

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 15th April 2008

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.
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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;

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- (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.
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Executed as a Deed

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



Signature


John Morton Vaughan

Full Name

Director

Position Held

)
)
)



Signature

Mark Hamilton Pryn

Full Name

Secretary

Position Held

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



Signature

John Morton Vaughan

Full Name

Director

Position Held

Signature



Mark Hamilton Pryn

Full Name

Secretary

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

John Morton Vaughan

Full Name

Director

Position Held

Signature



Mark Hamilton Pryn

Full Name

Secretary

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> <ul style="list-style-type: none"> A_t = the amount on the Adjustment Date; A₀ = the amount being adjusted; CPI_t = the highest CPI for a full calendar quarter published between the date CPI₀ is published and the Adjustment Date, including CPI₀; 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;
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.
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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.
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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).
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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.
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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.
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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.
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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.
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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.
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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.
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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
