

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL
CIVIL DIVISION

No. S APCI 2011 0103

BETWEEN

GRAHAM GOLDENBERG & ORS (according to the attached Schedule)

Appellants

and

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND
NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) and WESTPAC BANKING
CORPORATION (ACN 007 457 141) & ORS (according to the attached Schedule)

Respondents

THIRD AFFIDAVIT OF CELIA JANE ARMSTRONG

Date of document:

19 September 2012

Filed on behalf of:

the First, Second, Third and Fourth Appellants

Prepared by:

Clarendon Lawyers

Tel: 03 8681 4400

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MELBOURNE VIC 3000

Ref: MJF:1100297

michael.fernon@clarendonlawyers.com.au

I, **CELIA JANE ARMSTRONG** of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, make oath and say that:

- 1 I am an employee of the firm Clarendon Lawyers Pty Ltd (**Clarendon Lawyers**), the solicitors for the First, Second, Third and Fourth Appellants, being the Representatives Growers in this proceeding. Subject to the supervision of my principal, Michael Fernon, I have the carriage of this matter on behalf of the Representative Growers and I am authorised to make this affidavit on their behalf.
- 2 Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 3 This is my third affidavit in connection with the application for approval of the Deed of Compromise entered into by the parties to the proceeding and TSL on 25 July 2012 (**Deed of Compromise**). My first and second affidavits were each sworn on 30 August 2012 and filed in this proceeding on that day. They were headed, respectively, "Affidavit of Celia Jane Armstrong" and "Second Affidavit of Celia Jane Armstrong" and I adopt that terminology in this affidavit. Except where otherwise stated, defined terms used in this affidavit have the meaning ascribed to them in my earlier affidavits.
- 4 The Deed of Compromise is exhibit CJA-4 to the Second Affidavit of Celia Jane Armstrong filed in this proceeding on 30 August 2012.



- 5 Pursuant to clause 9(b) of the Deed of Compromise the Representative Growers requested that TSL establish and, in the period 14 August 2012 to 14 September 2012, operate effectively an appropriate telephone hotline facility and email facility to receive and, in accordance with instructions from the Representative Growers, address comments and questions from growers in connection with the Deed of Compromise and the Approval Application and receive any objections to the Deed of Compromise made by the growers (**Grower Notification and Consultation Process**).
- 6 Pursuant to clause 9(c) of the Deed of Compromise, in respect of the growers who raised comments, questions or made objections, TSL was required to record in appropriate detail the identity of those growers, the comments and questions raised by those growers and the responses provided to those growers and any objections made by those growers and any response provided in relation to those objections.
- 7 Pursuant to clause 9(e) of the Deed of Compromise, TSL was required to provide the Representative Growers, on a timely basis, a record with appropriate detail, of:
- (a) all comments, questions and answers given by TSL in accordance with the protocol agreed pursuant to clause 9(d) of the Deed of Compromise, which did not require preparation of a response by the Representative Growers;
 - (b) all comments and questions requiring preparation of a response from the Representative Growers;
 - (c) any objections by the Growers to which TSL has provided a response in accordance with the agreed protocol; and
 - (d) any objections requiring the preparation of a response by the Representative Growers.
- 8 The details of how TSL conducted the Grower Notification and Consultation Process and complied with its obligations under clause 9 of the Deed of Compromise are set out in the Affidavit of Mark Anthony Korda (*Almond Rights Appeal Proceeding*) sworn on 18 September 2012 in relation to this proceeding. That affidavit explains, among other things, that TSL prepared what Mr Korda refers to as a "Communication Spreadsheet" which recorded details of all telephone and email communications with Growers for a particular day during the course of the Grower Notification and Consultation Process (**Communication Spreadsheets**) and exhibits the Communication Spreadsheets as confidential exhibit MAK-6.
- 9 During the Grower Notification and Consultation Process I received regular emails from Antony Munro of KordaMentha, on behalf of TSL, attaching the Communication Spreadsheets. I received Communication Spreadsheets for 14-17 (inclusive), 20-24 (inclusive) and 27-31 (inclusive) August 2012 and 3-7 (inclusive), 10-14 (inclusive) and 17 September 2012.
- 10 In accordance with clause 9(d) of the Deed of Compromise, TSL referred to Clarendon Lawyers the comments, questions and objections in respect of which it was unable to respond and in respect of which Clarendon Lawyers, on behalf of the Representative Growers, was to prepare an appropriate response. In this affidavit I refer to the requests, comments or objections passed onto Clarendon Lawyers collectively as **Escalated Queries and Comments**.



- 11 TSL also referred to Clarendon Lawyers any requests for a copy of the advice prepared by Counsel for the Representative Growers in respect of the Deed of Compromise. In my first Affidavit of Celia Jane Armstrong I exhibit the Advice, being the original advice prepared by Counsel, the Updated Advice, being than updated version of the Advice and the Supplementary Memorandum prepared by Counsel as confidential exhibits CJA-1, CJA-2 and CJA-3 respectively. In this affidavit I generally refer to the Updated Advice and the Supplementary Memorandum as the '**Advice**'.
- 12 Alexandra Gleed, a graduate employed by Clarendon Lawyers has assisted me in managing the Escalated Queries and Comments. To manage this process, I asked Ms Gleed to prepare extracts of the Communication Spreadsheets which included only the Escalated Queries and Comments (**Escalated Queries and Comments Call Sheet**).
- 13 On behalf of the Representative Growers, I responded, or caused responses to be sent, to any Escalated Queries and Comments that required a response. Details of any responses were recorded in the Escalated Queries and Comments Call Sheet. The Escalated Queries and Comments Call Sheet also records various comments which did not require response but which the Representative Growers consider it appropriate to bring to the attention of the Court. Now produced and shown to me marked **confidential exhibit CJA-9** is a true copy of the Escalated Queries and Comments Call Sheets together with copies of any related emails with growers.
- 14 Exhibit CJA-9 is sealed. The Escalated Queries and Comments Call Sheets contain personal information of growers and the Representative Growers will seek orders that CJA-9 remain confidential.

Results of the Grower Notification and Consultation Process

- 15 I have read the Communication Spreadsheets and set out below an overview of all communications received from Growers as noted on the Communication Spreadsheets:
- (a) a total of five hundred and two (502) growers have made comments, questions or objections in relation to the Deed of Compromise;
 - (b) one hundred and sixty-seven (167) growers requested the First Letter to Growers, Notice to Growers, Frequently Asked Questions, Bank Account Nomination Form and/or Direction to Pay be emailed or posted to them;
 - (c) seventy-six (76) growers requested information in relation to the particulars of their investments, such as how many lots they had invested in or which scheme they had invested in;
 - (d) sixty-two (62) growers requested financial information, such as how much they were entitled to under the Deed of Compromises or how much TSL or TFL indebtedness they had;
 - (e) two hundred and fourteen (214) growers returned their Bank Account Nomination Form and/or their Direction to Pay to TSL;
 - (f) twenty-five (25) growers requested more information about the Deed of Compromise in general;
 - (g) thirty-one (31) growers notified TSL of a change of address or change of contact details; and
 - (h) twenty (20) growers made Escalated Queries or Comments (as addressed further in paragraph 16 below).



16 I have read the Escalated Queries and Comments Call Sheet and set out below an overview of all communications received from Growers as noted on that document (paraphrasing):

- (a) On 14 August 2012 a grower emailed TSL with the following two questions:
- (i) what is the likely quantum of the matter; and
 - (ii) whether KordaMetha, as liquidator, had commented upon the reasons for the Timbercorp Group's failure.

I replied to these questions by return email on 16 August 2012 referring the grower to the Frequently Asked Questions and stating that I was not aware of any comments made by KordaMetha.

- (b) On 14 August 2012 a grower called TSL and questioned how the lawyers came to the amounts offered under the Deed of Compromise per lot when they paid approximately \$14,000 for the investment. The grower requested that Clarendon Lawyers contact them. On 16 August 2012 I called the grower and left a message for them to call me. I have had no response from the grower.
- (c) On 14 August 2012 a grower called TSL and commented that they were naturally disappointed with the compromise. The call was marked as escalated. On 16 August 2012 I email the grower noting that they had contacted TSL and to contact me with any further questions that had not been address by TSL. On 16 August 2012 the grower replied by return email commenting:
- (iii) that the correspondence and web references were confusing;
 - (iv) that the person answering the TSL hotline call seemed hesitant and offered nothing in the way of explanation;
 - (v) that the grower had not been kept up to date with arrangements made;
 - (vi) there was never any mention of a new owner continuing to run the almond plantations, but this seemed possible in view of the trifling compensation offered; and
 - (vii) where could they find an explanation of the compromise,

I replied to the grower's concerns by return email on 16 August 2012. I attached to this email the First Notice to Growers and Frequently Asked Questions and requested that the grower contact me as I would be happy to discuss the documents with them. In my email I also briefly outlined background to the proceedings and Deed of Compromise. I have had no response from the grower;

- (d) On 14 August 2012 a grower emailed TSL and made the following comments:
- (i) their opinions would have little effect on the outcome of the proceedings;



- (ii) it was outrageous that an entity such as the ANZ bank could have greater rights than investors just because they executed a security over assets;
 - (iii) questioning Timbercorp's right to create any security over the assets without the grower's permission or knowledge;
 - (iv) that they could barely understand the Deed of Compromise and would be surprised if any investor could; and
 - (v) the Deed of Compromise is no compromise at all.
- (e) On 14 August 2012 a grower called TSL and commented that they were surprised to be receiving any money out of the compromise.
- (f) On 14 August 2012 a grower called TSL and commented that they were happy to see the end of this and that they wouldn't complain to receiving a little bit back.
- (g) On 15 August 2012 two growers and an advisor of the growers emailed TSL with a question in relation to the growers' joint venture arrangement regarding lots held and a related loan in one of the joint venture growers name. The growers' sought confirmation that the joint liability was restricted to the original benefits of the schemes and not the settlement monies. On 20 August 2012 I emailed Jane Sheridan of Arnold Bloch Liebler seeking an answer to the growers' question. On 22 August 2012 Jane Sheridan replied by return email stating that the joint venturer without the loan will receive their percentage share of the entitlement with no withholding and the percentage of entitlement of the joint venturer with the loan will be held in trust unless that joint venturer signs a direction to pay. On 22 August 2012 I caused a response to be sent to the growers in these terms.
- (h) On 15 August 2012 a grower called TSL and commented that it seemed ridiculous to receive such a small amount and was there any chance of getting more than the amount offered in the compromise. The grower's call was marked as escalated. On 20 August 2012 I replied to the grower's comments by calling them. I discussed the circumstances of the compromise generally with the grower. The grower requested the following three comments be put before the Court:
- (i) there had been little consultation by the Representative Growers with the growers at large and there should have been more consultation before reaching a compromise;
 - (ii) the money offered was not enough; and
 - (iii) people shouldn't get ripped off like this from investing in Australia it's not like they invested in some dodgy scheme out of Nigeria.
- (i) On 15 August 2012 a grower emailed TSL and commented that they agree with the compromise proposed.
- (j) On 15 August 2012 a grower called TSL and commented that Timbercorp went into voluntary administration on 23 April 2008 and the grower was invoice for management fees of \$20,000 on

1 October 2008. The grower further commented that they had since paid \$18,000 of the management fees owed and questioned what kind of management could still think the grower owed \$2,000.

- (k) On 15 August 2012 a grower emailed TSL and commented that they had changed their name since investing in the scheme as they had married. The grower then questioned whether they needed to complete any documents for this. On 20 August 2012 I emailed Jane Sheridan of Arnold Bloch Liebler seeking an answer to the grower's question. On 21 August 2012 Jane Sheridan replied by return email stating that the grower would need to attach a copy of their marriage certificate to their completed Direction to Pay. On 22 August 2012 I caused a response to be sent to the grower in these terms.
- (l) On 16 August 2012 a grower emailed TSL and commented that they would only receive just over \$1,000 from the compromise whilst still owing Timbercorp close to \$100,000 in part because of penalty interest.
- (m) On 16 August 2012 a grower called TSL and stated they objected to the compromise. The call was marked as escalated. On 16 August 2012 I called the grower to discuss their objection. I explained that the compromise was subject to Court approval. The grower requested copies of the Deed of Compromise, Bank Account Nomination Form, First Notice to Growers and Frequently Asked Questions. I sent these documents to the grower on 16 August 2012 to the grower's nominated address. At my request, on 20 August 2012 Ms Gleed called the grower to discuss any further queries with the grower. During that conversation the grower indicated to Ms Gleed that their main concern was the Macpherson and Kelley proceeding and any affect the compromise may have on those proceedings. Ms Gleed informed the grower that the proceedings were separate and that accepting any settlement amount in this proceeding would not affect the Macpherson and Kelley proceedings.

On 4 September 2012 I emailed the grower asking whether the grower wished to maintain their objection and if so, whether they would like to make any additional points know to the Court. On 6 September 2012, I received a return email from the grower in which the grower confirmed they withdrew their objection.

- (n) On 20 August 2012 a grower emailed TSL and commented that they were happy with the outcome reached and wanted the compromise to proceed.
- (o) On 21 August 2012 a grower emailed TSL and commented that it was outrageous that TFL continued to chase loans for a clearly worthless product and that they were glad to be part of the class action run by Macpherson and Kelley.
- (p) On 21 August 2012 a grower emailed TSL requesting a copy of the Advice. I replied by return email on 24 August 2012 requesting that the grower sign a deed of undertaking and acknowledgement to protect the confidentiality in and privilege attaching to the Advice (**Undertaking**). Upon receipt of the signed Undertaking from the grower on 28 August 2012 I emailed the grower a copy of the Advice.



- (q) On 23 August 2012 a grower called TSL and commented that the compromise is quite a shortfall for the current existing liability for grower investors and was not much of a return to grower investors.
- (r) On 24 August 2012 a grower emailed TSL requesting a copy of the Advice. I replied by return email on 2 September 2012 requesting that the grower sign an Undertaking. Upon receipt of the signed Undertaking from the grower on 11 September 2012 I emailed the grower a copy of the Advice.

17 On 18 September 2012 Jane Sheridan forwarded to me an email from a grower that was sent to TSL. The grower's question was directed to Clarendon Lawyers and attached an email that the grower had received from another grower encouraging the recipient to object to the compromise. The grower asked if the email they had received was related to the proceedings. By return email on the same day I informed the grower that the email had been sent to them by another grower who is involved in various grower groups which are not related to Clarendon Lawyers. I further informed the grower that the emailed they had received had not been sent or authorised by Clarendon Lawyers or the Representative Growers and invited the grower to contact me to discuss the matter further. The grower has not contacted me again.

Advice

- 18 At paragraph 7 of the first Affidavit of Celia Jane Armstrong filed and served on 30 August 2012 I refer to the Supplementary Memorandum of advice from counsel to the Representative Growers. The Supplementary Memorandum was provided to the Representative Growers by email on 29 August 2012.
- 19 I have reviewed the Advice and confirm that Clarendon Lawyers agrees with its contents.

Deeds of Covenant

- 20 On 28 February 2007 the custodian of the First Respondent entered into a Deed of Covenant which provided, *inter alia*, that the First Respondent was only entitled to exercise its rights under its security subject to the rights of the Growers. Now produced and shown to me marked **CJA-10** is a true copy of the Deed of Covenant dated 28 February 2007.
- 21 On 26 September 2006 the Second Respondent entered into a Deed of Covenant which provided, *inter alia*, that the Second Respondent was only entitled to exercise its rights under its security subject to the rights of the Growers. Now produced and shown to me marked **CJA-11** is a true copy of the Deed of Covenant dated 26 September 2006.

SWORN by CELIA JANE ARMSTRONG
at Melbourne in the State of Victoria
this 19 day of September 2012

)
)
) 

Before me: 

SARAH DORN
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

SCHEDULE

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

BETWEEN

GRAHAM GOLDENBERG

(in his capacity as representative of the Growers in the 2002 Almond Project (ARSN 099 611 935))

First Appellant

CHRISTOPHER MARK LITTLE

(in his capacity as representative of the Participant Growers in the 2005 Almond Project (ARSN 112 935 092))

Second Appellant

CONSTANTINE MOSHOPOULOS

(in his capacity as representative of the Participant Growers in the 2006 Almond Project (ARSN 118 387 974))

Third Appellant

DAVID BUTTERFIELD

(in his capacity as representative of the Participant Growers in the 2007 Almond Project (ARSN 122 511 040) and as representative of the Growers in the 2002 (Private Offer No 1))

Fourth Appellant

**BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED (ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED (ACN
066 601 250) and WESTPAC BANKING CORPORATION (ACN 007 457 141)**

First Respondent

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522)**

Second Respondent

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)

Third Respondent

MARK ANTHONY KORDA

(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fourth Respondent

LEANNE KYLIE CHESSER

(in her capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fifth Respondent

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL
CIVIL DIVISION

No. S APCI 2011 0103

BETWEEN

GRAHAM GOLDENBERG & ORS (according to the attached Schedule)

Appellants

and

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND
NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) and WESTPAC BANKING
CORPORATION (ACN 007 457 141) & ORS (according to the attached Schedule)

Respondents

EXHIBIT NOTE

Date of document:	19 September 2012
Filed on behalf of:	the First, Second, Third, Fourth and Fifth Appellants
Prepared by:	
Clarendon Lawyers	Tel: 03 8681 4400
Level 17, Rialto North Tower	Fax: 03 8681 4499
525 Collins Street	Solicitors Code: 101294
MELBOURNE VIC 3000	Ref: MJF:1100297
	michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "CJA-10" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 19 September 2012.

Before me:.....

SARAH DORN
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

Exhibit CJA-10

Deed of Covenant dated 28 February 2007

Sydney
Melbourne
Brisbane
Perth
Canberra
Gold Coast

Contents

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BWA Custodians Limited

The Beneficiaries

Deed of Covenant

Date 28 FEBRUARY 2007

Parties

BWA Custodians Limited ABN 63 009 413 852 of Level 27, 45 Clarence Street, Sydney, NSW 2000 (Security Trustee)

Agreed terms

1 Interpretation

1.1 Definitions

In this document:

Beneficiaries means:

(a) each Grower; and

(b) Timbercorp Securities Limited ABN 12 092 311 469 on behalf of the Growers for which it acts as responsible entity under any Project.

Borrower means Timbercorp Limited ABN 87 055 185 067.

Controller has the meaning given in the *Corporations Act 2001*.

Guarantor means each person (other than the Borrower, the Security Trustee or a related body corporate of the Security Trustee) who has provided a Security.

Grower means each person who has participated in any Project by acquiring an interest (as that term is defined in the *Corporations Act 2001*) in that Project.

Growers' Rights means:

(a) in respect of existing Growers, all of their present rights and interest under the Project Documents and any other rights and interests under the Project Documents; and

(b) in respect of future Growers, all of their rights and interests which are on the same terms as the rights and interest of Growers under the Project Documents as at the date of this document and any other rights and interests under the Project Documents;

in each case to the extent that those rights are in respect of the Secured Property.

Project means each managed investment scheme conducted by any of Timbercorp Limited ABN 87 055 185 067 or any of its related bodies corporate (as that term is defined in the *Corporations Act 2001*).

Project Documents means in respect of each Project, the documents

constituting the Project which are on terms consented to from time to time by the Security Trustee. It includes the relevant constitution and any management agreement, joint venture licence or lease agreement referred to in the constitution or otherwise connected with the Project.

Security means any Security Interest granted to the Security Trustee to secure the obligations of the Borrower under the Syndicated Loan Agreement (and includes any rights of set off, lien over funds or combination).

Security Interest means any interest or right which secures the payment of a debt or other monetary obligation or the compliance with any other obligation. It includes any retention of title to any property and any right to set-off, combine or withhold payment of any deposit or other money.

Secured Property means any property subject to a Security.

Syndicated Loan Agreement means the loan agreement between the Security Trustee, the Borrower and others, dated 15 December 2006.

1.2 Terms used

Terms used but not defined in this document have the meaning given to them in the Syndicated Loan Agreement.

1.3 Construction

Unless expressed to the contrary, in this document:

(a) words in the singular include the plural and vice versa;

(b) if a word or phrase is defined its other grammatical forms have corresponding meanings;

(c) "includes" means includes without limitation;

(d) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

(e) a reference to:

(i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

(ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;

(iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and

(f) headings do not affect the interpretation of this document.

2 Covenants by the Security Trustee

- (a) The Security Trustee acknowledges, covenants and agrees in favour of all of the Beneficiaries that:
- (i) notwithstanding any other provisions of this document, the Transaction Documents or any Project Document, it takes the Security, and is and will be only entitled to exercise its rights under the Security in respect of the Secured Property, subject to all of the Growers' Rights;
 - (ii) if the Security Trustee enforces any of its Security in respect of the Secured Property and the Security Trustee, or any Controller appointed by the Security Trustee to any party who has granted a Security, decides (in its absolute discretion) to adopt any or all of the Project Documents, then the Security Trustee will ensure that it or the Controller (as the case may be) complies with, observes and performs the obligations of the relevant Borrower or Guarantor (as the case may be) under each Project Document which has been adopted;
 - (iii) if a Project Document adopted by the Security Trustee or any Controller includes an agreement under or in respect of which management fees are payable by a Grower (**Management Agreement**), then the Security Trustee or the Controller (as the case may be), in their absolute discretion (but without limiting their respective obligations under paragraph (i)), must first make any management fees received during or after the enforcement of any Security available to either:
 - (A) the relevant Timbercorp manager to the extent reasonably required to satisfy or perform (or procure the satisfaction or performance of) that manager's obligations under the relevant Management Agreement (after which any surplus remaining may be applied in or towards payment of the Principal Outstanding); or
 - (B) the Growers who paid them if required under the Management Agreement; and
 - (iv) if, during or after the enforcement of any Security, the Security Trustee or any Controller receives management fees relating to a Management Agreement that it has not adopted, it must repay those fees (or procure their repayment) to the Growers who paid them.
- (b) Nothing in this document requires the Security Trustee or any Controller appointed by the Security Trustee to pay money to any Grower, except to the extent required under any Project Document adopted pursuant to clause 2(a)(ii) or clause 2(a)(iii).

3 General

3.1 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Victoria.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

3.2 Security Trustee's role

- (a) The Security Trustee enters into this document, and acts and incurs liabilities in connection with this document, only in its capacity as trustee of the Security Trust. Despite any other provision of this document:
- (i) the Security Trustee is not liable to any party to this document or any person claiming through such a person for, and
 - (ii) no party to this document or any person claiming through such a person has any recourse to the Security Trustee for, any amount that would otherwise be payable by the Security Trustee under, or as a result of a breach of, this document, except to the extent that:
 - (iii) the Security Trustee obtains final reimbursement from the assets held by it in its capacity as security trustee (the Trust Fund) for the amount; or
 - (iv) the amount is payable as a result of the Security Trustee's fraud, wilful default or gross negligence.
- (b) Subject to paragraph (a), no party to this document (or claiming through such a person) may take any step to recover an amount that is payable under, or as a result of a breach of, this Deed by or from the Security Trustee, its directors, officers, authorised representatives, employees, agents and/or attorneys, including by taking any step to:
- (i) have an administrator appointed to the Security Trustee;
 - (ii) have a receiver or receiver and administrator appointed to the Security Trustee or any of its property, except in relation to the Trust Fund;
 - (iii) have the Security Trustee wound up, or to prove in the winding up of the Security Trustee;
 - (iv) carry out any distress or execution on any property of the Security Trustee, other than the Trust Fund; or
 - (v) exercise any:
 - (A) right of set-off;
 - (B) right to combine or consolidate accounts; or

(C) banker's lien

against the Security Trustee or any of its property, except in relation to the Trust Fund.

(c) Paragraph (b) does not affect a party's rights to:

- (i) take steps to recover amounts from the Security Trustee for which the Security Trustee is liable under paragraph (a); or
- (ii) obtain an injunction, restraining order or declaration concerning the Security Trust, the Trust Fund or the Security Trustee's obligations under this deed.

(d) If the Security Trustee is replaced as trustee under the Security Trust deed:

- (i) this deed is to be construed and is to take effect from the date on which the Security Trustee was so replaced as if the replacement Security Trustee had executed this document, and any reference to the Security Trustee in this deed will be from that date a reference to the replacement Security Trustee to the exclusion of the party which has been replaced; and
- (ii) the parties must enter into such documentation, and take such other steps, as any party reasonably requires to give full effect to this.

Executed as a deed.

SIGNED, SEALED and DELIVERED for
BWA CUSTODIANS LTD under power of
attorney in the presence of:


Signature of witness

SARA LYNCH
Name


Signature of attorney

MARTIN COLEMAN
Name

14 DECEMBER 2006
Date of power of attorney

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Before me:.....

SARAH DORN

of Clarendon Lawyers Pty Ltd

Level 17, Rialto North Tower

525 Collins St, Melbourne Victoria 3000

an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

Exhibit CJA-11

Deed of Covenant dated 26 September 2006



Deacons

TIMBERCORP

672452/3

Dated 26 September 2006

Almond Agreement Deed of Covenant

Parties

The Growers

Australia and New Zealand Banking Group Limited
ABN 11 005 357 522

Timbercorp Securities Limited
ABN 12 092 311 469

Almond Management Pty Ltd
ABN 71 094 468 845

Contact

Gillad Dalal
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Website: www.deacons.com.au
Our ref: 256353

Deed dated *26 September 2006*

By **Australia and New Zealand Banking Group Limited**
ABN 11 005 357 522
of Level 10, 53-0 Collins Street, Melbourne, Victoria, 3000
(Lender)

In Favour of

The Growers

Timbercorp Securities Limited ABN 12 092 311 469 (on behalf of the Growers for which it acts as Responsible Entity under any Project) of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Almond Management Pty Ltd ABN 71 094 468 845 (on behalf of the Growers for whom it acts as a representative under any Project) of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Recitals

- A.** The Borrower and Lender have agreed to enter into the Facility Agreement to provide funding in relation to the Timbercorp 2005 Almond Project and Timbercorp 2006 Almond Project.
- B.** As security for the Facility Agreement the Borrower has agreed to grant to the Lender the Security.
- C.** The Lender has agreed to take the Security subject to the rights of the Growers in accordance with the terms of this Deed.

It is agreed

1. Interpretation

1.1 Definition

In this document:

Facility Agreement means the Facility Agreement dated on or around the date of this Deed between Almond Land Pty Ltd and the Lender as may be amended from time to time.

Growers' Rights means:

- (1) in respect of existing Growers, all of their present rights and interest under the Project Documents and any other rights and interests under the Project Documents which are on terms consented to in writing by the Lender; and
- (2) in respect of future Growers, all of their rights and interests which are on the same terms as the rights and interest of Growers under the Project Documents as at the date of this document and any other rights and interests under the Project Documents which are on terms consented to by the Lender in writing,

in each case to the extent that those rights are affected by the Security.

1.2 Terms used

Terms used but not defined in this document have the meaning given to them in the Facility Agreement.

2. Covenants by the Lender

- (1) The Lender acknowledges, covenants and agrees that:
 - (a) it takes the Security, and is and will be only entitled to exercise its rights under the Security, subject to all of the Growers' Rights;
 - (b) if the Lender enforces any of its Security then if the Lender, or any Controller appointed by the Lender to any party who has granted a Security, decides (in its absolute discretion) to adopt any or all of the Project Documents, then the Lender will ensure that the Lender or the Controller (as the case may be) complies with, observes and performs the obligations of the relevant Borrower or Security Provider (as the case may be) under each Project Document which has been adopted;


- (c) if a Project Document adopted by the Lender or any Controller includes an agreement under or in respect of which Management Fees are payable by a Grower ("Management Agreement"), then the Lender or the Controller (as the case may be), in their absolute discretion (but without limiting their respective obligations under paragraph (b)), must first make any Management Fees received during or after the enforcement of any Security available to either:
 - (i) the relevant Timbercorp manager to the extent reasonably required to satisfy or perform (or procure the satisfaction or performance of) that manager's obligations under the relevant Management Agreement (after which any surplus remaining may be applied in or towards payment of the Amount Owed); or
 - (ii) the Growers who paid them; and
 - (d) if, during or after the enforcement of any Security, the Lender or any Controller receives Management Fees relating to a Management Agreement that it has not adopted, it must repay those fees (or procure their repayment) to the Growers who paid them.
- (2) Nothing in this Deed requires the Lender or any Controller appointed by the Lender to pay money to any Grower, except to the extent required under any Project Document adopted pursuant to clause 2(1)(b) or clause 2(1)(c).

3. Governing Law

This document is governed by the law in force in Victoria.

Executed as a Deed Poll in Melbourne


Signed for and on behalf of **Australia
and New Zealand Banking Group
Limited** ABN 11 005 357 522 by a
duly appointed attorney in the
presence of:




Signature of Witness



Name of Witness (please print)



Signature of Attorney (I have no
notice of revocation of the power of
attorney under which I sign this
document)



Name of Attorney (please print)