue in full force and effect.

27. WAIVER AND EXERCISE OF RIGHTS

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Deed, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed or default under this Deed as constituting a waiver of that right, power, authority, discretion or remedy.
- (c) A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

Executed as a Deed

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

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

Signature

Full Name
Director

Signature

Full Name
Director/Secretary

SCHEDULE

Schedule of Growers follows
