

**Timbercorp Securities Limited**  
**ABN 12 092 311 469**

**Application Form**

Persons intending to use an electronic version of the Application Form should note the following:

- 1 The Application Form relates to the 2003 Timbercorp Almond Project ARSN 103 197 299 ('**project**') pursuant to a prospectus dated 11 March 2003 ("**prospectus**") as amended by a supplementary prospectus dated 21 March 2003. The prospectus expires 13 months after the date of the prospectus.
- 2 The Application Form is accompanied by an electronic version of the prospectus which contains information regarding investing in securities referred to in the Application Form.
- 3 Persons who access the prospectus in electronic form should note that interests in the project offered by this prospectus are not intended to be a short-term investment and will be subject to the risks generally associated with commercial almond orchard plantations.
- 4 A person who gives another person access to the Application Form must at the same time and by the same means give the other person access to the prospectus and any supplementary document.
- 5 Interests in the project will only be processed and issued on receipt of the Application Form issued together with the prospectus.
- 6 The offer to subscribe for interests referred to in the prospectus is available to Australian residents. The prospectus does not constitute an offer of securities in any jurisdiction where, or to any person to whom, it would be unlawful to issue the prospectus.
- 7 Whilst the prospectus is current, Timbercorp Securities Limited will send copies of the prospectus and any supplementary document and the Application Form, on request and without charge. In this regard, please contact:

**Timbercorp Securities Limited**

Level 8, 461 Bourke Street,

Melbourne, Victoria, 3000

Telephone: 03 8615 1200

Facsimile: 03 9670 4271

Email: [r.coughlan@timbercorp.com.au](mailto:r.coughlan@timbercorp.com.au)

# 2003 TIMBERCORP ALMOND PROJECT SUPPLEMENTARY PROSPECTUS

## INTRODUCTION

This is a Supplementary Prospectus to the Prospectus for the 2003 Timbercorp Almond Project (ARSN 103 197 299) (**the Project**) lodged by Timbercorp Securities Limited (ACN 092 311 469) (**Timbercorp Securities**) with the Australian Securities and Investments Commission on, and dated, 11 March 2003 (**the Prospectus**). This Supplementary Prospectus is dated 21 March 2003. It should be read in conjunction with the Prospectus. This Supplementary Prospectus must accompany any copies of the Prospectus. The Australian Securities and Investments Commission takes no responsibility for the contents of this Supplementary Prospectus.

### 1 PAGE 7

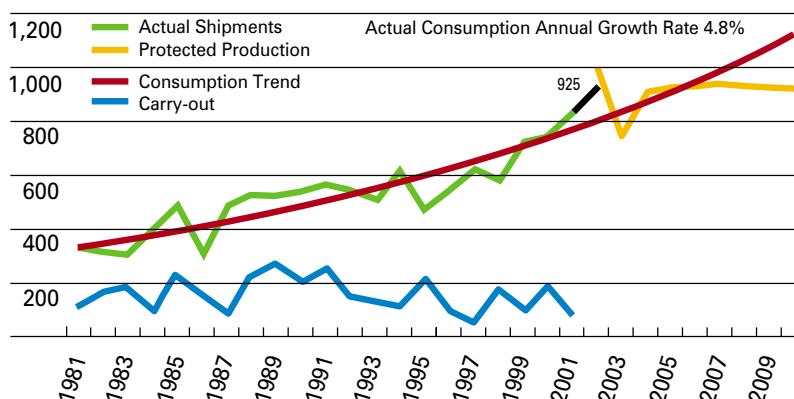
- (a) The graph appearing in the first column of page 7 titled 'California Almond Crop Pounds (Hundreds of Millions)' is deleted.
- (b) The first sentence appearing immediately after the graph titled 'World Almond Prices' is deleted and is replaced with the following:

'The 2001 California crop totalled 824.1 million pounds, whilst the 2002 crop totalled 1.043 billion pounds'.

### 2 PAGE 8

The first graph on page 8 titled 'California Almond Production / Shipment Trend' is deleted and replaced with the following graph.

#### CALIFORNIA ALMOND PRODUCTION /SHIPMENT TREND MILLION LBS



Source: 2003 Blue Diamond Growers

### 3 THE DIRECTORS OF TIMBERCORP SECURITIES LIMITED

This Supplementary Prospectus has been signed by a director of Timbercorp Securities Limited for and on behalf of the directors, and in accordance with section 351 of the Corporations Act.

Sol C. Rabinowicz

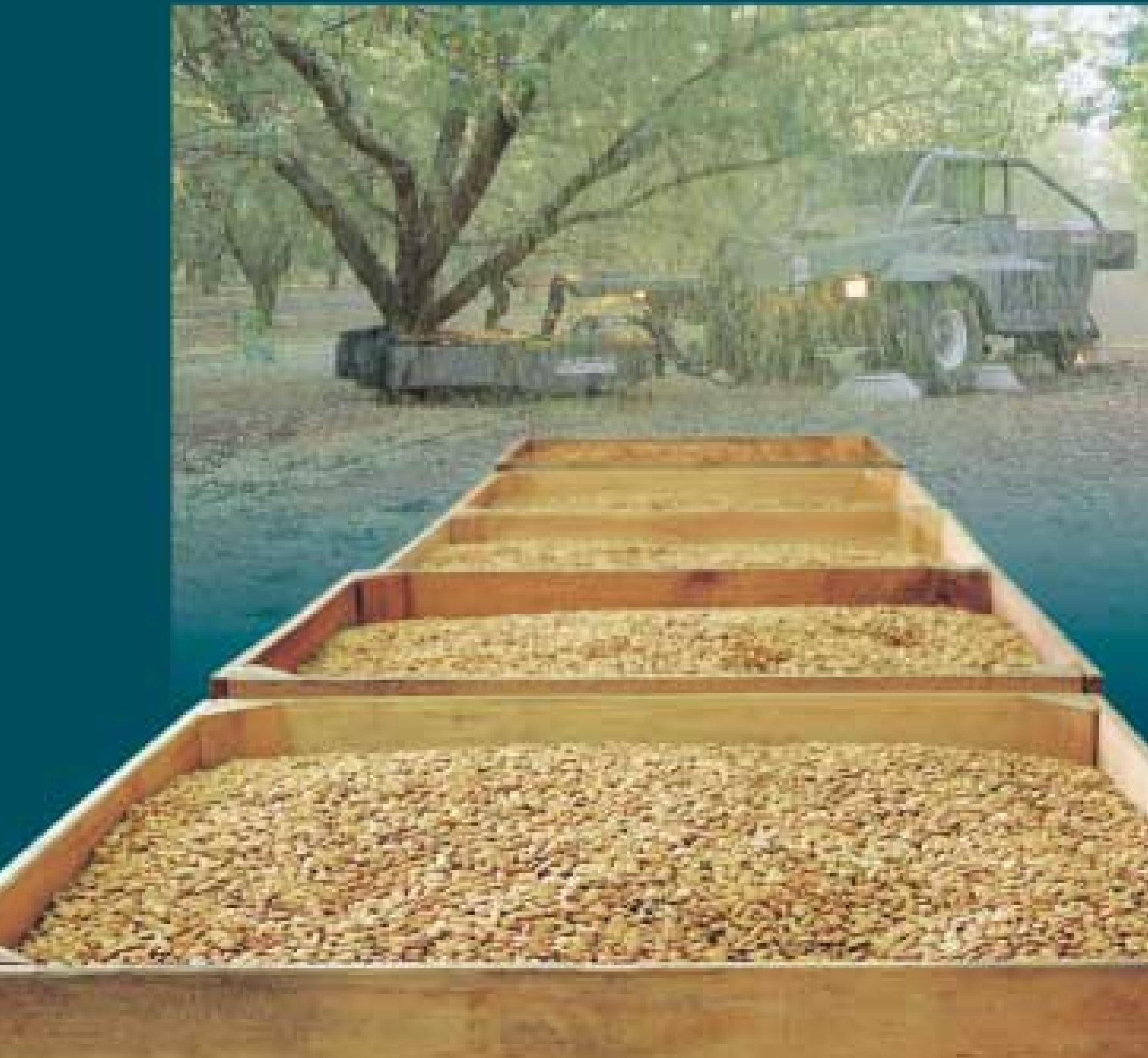
Director



# 2003 TIMBERCORP ALMOND PROJECT PROSPECTUS

ARSN 103 197 299

An offer to cultivate and manage up to 500 hectares of almond orchards (ie. 2,000 x 0.25 hectare Almondlots) with an option to accept oversubscriptions. This is not intended to be a short term venture and will be subject to the risks generally associated with horticultural operations.



# CORPORATE DIRECTORY

## Responsible Entity

Timbercorp Securities Limited  
ACN 092 311 469

## Head Office

8th Floor  
461 Bourke Street  
Melbourne Victoria 3000  
Telephone 03 8615 1200  
Facsimile 03 9670 4271

Offices also in:

Perth, Sydney, Brisbane, Adelaide  
and Launceston

## Directors

Gary W Liddell (Chairman)  
Robert J Hance  
John M Vaughan  
Sol C Rabinowicz

## Project Manager

Almond Management Pty Ltd  
ACN 094 468 845  
Level 8, 461 Bourke Street  
Melbourne Victoria 3000

## Land Owner

Almond Land Pty Ltd  
ACN 091 460 392  
Level 8, 461 Bourke Street  
Melbourne Victoria 3000

## Orchard Contractor

Select Harvests Limited  
ACN 000 721 380  
360 Settlement Road  
Thomastown Victoria 3074

## Custodian

Permanent Trustee Company Limited  
ACN 000 000 993  
Level 3, 151 Rathdowne Street  
Carlton Victoria 3053

## Auditor

Deloitte Touche Tohmatsu  
Chartered Accountants  
505 Bourke Street  
Melbourne Victoria 3000

## Lawyers

N M Taylor Lawyers  
Level 7, 350 Collins Street  
Melbourne Victoria 3000

## Independent Almond Orchard Expert

Horticultural Development  
Services Pty Ltd  
ACN 094 895 271  
28 Craigburn Drive  
Flagstaff Hill South Australia 5159

This document is important and should be read in its entirety. If you are uncertain or have any doubts about subscribing to this issue, you should consult your financial advisor, solicitor or accountant.

No person, firm or corporation associated with the issue of this document guarantees, warrants or underwrites the performance of this Project or any particular return.

The Custodian has not authorised or caused the issue of this document. The Custodian has not performed any role in the preparation of this document.

Each subscriber will become a Grower responsible commercially for carrying on the business of growing almonds for sale. This venture is not intended to be a short term investment and will be subject to the risks generally associated with commercial almond orchard plantations. The Responsible Entity does not guarantee that any Grower will be protected against all liability to other parties since each Grower is severally liable under the various agreements entered into on its behalf.

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Branch, Department of Communications, Information Technology and the Arts, GPO Box 2154, Canberra ACT 2601, or by email [commonwealthcopyright@dcita.gov.au](mailto:commonwealthcopyright@dcita.gov.au)

## Select Harvests Limited

Intending applicants should note that Select Harvests (and any related company of Select Harvests involved in the Project) has not been involved in the preparation of this document; has not authorised or caused the issue of this document; has not been involved as a promoter of Timbercorp Securities, the Project or this document; has not taken any responsibility for the correctness of any disclosure in this document of any references to Select Harvests (or any related company of Select Harvests involved in the Project) or the terms of any contract to which Select Harvests (or any related company of Select Harvests involved in the Project) is a party; and has not performed any function in a professional, advisory or other capacity for Timbercorp Securities Limited in relation to the issue or proposed issue of securities under this document.

References to Select Harvests (or any related company of Select Harvests involved in the Project) in this document ought not to be taken as an endorsement by Select Harvests (or any related company of Select Harvests involved in the Project) of this Project nor are they recommendations of participation by an intending applicant.

## Date of Prospectus

This prospectus is dated 11 March 2003 and was lodged with the Australian Securities and Investments Commission on that day.

The Australian Securities and Investments Commission takes no responsibility as to its contents. No interests will be allotted or issued on the basis of this prospectus later than 13 months after the date of this prospectus, although the Offer Period may close earlier.

## Electronic prospectus

Timbercorp Securities Limited proposes to issue this prospectus on the website [www.timbercorp.com.au](http://www.timbercorp.com.au). Any person accessing the electronic version of this document for the purpose of participating in the 2003 Timbercorp Almond Project must be an Australian resident and must only access the information from within Australia. Almondlots will only be issued under the electronic version of the prospectus on receipt of an application form issued together with the electronic version of the prospectus.

## Definitions and Glossary

This document contains a number of terms that have a special meaning or that you may not have heard before. A glossary of those terms appears in the section titled "Glossary" at the back of this document.

No person, firm or corporation associated with the issue of the prospectus guarantees, warrants or underwrites the performance of this Project or any particular return from the Project. This prospectus does not take into account the investment objectives, financial situation nor particular needs of any potential Grower.

None of the photos used in this Prospectus represent assets of the Project.

# 2003 TIMBERCORP ALMOND PROJECT PROSPECTUS ATO PRODUCT RULING PR 2003/2

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	<b>GLOSSARY</b>

# FEATURES

Benefit from an established and vibrant industry that has not experienced the boom and bust cycles common to many horticultural crops

Page 6

An opportunity to participate in one of the largest commercial almond orchards in Australia

Page 18

The Orchard is on premium land and is professionally managed by Select Harvests Limited, an ASX listed public company, and Australia's largest integrated producer, processor and marketer of almonds

Pages 18 & 23

Almonds have a variety of consumption purposes and are increasingly being recognised as offering significant health benefits

Page 6

Significant tax deductions are available to Growers – confirmed by ATO Product Ruling PR 2003/2: 2003 Timbercorp Almond Project

Page 30

The opportunity to earn attractive after tax returns and from 2006 earn income

Page 15

Your Almonds will be harvested and sold in both the export and domestic markets

Page 14

The Responsible Entity is a wholly owned subsidiary of Timbercorp Limited, an ASX/S&P 200 listed company

Page 21

The Project contains safeguards to protect your investment

Page 28

Permanent Trustee Company Limited has been appointed as Custodian to receive and hold Application Moneys and Proceeds until they are disbursed in accordance with the Project Agreements

Page 11

Security of land tenure is enhanced by the grant of a Lease of the Orchard by the Land Owner, Almond Land Pty Ltd, to the Responsible Entity

Page 12



# OVERVIEW OF THE 2003 PROJECT

## WHAT ARE WE OFFERING?

The 2003 Timbercorp Almond Project offers you a unique opportunity to participate in a vertically integrated project, in an historically stable, yet expanding, global industry.

The Australian almond industry, which accounts for less than 2% of world production, is experiencing increasing demand for almonds and almond-related products both locally and in export markets that include India, Europe, the Middle East, Japan and South East Asia.

The Project is being conducted on a large commercial almond orchard in Australia, located near Boundary Bend in north west Victoria. Almond Land Pty Ltd, the Land Owner, will complete the establishment of the Orchard in June 2003 with the assistance of Select Harvests. The anticipated size of the Project, combined with the use of best horticultural management practices and the most advanced harvesting and irrigation systems and processing facilities, should achieve significant economies of scale and enhanced returns.

The term of the Project is approximately 20 years from the date of acceptance of your application.

## HOW DOES THE PROJECT WORK?

You will enter into a Licence and Joint Venture Agreement with the Land Owner, Almond Land Pty Ltd, to obtain a licence over discrete allotments of the Orchard of approximately 0.25 hectares each, called Almondlots. Each Almondlot will include Almond Trees, an allocation of Water Licences and associated infrastructure all of which you are entitled to use under the licence. The licence fee payable under the agreement is your sole responsibility.

Then, you and the Land Owner, as your 10% joint venturer, will engage us, Timbercorp Securities, under an Almondlot Management Agreement to provide the following services:

- cultivate and manage your Almondlots;
- harvest and procure the processing of the almonds grown on your Almondlots; and
- market the almonds grown on your Almondlots.

You will be responsible for 90% of the management costs payable to Timbercorp Securities under the Almondlot Management Agreement. The management costs shown in this prospectus relate to your 90% share of the costs payable under the Almondlot Management Agreement.

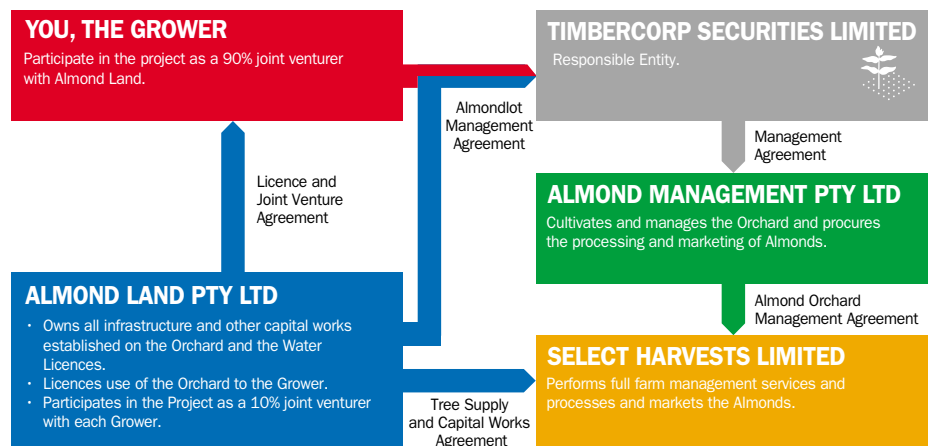
We expect your Almondlots to enter commercial production in February-April 2006.

We, as Responsible Entity, will delegate our managerial responsibilities to Almond Management Pty Ltd, the Project Manager, under the Management Agreement, but will remain liable to you for the actions of the Project Manager.

## ENGAGEMENT OF SELECT HARVESTS

Under an Almond Orchard Management Agreement, Select Harvests, Australia's leading integrated producer, processor and marketer of almonds is engaged by the Project Manager to manage the day-to-day farming operations on the Orchard. It will harvest and process the entire crop of Almonds each year at its processing facility and market the Almonds through established channels in domestic and overseas markets. Select Harvests guarantees that the entire annual crop of Almonds available for harvest in a particular season will be sold by 30 June in the financial year after the year in which the harvest for that season commences.

## TIMBERCORP ALMOND PROJECT STRUCTURE





## HOW MUCH WILL IT COST?

### APPLICATIONS ON OR BEFORE 30 JUNE 2003 (EARLY GROWERS)

#### *Initial fees and costs*

If you apply to become a Grower in the Project on or before 30 June 2003, you will pay the following fixed management and licence fees per Almondlot (0.25 of a hectare) in respect of the first three financial years of the Project. These fees represent your licence fees and your 90% share of the total management fees for this period. The total fees payable per Almondlot on application are \$6,065 (including \$551.36 GST).

Year ended 30 June	2003 \$	2004 \$	2005 \$
Management fee	5,200 (incl. \$472.73 GST)	1,870 (incl. \$170 GST)	1,870 (incl. \$170 GST)
Licence fee	865 (incl. \$78.64 GST)	865 (incl. \$78.64 GST)	865 (incl. \$78.64 GST)
<b>Total</b>	<b>6,065</b>	<b>2,735</b>	<b>2,735</b>
When due	On application	31 October 2003	31 October 2004
Tax deduction	100%	100%	100%

#### *Ongoing fees and costs*

On 31 October of each subsequent year during the life of the Project, commencing 31 October 2005, you will pay the following annual costs:

- an annual licence fee of \$865 Indexed each year;
- the estimated annual operating costs of managing your Almondlots; and
- a management fee equal to 3% of the Proceeds from the sale of your Almonds.

The estimated annual operating costs payable for a financial year will be adjusted by the amount by which the previous financial year's estimate differed from the actual costs of managing the Almondlots for that financial year, unless the adjustment has already been taken into account in any distribution of proceeds made to you.

Our remuneration package is deliberately designed to provide an incentive for us to obtain the highest yield and best price for your Almonds and to minimise your operating costs. Accordingly, we will be entitled to a 25% incentive fee if we exceed the incentive fee thresholds specified in section 3 for Growers on a two-year rolling basis. Details of all these costs are set out in section 3. All fees and costs will be increased on account of GST.

### APPLICATIONS ON OR AFTER 1 JULY 2003 (POST 30 JUNE GROWERS)

#### *Initial fees and costs*

If you apply to become a Grower in the Project on or after 1 July 2003 and before the Offer Period closes, you will be required to pay the following fixed management and licence fees per Almondlot in respect of the first two financial years of your participation in the Project. These fees represent your licence fees and your 90% share of the total management fees for this period. The total fees payable per Almondlot on application are \$6,065 (including \$551.36 GST).

Year ended 30 June	2004 \$	2005 \$
Management fee	5,200 (incl. \$472.73 GST)	1,870 (incl. \$170 GST)
Licence fee	865 (incl. \$78.64 GST)	865 (incl. \$78.64 GST)
<b>Total</b>	<b>6,065</b>	<b>2,735</b>
When due	On application	31 October 2004
Tax deduction	100%	100%



#### *Ongoing fees and costs*

On 31 October of each subsequent year during the life of the Project, commencing 31 October 2005, you will pay the same ongoing annual licence and management fees and costs payable by Early Growers, being:

- an annual licence fee of \$865 Indexed each year;
- the estimated annual operating costs of managing your Almondlots; and
- a management fee equal to 3% of the Proceeds from the sale of your Almonds.

We will also adjust your estimated annual operating costs in the same manner as is described for Early Growers above.

We will also be entitled to a 25% incentive fee if we exceed the incentive fee thresholds specified in section 3 for Growers on a two-year rolling basis. Details of all these costs are set out in section 3. All fees and costs will be increased on account of GST.

#### **TAXATION**

Based on Product Ruling PR 2003/2, you should be entitled, in the year of payment, to an income tax deduction for all management and licence fees and costs that you pay under the Project together with any interest incurred on borrowings. However, the amount of deduction will be reduced by the amount of any GST input tax credit to which you are entitled under GST Law. You should also be entitled to a deduction for 90% of the costs associated with the establishment of the almond trees on the Orchard, even though the Land Owner incurs these costs.

#### **RISKS**

Details of the risks associated with the Project are set out in section 9 of this prospectus.

#### **RETURNS**

It is not possible to determine financial returns to Growers over the life of a 20 year agribusiness project with certainty. This is because the calculation of returns involves the consideration of a large number of variables, most of which are outside our control, and because anticipated events that affect returns may not occur as expected, whilst unanticipated events that affect returns may also occur.

Prospective financial information is also predictive in character. Under the Corporations Act, we are required to have reasonable grounds for including prospective financial information about the Project in this prospectus; otherwise the information will be misleading. The test in the Corporations Act requires that the grounds for including prospective financial information must be objectively verifiable. This generally requires supportive information to verify the different variables that will have an impact on financial returns. As this is a long term project, the performance of some of the key financial variables is difficult to objectively confirm or verify, and so we have not provided forecast returns to Growers for each year of the Project.

However, we do want to provide you with sufficient information upon which to make your own assessment of the merits of investing in the Project. Some of the matters that will affect the returns you may achieve from the Project and which will help you to perform your own calculations of the cash flow which an investment in the Project may generate, are discussed in section 4.

Before deciding whether to participate, you should discuss the potential returns that you may achieve from the Project with your professional advisors.

#### **SUBSCRIPTION AND ALLOCATION DETAILS**

There is no minimum subscription that must be reached before we allocate Almondlots under this prospectus.

You must apply for a minimum of two Almondlots (0.50 hectares), although we reserve the right in our absolute discretion to accept applications for less than two Almondlots.

We are offering up to 2,000 Almondlots for subscription and we reserve the right to accept oversubscriptions for Almondlots on the Orchard. Unless agreed otherwise with any particular Grower or financial intermediary and subject to our absolute discretion to refuse an application, Almondlots will be allocated and issued on a first come first served basis, that is, in the order of receipt of completed applications.

During the period 16 June 2003 to 30 June 2003 we will only accept applications if we are satisfied that we can complete the services in respect of which the Application Moneys are paid by 30 June 2003.

Applications will not be accepted after the Offer Period has closed.

*This section contains an overview only of the Project. Before deciding whether to participate in the Project, you should read the whole of this prospectus.*



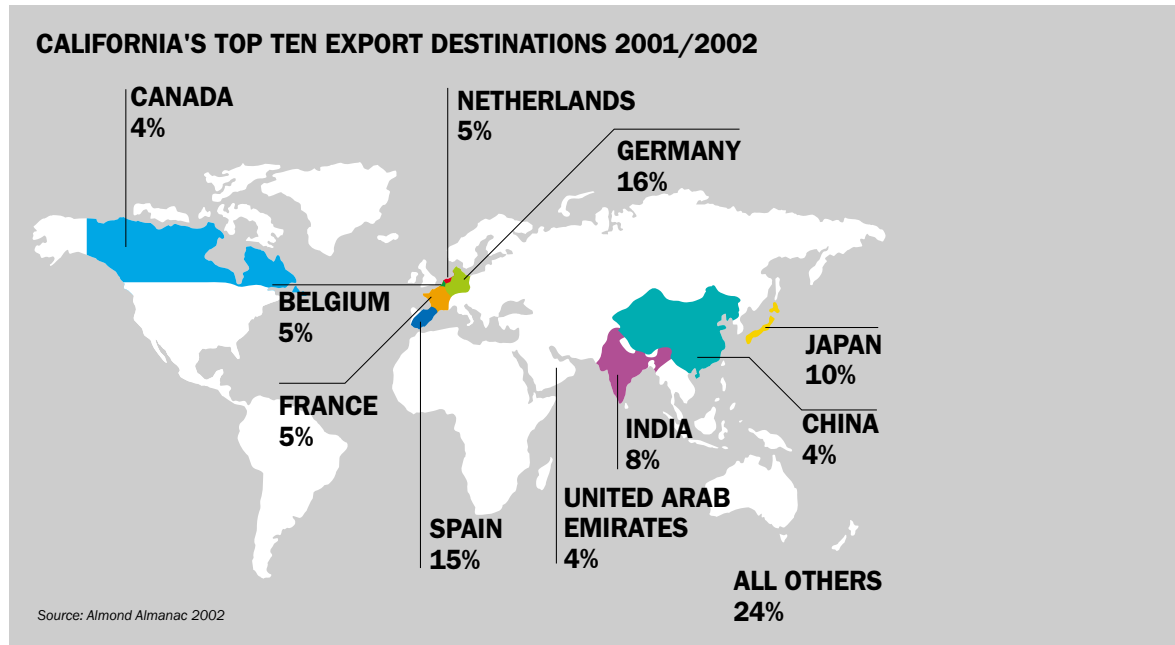
# THE ALMOND INDUSTRY - STABILITY AND GROWTH

## WHY INVEST IN ALMONDS?

In July 1999, the South Australian Government ('SAG') published a report outlining the investment opportunity in almonds. Under the heading, 'Why Invest in Almonds?' the report lists the following key reasons:

- 'Industry growth of more than 13% per annum for more than 15 years indicates buoyancy of the market.'
- 'The industry enjoys world's-best practice in production, processing and marketing.'
- 'It is a highly organised industry and professionally managed at all levels.'
- 'Its relative pest and disease-free status results in lower production costs.'
- 'Australia's international reputation as a producer of premium quality-product is driving export sales.'
- 'There is potential to develop new, value-added almond products.'

## INCREASING GLOBAL DEMAND FOR ALMONDS



Almonds are the most versatile of all nuts as they are able to be consumed in their raw form as well as in a wide variety of processed forms, including blanched (whole, sliced or slivered), roasted and smoked. They are extensively used in cooking, breakfast cereals, confectionery, snack foods, dairy products and spreads. Almond oil has very low saturated fat content that makes it popular for cooking and as salad oil. It is also used for massaging, cosmetics and wood preservation. Almond hull (the outside husk) is a high-energy fodder used as stock food.

In developed countries, health-related considerations contribute to the increasing acceptance of almonds as an important component of a healthy diet. This has led to a drive among producers to develop an even wider range of applications for almonds.

In developing countries, where almonds are desirable and are often associated with cultural ceremonies or celebrations, affordability is a key factor in market growth. In India, China and several Middle Eastern and Asia-Pacific countries, economic development is improving the average standard of living and increasing the size of the middle class. This growth makes almonds an affordable food for a sizeable market. The marketing of almonds is likely to become

a contributing factor to continued growth in demand in these countries once market size encourages greater investment in marketing activities.

Given California's dominant supplier position - it accounts for approximately 80% of world almond production - it is reasonable to take Californian export statistics as indicators of market growth. These statistics show that Asian demand experienced a significant dip in 1995/96 (during Asia's economic difficulties) but has achieved consistent growth since then, achieving pre-crisis export levels by 1997/98.

Asia accounts for approximately 26% of California's almond exports. The three largest Asian importers of almonds are China, India and Japan. During 2001/2002 Japan's demand for almonds increased by a record 18%, while India's demand increased by 5%. India continues to account for approximately one third of California's almond exports to Asia. India is also a major market for Australian almonds, and is widely considered to have a stronger economy than many other countries in the region, with a fast-growing middle class which is a significant almond consumer. Almonds are attractive to the Indian diet because of their high protein value.



Direct shipments to Eastern Europe have increased dramatically over the past five years. In 2001/2002 alone, demand has doubled, and approximately 33% of Californian exports to the region have been shipped to Russia. Western Europe has traditionally been the leading destination of Californian almonds and continues to experience strong demand, accounting for approximately 57% of all exports.

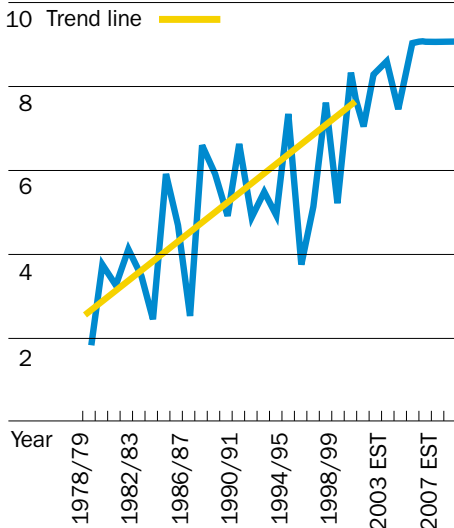
History shows that worldwide consumer demand for almonds is relatively elastic. Increased almond production has historically been met with increased market demand and market consumption.

International demand for almonds is expected to continue to show strong growth with considerable strength in traditional markets as well as emerging markets such as Japan, India, China and Eastern Europe.

## THE CALIFORNIAN ALMOND CROP

The world's largest producer of almonds is California, which accounts for approximately 80% of the world supply. Almonds are the highest-value agricultural export for California and the United States' highest-value horticultural export. The size and quality of the Californian crop is the single most influential factor affecting the market price for almonds. Spain and Italy are also significant almond growers accounting for approximately 16% of world production in 2001/2002, with a large number of other countries sharing the balance.

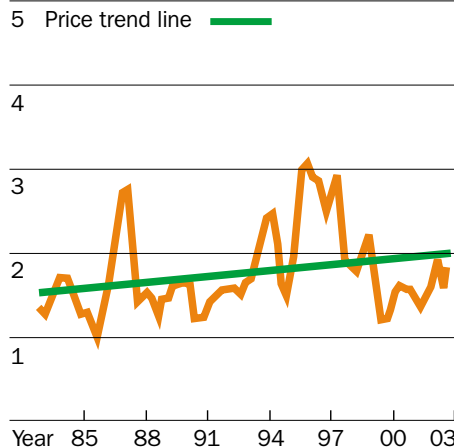
### CALIFORNIA ALMOND CROP POUNDS (HUNDREDS OF MILLIONS)



World prices declined in 1999 following a then record crop in California of 830 million pounds (approximately 380,000 tonnes). However, in May 2000, the United States implemented a statutory reserve system (ie. a crop set aside) of just over 22% of the total crop to help stabilise the market. With a commercial selling floor operating, prices recovered, and stability returned to the market. The record exports from the United States, including newly developed markets, together with a lower crop in the 2000 season, resulted in the full release of the reserve. The reserve was not reinstated during the 2001/2002 crop year.

### WORLD ALMOND PRICES

GRADE NP SSR 23/25  
\$US PRICE PER POUND



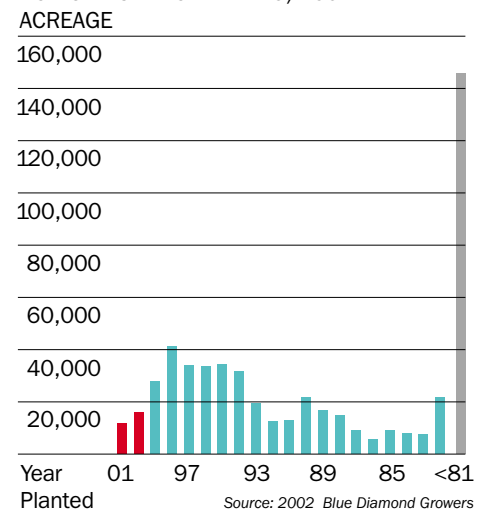
The 2001/2002 crop totalled approximately 824 million pounds. Blue Diamond Growers, a major group of Californian Almond Growers, estimates the 2003 crop at 750 to 900 million pounds (approximately 340,000 to 409,000 tonnes).

During December 2002, international exports surged 30% over the same month last year, with shipments exceeding 65 million pounds, demonstrating a strong growth in international consumption.

Despite the recent bumper crops, California suffers from variable climatic conditions that result in substantial fluctuations in world almond production. An analysis of California's almond crops over the past 25 years shows that bumper crops occur only sporadically, with very good crops typically followed by average or poor harvests: see the graph below.

Due to the variable climatic conditions during the blossom period and the biennial production nature of the Californian crop, the Californian industry maintains carry-over stocks of saleable almonds during the blossom period. These stocks have not increased with total production, and in fact they have been steadily declining, which suggests that California is unlikely to be able to meet market demand in lower producing seasons. The level of carry-over stocks to total shipments peaked at 56% in 1982/83 and stood at only 9% in 2001/02, the second lowest ever in the industry's history.

### CALIFORNIA ALMOND ORCHARDS AGE OF ACREAGE - MAY 9, 2002



Source: 2002 Blue Diamond Growers



## FORECAST LOWER CALIFORNIAN PRODUCTION AND RISING ALMOND PRICES

In May 2001 the California Agricultural Statistics Service (CASS) released the 2000 California Almond Acreage Report.

The CASS Report disclosed that almost one third of California's almond bearing acres are now 20 years or older. Furthermore, production from these orchards is declining and many may soon be removed.

In May 2002 the President of Blue Diamond Growers noted that new plantings have continued to decline each year since 1998, on average by 18% per annum. In addition, the composition of almond varieties in California have seen the Non Pareil variety (which is the preferred table almond and which is the main cultivar used for the Project) reduced from a peak of 56% of the total Californian crop in the early 1970's to only 39% in 2001/02. Consequently, Blue Diamond Growers believes that existing market premiums for the Non-Pareil variety will continue in the future. The level of new plantings of Non-Pareil also continues to fall with only 4,828 acres planted in 2001/02 – the second lowest planting since the late 1980s.

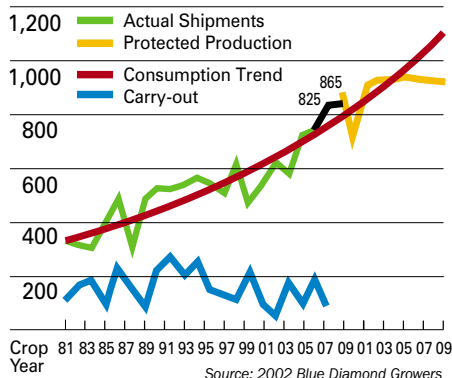
Given the older acreage and the current depressed returns to Californian growers, CASS comments that almond tree removal during the next several years may exceed new acres coming into production. At the existing 530,000 bearing acres, it is likely that Californian almond bearing acreage has peaked for the foreseeable future. Until market conditions improve, CASS believes that California's almond bearing acreage may well start to decline or stabilise as it did towards the end of the 1980s.

Since 1981 the compound annual growth rate in consumption of Californian almonds has been 4.8% per year and CASS expects this rate to be maintained or increased given the global consumer awareness of the favourable health and nutritional information surrounding Almonds.

On 27 June 2002, Blue Diamond Growers noted that as the US dollar continues to slide against the Euro dollar and the Japanese Yen, prices paid by European and Japanese consumers remain cheap. However, while grower costs have risen dramatically in recent times (most recently due to the California energy crisis) more favourable market conditions should see growers experiencing better returns.

If any future consumption growth is to be satisfied, prices must continue to improve; otherwise available supplies will radically decline.

## CALIFORNIA ALMOND PRODUCTION /SHIPMENT TREND MILLION LBS



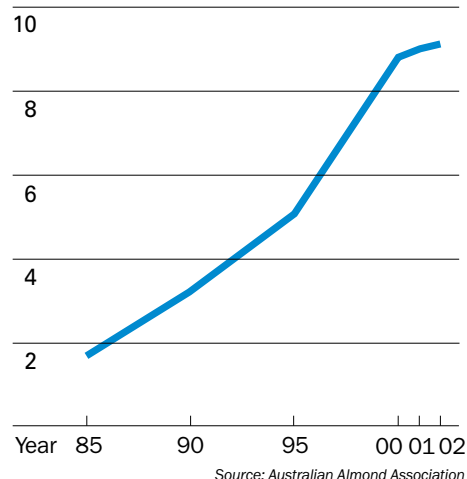
## THE AUSTRALIAN ALMOND INDUSTRY

### Climate

Unlike California, Australia has a history of stable almond production: see the graph below. This is primarily due to the more favourable weather conditions present in almond growing regions of Australia.

The majority of almond production in Australia is located in the Sunraysia region, which is centred on the Murray River from Robinvale in Victoria through Renmark and Loxton in South Australia and then through to Swan Reach, also in South Australia. Australian growers experience less significant variations in climatic conditions than those experienced by Californian almond growers.

## AUSTRALIAN ALMOND PRODUCTION TONNES (000)



### Production

Australian production of almonds has been steadily increasing over the past 15 years at approximately 13% per annum and in recent times production has outstripped consumption for the first time.

Australia's favourable weather conditions result in a relatively stable production of almonds and Australian almond growers produce a consistent quality of output, which should place our industry in a competitively advantageous position.

Furthermore, Australia has a track record of producing high-grade almonds, which are recognised by their largeness and lightness in colour, and has been able to develop attractive export markets because of the ability to provide continuity of supply, as well as the quality of this supply.

Select Harvests, the orchard contractor and marketer for this Project, focuses on meeting the requirements of its customers. An example of this is its Indian customers. In India, there is a demand for unshelled almonds and an established hand-shelling industry. Most of Select Harvests' exports unshelled almonds are sold to India, which has an expected rapidly growing market for almonds.

Australia's position is further strengthened by the fact that its supply is anti-cyclical, complementing rather than competing with the supply patterns of the almond producers of the Northern Hemisphere.

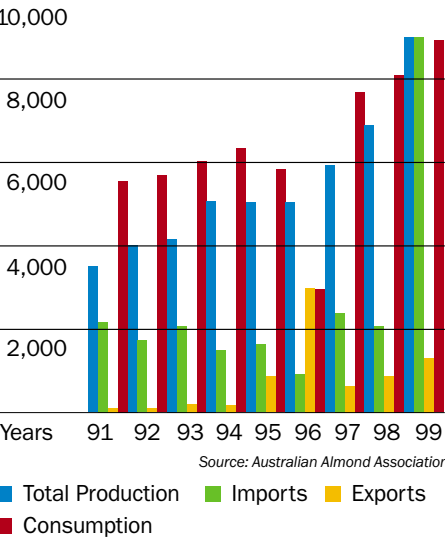
In 1999, Australia's production of almonds reached a then record of approximately 8,500 tonnes and continues to increase. In 2001, it reached a new record of approximately 9,000 tonnes. Given the increase in number of acres in production, this figure is expected to increase in the order of between 15,000 – 20,000 tonnes progressively over the next seven years.

**Consumption**

The domestic market for almonds is solid, with high per capita consumption due to Australia's relative affluence and multicultural mix. Almonds are a traditional component of the diets of people from Mediterranean countries, India, the Middle East and Asia.

Australian consumption reached 8,867 tonnes in 1999, representing a per capita consumption rate of approximately 490 grams and reached approximately 9,000 tonnes in 2001. This compares with 5,790 tonnes in 1995, equating to approximately 350 grams per head. In 2002, Australia's consumption of almonds increased once again.

**AUSTRALIAN TOTAL PRODUCTION, IMPORTS, EXPORTS & CONSUMPTION (KERNEL) TONNES**



**Australia's competitive advantage**

While Australia has developed a sound niche position in selected export markets, its overall volume of production is still very small, accounting for less than 2% of world production. Although Australia's production is increasing, so is world production. The Californian crop has quadrupled over the past 20 years. Our proportion of world production is not expected to change significantly, although as some producers (for example, Italy) decline, Australia will move up the ranking ladder.

While the production level from California and the United States' exports and market policies remain the most influential factors in determining global supply and prices of almonds, in some niche markets such as India, Australia has enjoyed premium prices by being able to meet demand for high-quality almonds and value added products such as blanched almonds.

Australia, being the dominant grower of almonds in the Southern Hemisphere, has a counter-seasonal advantage that provides a fresh alternative for consumers. It also benefits from a far less erratic climatic pattern than California and its pollination period is approximately twice that of California. These factors contribute to relatively stable harvests of good quality almonds.

Our counter seasonality to Northern Hemisphere growers, together with our quality and clean environment and efficient production technology, ensure that Australia is comfortably able to sell its total crop each year.

The SAG report highlights this competitive advantage: 'High-quality almonds tend to be exported for premium prices to niche markets... Over the past three years significant export markets have been identified and developed, and the almond industry is now increasingly focused on the export market.'

The SAG report further states: 'The Riverland/Sunraysia region provides excellent climate conditions ... The primary requirements of almonds are frost-free growing conditions from the flowering stage in the month of July. The region is relatively frost-free and there are few pests and disease problems due to the ideal dry climate.'





This Project aims to capitalise on the competitive advantages identified above, but also takes the range of benefits further through long-term contractual arrangements with Select Harvests, Australia's leading integrated producer, marketer and exporter of almonds. Select Harvests will control all aspects of growing, harvesting, processing, sorting and packing of almonds and therefore, is well-placed to achieve a consistent quality of almonds.

This Project is expected to have little or no impact on the balance of global supply and demand and therefore no significant impact on world almond prices. However, Growers will benefit from increased sales that Select Harvests will make to niche and emerging export markets, including China, India, Japan, Middle East, Europe, and to long standing domestic customers such as confectioners, bakers and cereal manufacturers, dairy producers, supermarket packers and wholesalers. For further details regarding Select Harvests, refer to the previous section and sections 6 and 7.

**ALMONDS – THE HEALTH BENEFITS**

Current medical research demonstrates that not only are almonds healthy, but they may also provide some protection against various cancers, lower the risk of heart disease and reduce the risk of strokes by lowering blood pressure. In addition, almonds contain a wide range of important vitamins, antioxidants and minerals as well as dietary fibre.

The health benefits of almonds are being increasingly understood and this is stimulating consumption in developed countries. Nuts of all sorts are rich in antioxidant vitamin E. Almonds are loaded with alpha-tocopherol, which is believed to have the potential to lower the risk of heart disease.

Until recently, there was some focus on nuts being relatively high in fat. While this is true, the fat in nuts is unsaturated. A study published in the April 2000 issue of the American Archives of Internal Medicine indicated that people could lower their blood cholesterol by eating less saturated fats and more unsaturated fats. This was again confirmed by the American Heart Association (AHA) in a journal issued in August 2002.

The journal published the results of a study which concluded that almonds significantly lowered 'bad' cholesterol levels in people with high cholesterol levels. The findings demonstrated for the first time the more almonds you eat in place of higher saturated fat foods, the more effective you may be at lowering cholesterol levels.

Nuts of all varieties have traditionally been labelled 'party fare' – a sinful, fat-laden snack only to be eaten as a treat. However, awareness is growing that nuts contain monounsaturated fats and are in fact good for you.

Research by the Heart Foundation of Australia has established that 'good' fats are found in nuts, fish, poly and mono unsaturated margarines, cooking oils and salad dressings. These fats help lower high blood cholesterol levels and fight heart disease.

While a diet high in saturated fat is undoubtedly bad, Heart Foundation National Nutrition Manager Susan Anderson says: 'Throwing out all fats is like throwing out the baby with the bath water.' The most popular misconception about nuts is that they are fattening and contain cholesterol. Studies by leading medical and nutritional researchers in the United States have shown this to be without scientific basis.

Other studies by leading research groups have concluded that diets high in nuts could be protective against some cancers such as colon, lung and prostate cancer and diabetes and Alzheimer's disease, among others.

The accumulation of nutritional and medical research should have a significant impact on the demand for, and consumption of, almonds in developed countries where growing numbers of people are changing their dietary habits to include healthy foods.

**ONE OUNCE OF ALMONDS PROVIDES**

- 6 Grams Carbohydrates
- 3 Grams Fibre (A good source)
- No Cholesterol
- 8% Daily Value Calcium
- 35% Daily Value Vitamin E (An excellent source)
- 6% Daily Value Iron, Niacin, Potassium and Zinc
- 15% Daily Value Copper, Phosphorous and Riboflavin (A good source of each)
- 6 Grams Protein (A good source)
- 164 Calories
- 14 Grams Total Fat (Of that, 9 Grams Monounsaturated Fat)
- 20% Daily Value Magnesium (An excellent source)



Source: Almond Almanac 2002

# HOW THE PROJECT WORKS



## BECOMING A GROWER

You may become a Grower by completing the application and power of attorney form at the back of this prospectus and paying the relevant Application Moneys.

On acceptance of your application, you will become an almond grower in your own right on Almondlots that Almond Land, the Land Owner, licenses to you.

Upon becoming a Grower, we will send to you:

- an Almondlot statement, together with a map to enable you to identify the location of your Almondlots; and
- a formal advice of the Application Moneys paid by you, to assist in the preparation of your income tax return.

During the Project, we will send to you:

- annual reports setting out the results of the harvest of Almonds including the condition of the Orchard and Almond Trees and other relevant details;
- annual invoices for management, incentive and licence fees; and
- once the Almond Trees start producing Almonds, annual statements of income and expenses and proceeds from the sale of Almonds produced from the Orchard.

Naturally, you will be entitled to visit your Almondlots and monitor their progress.

## PROJECT AGREEMENTS

Your rights and obligations under the Project will be governed by the Constitution and the Project Agreements. Following is an explanation of the key features of these agreements.

## CONSTITUTION

The Constitution is a deed that establishes the 2003 Timbercorp Almond Project as a managed investment scheme. By completing the application and power of attorney form attached to this prospectus, a Grower agrees to be bound by the Constitution. The Constitution sets out the terms and conditions under which we are appointed Responsible Entity of the Project. It also sets out:

- how the Project will be administered;
- how reports will be provided to you;
- your rights;
- the fees that you are required to pay;
- termination and retirement provisions;
- your protections and safeguards, including complaints resolution procedures; and
- receipt and distribution of Proceeds.

## CUSTODY AGREEMENT

We have engaged Permanent Trustee Company Limited as Custodian for the Project. Its principal role is to perform the following functions:

- receive and hold Application Moneys and Proceeds until they are disbursed under the Project Agreements;
- upon a direction from us, and if duly appointed as attorney, execute the Licence and Joint Venture Agreement and Almondlot Management Agreement as attorney for and on behalf of the Growers; and
- retain the executed Project Agreements in safe custody.

We will pay all of the Custodian's fees and expenses out of our own funds. None of these fees are required to be met by Growers.

## LICENCE AND JOINT VENTURE AGREEMENT

The Licence and Joint Venture Agreement will be between you and the Land Owner. We will also be a party to that agreement.

Under this agreement, the Land Owner agrees to establish all of the infrastructure and other capital works necessary to operate a commercial almond orchard including the planting of the Almond Trees on your Almondlots.

The Land Owner will own the entire infrastructure and other capital works on the Orchard including the Water Licences and irrigation equipment. For further details on the Orchard and the Water Licences refer to section 6 of this prospectus.

The Land Owner will grant to you a licence to use and occupy identifiable Almondlots for the term of the Project. The purpose of the licence is to allow you to cultivate and harvest Almonds in a joint venture with the Land Owner for commercial gain.

If you participate in the Project as an Early Grower (ie. you make an application and are accepted into the Project on or before 30 June 2003), your application fee includes a licence fee of \$865 (including \$78.64 GST) per Almondlot for the period from acceptance of your application until 30 June 2003. On 31 October 2003 and 2004, you will also pay a licence fee \$865 and thereafter, commencing on 31 October 2005, you will pay an annual licence fee of \$786.36, Indexed from the previous year and increased on account of GST.



Almond Land has engaged Select Harvests:

- to oversee the establishment of the infrastructure and other capital works on the Land on which the Orchard is or will be established; and
- to plant the Almond Trees on the Orchard and to erect stakes and tree guards.

## LEASE AND SUB-LEASE

In order to secure your tenure of the Land for the duration of the Project, the Land Owner will lease to us in our capacity as Responsible Entity under the Project those parts of the Land on which the Project will be conducted. The Leases will confer on us exclusive possession of the relevant parts of the Land. In order to enable the Land Owner to grant to you a licence over your Almondlots, we will sub-lease the relevant parts of the Land back to the Land Owner. The terms and conditions of the Sub-Lease generally reflect those contained in the Lease.

## ALMONDLOT MANAGEMENT AGREEMENT

Under the Almondlot Management Agreement between you and us, we will manage and cultivate your Almondlots (which you will operate in joint venture with the Land Owner), harvest your Almonds, procure the processing of the Almonds that have been harvested and procure the marketing and sale of the Almonds throughout the term of the Project.

We will engage Almond Management, the Project Manager, to assist us in performing our duties and meeting our obligations under the Almondlot Management Agreement. In turn, under the Almond Orchard Management Agreement, Almond Management will engage Select Harvests, Australia's leading integrated producer, processor and marketer of Almonds, to undertake the day-to-day management of the Orchard, harvest the Almonds and thereafter process and sell the Almonds to domestic and overseas markets through an established distribution network.

Select Harvests' ability to manage the value chain from the Orchard to the supermarket shelf is considered to be a major benefit to Growers participating in the Project.

As an Early Grower, your application fee includes a management fee of \$5,200 per Almondlot (including \$472.73 GST) for the period from acceptance of your application until 30 June 2003.

Thereafter, you will be required to pay the following fixed management fees and costs:

- (a) for the period commencing on 1 July 2003 and ending on 30 June 2004 - \$1,870 per Almondlot (including \$170 GST) payable on 31 October 2003; and
- (b) for the period commencing on 1 July 2004 and ending on 30 June 2005 - \$1,870 per Almondlot (including \$170 GST) payable on 31 October 2004.

As a Post 30 June Grower, your application fee includes a management fee of \$5,200 per Almondlot (including \$472.73 GST) for the period from acceptance of your application until 30 June 2004.

Then for the period commencing on 1 July 2004 and ending on 30 June 2005, you will pay a management fee of \$1,870 per Almondlot (including \$170 GST) on 31 October 2004.

Thereafter, as an Early Grower or Post 30 June Grower, you will be required to pay the following management fees and costs

- (a) in respect of each subsequent financial year until 30 June 2023, commencing on 31 October 2005 - an amount per Almondlot that we estimate to be the reasonable operating costs of us managing your Almondlots. This fee will include an allocation of overhead costs incurred by us that will not exceed \$50 per Almondlot (Indexed, adopting 30 June 2003 as the base date) and will be payable on 31 October of each year. Once the actual costs are determined, we will adjust the following year's payments to reflect the actual costs incurred after having regard to any deductions already made from your distributions for such costs;
- (b) a management fee of 3% of the annual proceeds of sale of your Almonds; and
- (c) an incentive fee of 25% of so much of the annual Net Proceeds payable to you in a financial year which exceed the Net Proceeds specified on the next page. In order to allow for a variation in yields from year to year, this fee will be calculated on a two year rolling basis. That is, if in the immediately preceding financial year, the actual Net Proceeds were less than the Net Proceeds specified on the next page for that preceding financial year, the amount of the deficit must be deducted from the actual Net Proceeds when calculating the incentive fee payable to the Responsible Entity for the current financial year.

If you participate in the Project as a Post 30 June Grower (ie. you make an application and are accepted into the Project on or after 1 July 2003 and before the Offer Period closes), your application fee includes a licence fee of \$865 (including \$78.64 GST) per Almondlot for the period from acceptance of your application until 30 June 2004. On 31 October 2004 you will also pay a licence fee of \$865 and thereafter, commencing on 31 October 2005 you will pay the same annual licence fee as that payable by Early Growers.

The licence fees payable under the Licence and Joint Venture Agreement are your sole responsibility.

The Land Owner will be your joint venturer in respect of each of your Almondlots. Your joint venture interest will be 90% and the Land Owner's joint venture interest will be 10%. This means that you will pay 90% of all costs associated with the cultivation and management of your Almondlots and the Land Owner will pay 10% of the costs. Correspondingly, you will receive 90% and the Land Owner will receive 10% of the produce. Costs and fees shown in this prospectus relate to your 90% share of the costs, other than the licence fees, whilst the income shown reflects your 90% entitlement to income.



INCENTIVE FEE THRESHOLD

Year ending 30 June	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Project Year	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Net Proceeds to Growers before tax	800	2,166	2,444	2,504	2,567	2,631	2,698	2,764	2,834	2,905	2,977	3,051	3,128	3,208	3,287	4,282

We have determined the incentive fee threshold using assumptions made by us as to average almond prices and yields, operating costs and inflation over the life of the Project.

Please note that:

- the above figures are not an indication of the potential financial returns that Growers may receive from the Project and have been calculated by us solely for the purpose of determining the incentive fee threshold; and
- the financial returns that Growers receive from the Project may differ materially from the above figures.

Under the Almondlot Management Agreement, we may pay on your behalf in accordance with the Constitution your annual licence fees and your 90% share of the annual management and incentive fees and other costs due and payable out of any Proceeds that we hold on your behalf or to which you are entitled.



## **HARVEST, PROCESSING AND SALE OF YOUR ALMONDS**

### **Harvest and processing**

We expect your Almondlots to start producing commercial quantities of Almonds in autumn 2006.

The harvesting program will commence in late February of each year when Select Harvests will test the maturity of the Almonds to determine their readiness for harvesting. Harvesting will take place generally in the months of February to April.

Following harvest, the Almonds will be transported to a modern processing facility owned and operated by Select Harvests, where they will be weighed, tested and processed. The processing facility is divided into two parts. The hulling and cracking plant is located on Select Harvests' main farm at Kyndalyn Park, approximately 40 kilometres from the Orchard, and the sorting and packing operation is situated close by at Euston, the sister city of Robinvale on the New South Wales side of the Murray River.

After the Almonds are shelled, Select Harvests will dry any kernels derived from the Almonds to remove excessive moisture content. All hull and shell generated by the processing of the Almonds will be the property of Select Harvests and it will be responsible

for their disposal. Finally, the Almonds will be graded having regard to size, variety and defects, if any. For further information on the harvesting and processing of your Almonds and the processing plants, refer to section 6 of this prospectus.

### **Sale of your Almonds**

The Almondlot Management Agreement requires us to sell your Almonds as your agent. We will endeavour to sell the Almonds so as to maximise returns to Growers. Under the Almondlot Management Agreement, we are appointed as your agent and attorney to enter into any agreement for the sale of the Almonds. We have appointed the Project Manager as agent to sell the Almonds, subject to our direction.

One of the key arrangements that underpin the commerciality of the Project is the engagement of Select Harvests to market the entire crop of Almonds through established local and overseas channels. This arrangement is embodied in the Almond Orchard Management Agreement.

### **Pools and sub-pools**

Following harvest, your Almonds will be pooled with the Almonds of all other Growers in the Project. They will then be processed and, until they are sold, kept separate from all other almonds that have been processed or stored by Select Harvests.

Generally, Select Harvests will pool your Almonds with all other almonds that it sells. Alternatively, the Project Manager, as your agent, may choose to sell the Almonds outside the pooling arrangements operated by Select Harvests and may direct Select Harvests to sell the Almonds separately. Price considerations will determine whether the Project Manager directs Select Harvests to sell outside these pool arrangements.

The pooling arrangements operated by Select Harvests are also designed to ensure that producers of higher quality almonds benefit from higher prices and returns that may be achieved in respect of the sale of their almonds.

Accordingly, Select Harvests will establish sub-pools at the commencement of each season. The sub-pools will be based on grades that will be marketed separately and for which substantial price differentials will exist. Separate contribution proportions and prices will be calculated for each sub-pool created, and an amount equal to the proceeds of sale less the costs of sale will be paid to the Project Manager within 7 days of the end of each month. Then, at the end of each quarter, Select Harvests will reconcile and adjust the actual contribution proportions made by the Project Manager on your behalf to each sub pool operated by Select Harvests to ensure that Growers ultimately receive all proceeds to which they are entitled.

### **Distribution of your almond proceeds**

As your Almonds will be pooled with the Almonds of all other Growers in the Project, you will be entitled to a proportionate share of the net proceeds paid by Select Harvests to the Project Manager, plus any other proceeds of sale generated by the Project Manager on your behalf.

As consumer demand and price prospects will determine the timing of sales, we will receive proceeds from the sale of almonds progressively throughout each year. We will distribute proceeds received from the Project Manager within 30 days after the end of each quarter. Prior to distributing the proceeds to you, we will deduct your licence fees and your 90% share of the estimated costs of operating your Almondlots for the next year, the management fee of 3% of the annual sale proceeds and any incentive fee that are due to us. At the same time we may have also calculated the actual operating costs incurred by you for the previous Financial Year and will adjust your distribution accordingly.



# FACTORS AFFECTING PROJECT RETURNS

## INTRODUCTION

In this section, you will find information that will help you to perform your own calculations of the cash flow which an investment in this Project may generate over its 20 year term. In providing you with the information you need, our directors have exercised due care in preparing and reviewing the information. In the opinion of our directors, the information is reasonable. In particular the directors have obtained confirmation from the Independent Almond Expert that the yield estimates are reasonable. The Independent Almond Orchard Expert's Report appears in section 11.

There are many factors that affect horticultural projects, particularly over the 20 year term of this Project. Many of those factors are beyond our control. Accordingly, we have elected not to provide forecast returns for each year of the Project; nor have we provided an estimate of the total return on investment. However, we do want to provide you with sufficient information upon which you can make your own assessment of the merits of investing in this Project.

In providing you with this information, we and our directors do not guarantee returns over the 20 year term of the Project.

## FACTORS WHICH IMPACT FINANCIAL PERFORMANCE

In considering whether to participate in the Project, you should have regard to the matters detailed below. Each of these matters will affect the returns you may achieve over the life of the Project. You should consider these matters in conjunction with the taxation benefits and GST issues discussed in section 5 and the risks that are described in section 9.

## ALMOND PRICES

The first main factor that will determine the financial performance of the Project is income, which is a function of price and yield. This section of the prospectus discusses almond prices.

The price at which Select Harvests is able to sell the Project's Almonds will be affected primarily by the almond price in US dollars, as California supplies approximately 80% of the worldwide demand for almonds.

Over the past 20 years, the Non Pareil SSR 23/25 almond variety has traded in a range of \$US2.60 to \$US6.71 per kilogram. A graph showing the movement in the almond price (in US\$ per pound) over this period together with the historical price trend line appears on page



7 of this prospectus. It can be reasonably expected that prices will continue to fluctuate in the future, thereby affecting your returns from year to year. The last coordinate on the graph is the last recorded trading price in December 2002 which was \$US3.96 per kilogram (\$US1.80 per pound).

Under this Project the Orchard will comprise 50% Non-Pareil, 33% Carmel and 17% Price almond varieties. There is no published price information available for the Carmel and Price varieties. These pollinator varieties generally attract slightly lower prices than the premium Non Pareil almond variety.

Non Pareil is the preferred table almond because of its size, shape, light colour, mild taste and ease of hand shelling which minimises kernel damage. The Non Pareil SSR 23/25 almond is the benchmark grade and size of almonds used in the international almond market for the purpose of determining the price at which almonds will be traded.

The SSR (Select Sheller Run) grade is the lowest grade of almonds produced by Select Harvests. Of the 2002 crop managed by Select Harvests, only approximately 10% of the Non Pareil variety and 50% of the Carmel and Price varieties were rated SSR grade. One half of the total crop produced by Select Harvests is Non Pareil. The balance of the 2002 crop was rated Extra No 1 or Supreme grade, which command premiums of up to US 22 cents per kilogram (US 10 cents per pound) above SSR. Extra No 1 and Supreme are ranked as the second and third highest grades of almonds. The highest grade, Fancy, is rarely traded.

Importantly, over the past few years Select Harvests has demonstrated a consistent and proven ability to produce premium end grade almonds. This is an important consideration for prospective Growers in the Project.

We have been advised by Select Harvests that prices have risen by approximately 30% since August 2002, driven by very strong demand, in line with international market prices, although recent price increases have been offset to a certain extent by an appreciating Australian Dollar.

Select Harvests does not guarantee the sale price of the Almonds produced by the Project.

## The Californian Almond Industry

Being the world's major supplier of almonds, the size of the Californian crop will have a significant bearing on global almond prices and your returns from year to year. For a discussion of the Californian Almond Industry and the challenges it faces in meeting future demand, see section 2 of this prospectus.

## Exchange Rate

Almonds in world markets are priced in US dollars. Therefore, fluctuations in the US\$/A\$ exchange rate will also influence your returns over the life of the Project.

## Timing of sales

The speed with which Select Harvests is able to sell your Almonds will also affect the returns that you may achieve over the life of the Project.

Currently, Select Harvests sells approximately 50% of its stock of almonds in the period of March to June each year, while operating an



active export program. The major domestic demand is in the period of August to December in the build up to Christmas.

There is no guarantee that Select Harvests will continue to sell almonds, including Almonds produced from this Project, in line with current sales patterns. However, under the Almond Orchard Management Agreement, Select Harvests guarantees that it will sell the entire crop produced each year by the end of the financial year following the year in which your Almonds are harvested. Your crop of Almonds will be harvested each year between February and April.

#### Domestic / export sales

Over the past few years, approximately 40% of all almond sales made by Select Harvests have been into export markets.

Select Harvests' ability to continue exporting almonds will depend on the following:

- the demand / supply dynamics within the Australian and overseas market and the availability of almonds for export; and
- availability of almonds for export in the March-July period when it is operating its export market program.

#### Other Matters

Finally, global economic conditions and actions taken by individual world governments and regulatory authorities, particularly those of the United States, will have an impact on the supply, demand and world price of almonds.

### THE ALMOND YIELDS

The second important factor that will affect the returns you may achieve over the life of the Project are the almond yields produced by the Orchard.

Our directors believe that it is reasonable to expect that the average yield of Almonds will be as follows:

Year ended 30 June	Kilograms per Almondlot	Kilograms per hectare
2006	93	371
2007	340	1,359
2008	463	1,853
2009	803	3,212
2010 onwards p.a.	865	3,460

The above yields are based on an average planting density of 248 Almond Trees per hectare ie. 62 per Almondlot, and are verified as reasonable by the Independent Almond Orchard Expert's Report, which is reproduced in section 11. Of course, actual yields may

fluctuate from year to year due to seasonal and other factors.

Furthermore, some Almondlots may produce yields which are higher or lower than the expected yields. However, all almonds produced from the Project will be pooled and Early Growers and Post 30 June Growers will share in the proceeds of sale of the pooled almonds.

### COSTS

Another important factor that will affect the returns you may achieve over the life of the Project is the costs that are to be paid by you. The costs for the first three financial years of the Project are fixed and are fully set out in section 3. From the fourth year of the Project certain components of the management fees, and licence fees will be Indexed. Full details of the ongoing costs are set out in section 3.

Based on information provided to us by Select Harvests as operator, we estimate that the operating costs of managing your Almondlots in the financial years ending 30 June 2006 to the end of the Project will be as follows:

Year ended 30 June	Estimated operating costs per Almondlot
2006	\$1,579
2007	\$1,881
2008	\$2,010
2009	\$2,323
2010 onwards p.a.	\$2,404

Note: These costs are inclusive of GST and are estimates only at present day prices which do not take into account future inflation. Actual costs may be higher or lower.

Other ongoing annual costs you will have to pay in the 2006 financial year and beyond will be the licence fee (Indexed adopting 30 June 2003 as the base date), the management fee of 3% of the annual proceeds of the sale of your Almonds, and the 25% incentive fee calculated as described in section 3.

Certain components of the operating costs of managing your Almondlots and licence fees will be affected by the rate of inflation in Australia.

However, you should note that it is in our interests to maximise the price that you receive for your Almonds and to minimise the operating costs of managing your Almondlots, in order to exceed the incentive fee thresholds as detailed in section 3.

### TAX PROFILE

Your profile as a resident Australian taxpayer will also impact the returns you achieve from participation in the Project.

The higher your marginal tax rate, the greater the benefit you receive from the income tax deductions to which you are entitled to for all management and licence fees and costs that you pay in respect of the Project together with any interest incurred on borrowings and your 90% write off for the costs incurred by the Land Owner to establish the almond trees on the Orchard.

Obviously, a natural person on the highest marginal tax rate (including the Medicare levy) of 48.5% will receive the greatest benefit from the income tax deductions available under the Project.

However, note that the amount of any deduction will be reduced by the amount of any GST input tax credit to which you are entitled under GST Law. You may claim input tax credits for the GST included in the Project costs, provided you are registered for GST.

Your returns will also be affected by whether or not you elect to have the Simplified Tax System apply to your almond growing activities, and your marginal tax rate at the time you receive proceeds from the Project.

For a discussion of these matters, please see section 5 and Product Ruling PR 2003/2 which is reproduced in section 10.



# TAXATION BENEFITS AND GST

## DEDUCTIONS AVAILABLE

You should be entitled to an immediate taxation deduction for the Application Moneys payable on application.

In addition, you should also be entitled to deductions for your ongoing annual costs when they are incurred. These costs include management and licence and incentive fees, as well as interest on any funds that you borrow to finance your almond farming activities.

However, you should note the operation of section 27-5 of the Tax Act in relation to GST, which is explained below.

You should also be entitled to claim a write off for 90% of the costs associated with the establishment of the Almond Trees on the Orchard at the rate of 13% p.a. commencing from the year of first commercial production. The year of first commercial production will be the financial year ending 30 June 2006.

## ATO PRODUCT RULING

The Australian Taxation Office has issued Product Ruling PR 2003/2. This Product Ruling confirms the deductibility of the Project costs. A copy of the product ruling is reproduced in section 10.

A product ruling is a binding public ruling under the Taxation Administration Act 1953, in relation to the effect of the income tax law on a project. It protects Growers so long as the Project is carried out in accordance with the details that we provided to the Australian Taxation Office and described in the product ruling.

## RALPH INITIATIVES

Under the New Business Tax System (Integrity Measures) Act 2000, prepayments in respect of 'tax shelter' arrangements are deductible over the period during which the services are provided, rather than being immediately deductible.

Growers in the Project should not be affected by these provisions, as all payments under the Project Agreements relate to services being wholly provided in the year of payment. In other words, none of these payments are prepayments. This means that all management and licence fees and costs set out in this prospectus and incurred in relation to the Project should be deductible in the year of payment.

The New Business Tax System (Integrity Measures) Act 2000 also affects the deductibility of losses from 'non-commercial

business activities'. The provisions of this legislation restrict the extent to which an individual can offset losses from a non-commercial activity against other income.

If the provisions apply, losses from the non-commercial business activity will be carried forward and will be deductible against future income derived from that activity only. Losses will only be allowed as deductions against other income if the income is excepted income, if one of four tests is satisfied or, importantly for our purposes, if the Commissioner favourably exercises a discretion that the legislation gives to him.

This is important because none of the tests will be satisfied by a Grower either in the year of subscription or subsequent years up to the stage of harvest and the income is unlikely to be excepted income.

The Product Ruling, however, states that the Commissioner will exercise his discretion favourably for the period of the Product Ruling and thereafter in the absence of legislative change.

## GOODS AND SERVICES TAX (GST)

The Goods and Services Tax (GST) came into effect on 1 July 2000.

GST is a tax payable on any "taxable supply". A taxable supply includes the supply of goods, services and many other things. Taxable supplies in respect of the Project include the management services provided by us, the licence rights granted by the Land Owner in relation to your Almondlots and all services associated with the harvesting, processing, delivery and marketing of your Almonds. All of the Project Agreements contain provisions to the effect that where the Land Owner or we are required to remit any GST in respect of services provided to you under a Project Agreement, the amount of the management, licence or incentive fee payable by you may be increased by an amount to cover the GST that the Land Owner or we must remit.

It is important to note that the provision of finance is not a 'taxable supply' and, therefore, any interest payable by you on borrowed funds is not subject to GST.

As a Grower in the Project, you will be carrying on an enterprise. This means that you will be entitled to claim an input tax credit in the nature of a refund or offset for any GST that you pay in relation to the Project. In order to claim the credit, you must be registered for GST purposes and obtain an Australian Business Number (ABN) from the Australian

Taxation Office. If you already carry on an enterprise that is registered and you licence your Almondlots in the same name as that which carries on the enterprise, your existing registration will be sufficient. However, if you do not, or if you do not carry on any other type of enterprise, then you will be able to register specifically in relation to your Almond growing enterprise.

You should note the effect of section 27-5 of the Tax Act. It operates to reduce the amount of any tax deduction that you may claim by the amount of any input tax credit to which you are entitled. This means that if you register, or are required to be registered, for GST, you will not be entitled to claim a tax deduction for the amount of any GST that you pay under the Project Agreements during the life of the Project. Of course if you are registered for GST, you will be entitled to claim an input tax credit in respect of any GST paid.

You should obtain your own independent professional advice in relation to the effects of GST under the Project.

## ALMOND PROCEEDS

All proceeds that you derive from the sale of Almonds will be assessable income for taxation purposes.

## ALMONDS ON HAND AT THE END OF THE YEAR

Given the usual pattern of Select Harvests' sales, the entire crop of the Project for a season will generally not be sold by 30 June of the year in which it is harvested. However, any remaining crop for a season will be sold in the following financial year as guaranteed by Select Harvests under the Almond Orchard Management Agreement with the Project Manager.

As a result, you will generally have to bring to account opening and closing trading stock on hand at the end of each year when determining your taxable income. We will advise you each financial year of the value of opening and closing trading stock on hand to allow you to prepare your income tax return.

Note that Select Harvests does not guarantee the sale price of the Almonds.

## TAXATION ADVICE

Before deciding whether to participate, you should refer to the Product Ruling in section 10 and obtain your own independent professional advice on this important matter.

# PROJECT SITE AND DEVELOPMENT

## THE LAND AND SOILS

The Sunraysia region of northwest Victoria is a prime horticultural area with a history of improving yields of high quality almonds. This Project will be conducted on Land known as the Yungera site.

The Yungera site will comprise up to approximately 1,150 hectares of almond orchards, after allowing for the construction of roads, frost prone areas and soil types. The Yungera site is situated within close proximity to Boundary Bend and is adjacent to an existing 145 hectare almond orchard owned and managed by Select Harvests. The property comprises a total of approximately 5,000 hectares.

The Land has been soil tested and surveyed not only to determine the most appropriate orchard layout, but also to ensure that the irrigation system design is optimised for the land planted. The tests have shown that the Land is suitable for growing commercial crops of almonds.

Like many nut trees, almonds need deep well drained soils. The Land is undulating throughout and is characterised by the existence of steep, predominantly east/west sand dunes with some closed depressions and low-lying country. Certain areas will require soil amelioration in order to assist almond tree root growth. Areas on the Land with shallow topsoil, high drainage hazards, significant compacted soil layers and high frost risk (typically low lying areas where cold air accumulates) have been excluded from development. For further details regarding the land and soil, refer to the Almond Orchard Expert's Report in section 11.

## CLIMATE AND TOPOGRAPHY

The Sunraysia region enjoys a Mediterranean semi arid climate with relatively mild winters and long warm to hot dry summers. This is the preferred climate for almond growing. It has a mean annual rainfall of 311.2 millimetres, which resembles the southern end of the San Joaquin valley in California, around Bakersfield, which is a significant almond-producing region. Rainfall is distributed quite evenly throughout the year with an average rainfall of approximately 20 to 35 millimetres each month of the year. As a result, the incidence of crop loss and disease due to high rainfall is low.

The minimal daily cloud that is characteristic of the area maximises the time available for tree and nut growth. Mean daily temperatures during August, when almonds flower and bees are used to cross-pollinate the crop, range from 4.1 to 17.3 degrees Celsius. During the harvest months of February to April, mean maximum daily temperatures range from 32.1 to 23.5 degrees Celsius, thus allowing the kernel sufficient time to dry in the field before the harvest and processing commence.

## WATER SUPPLY AND IRRIGATION

Growing almonds is a high water usage activity and the establishment of a new orchard requires extensive planning in the areas of irrigation design, layout, installation and water monitoring in order to achieve high yields.

At full maturity, almond trees, on average, require 12.5 megalitres of water per hectare to produce the quantity and quality of almonds that are being forecasted for this Project.

The Land Owner will progressively acquire, at its own cost, sufficient permanent Water Licences on the open market to meet the Project's needs up to a maximum of 12.5 megalitres per hectare. It will purchase sufficient Water Licences prior to the commencement of each irrigation season. If during the life of the Project, additional water in excess of 12.5 megalitres per hectare is required, and such water can be reasonably procured by way of temporary water rights, we will procure such additional water and supply it to you. The cost of supplying such additional water will be treated as a cost of operating the Almondlots, payable by Growers to us under the Almondlot Management Agreement.

Water for the Project is pumped from the Murray River. The Murray River generates water from rainfall on the slopes of the Australian Alps. The northern slopes including the Mount Kosciusko region in New South Wales feeds water to the Murrumbidgee River which enters the Murray River not far from Robinvale. The southern slopes of the Australian Alps located south of the Kosciusko National Park feeds water to the north of the Murray River.

The water is transported from the Murray River to the Orchard via mainlines. The Land Owner proposes to establish two dams on the Yungera site with a combined capacity of 600 megalitres. The water will be delivered to Growers' Almondlots through a sophisticated drip irrigation system.

The delivery of water to the Orchard is under the control and direction of the Sunraysia Rural Water Authority which is also responsible for the collection and disposal of sub-surface drainage water resulting from irrigation activities.

Water is applied to the Almond Trees using two poly drip laterals with one lateral on each side of the tree row to allow alternative watering of Non Pareil and pollinator almond varieties. To achieve optimum tree growth and yields, soil moisture needs to be maintained within strict limits. Therefore, the volume of water that is applied to the almond rows each day depends on the prevailing climatic conditions, the age of the trees, drainage characteristics and moisture holding capacities of soils and roots at various parts of the Orchard. For this purpose the irrigation blocks on the Orchard have been grouped within uniform soil types.



The Land Owner has commissioned a qualified expert irrigation company to prepare a fully integrated irrigation design, water budget and drainage management plan for the Orchard. These plans and budgets were reviewed by Select Harvests' engineer to achieve a number of results: first, to ensure that the irrigation system installed on the Orchard conforms with specifications particular to almond growing and operates to maximum efficiency; secondly, to enable us to maximise the quantity and quality of the Almonds produced and achieve consistent uniform production. For further details on the irrigation requirements of the Orchard, refer to the Almond Orchard Expert's Report in section 11.

The Land Owner owns the entire infrastructure and other capital works that it has carried out on the Orchard, including the Water Licences and irrigation equipment.



## HOW THE ORCHARD IS ESTABLISHED

The Land Owner will purchase the Almond Trees for the Orchard from Select Harvests under a Tree Supply and Capital Works Agreement. The trees, which will be largely supplied from Select Harvests nursery, will be defoliated in May in preparation for planting in June 2003. Select Harvests has agreed with the Land Owner that it will, at its cost, replace and replant any Almond Tree which fails on the Orchard in the first six months after planting where Select Harvests causes such failure.

Under the Tree Supply and Capital Works Agreement, the Land Owner has also appointed Select Harvests to oversee the installation of the internal irrigation system and other infrastructure works on the Orchard prior to planting. These works include identifying and organizing the pegging of block layouts, clearing approved vegetation, broadacre weed spraying, ripping of tree rows, marking out tree locations and applying pre-plant fertilizer. Select Harvests will then plant the Almond Trees, tie them to tree stakes and protect them with supporting guards.

The Almond Trees will be planted on a 7.25 metre by 5.5 metre grid to give a density of approximately 247 trees per hectare. This spacing allows trees to grow without undue overcrowding and enable machinery to travel down the rows without damaging the crop. Select Harvests will prune the Almond Trees to promote tree shape that has the potential to achieve early yield projections and consistent quality commercial yields at full maturity.

The layout of the Orchard needs careful planning. Because the almond tree is not self-pollinating, different varieties of almond trees that flower at approximately the same time were planted to ensure bees carry out cross-pollination. Three varieties of Almond Trees will be planted, with the main Non Pareil variety being planted every second row. The other two varieties, Price, an early blooming variety, and Carmel, a later blooming variety, will be planted in alternate pollinator rows to ensure that the main variety is adequately pollinated.

### Non Pareil

Non Pareil originated in Suisun, California in 1879. It is the main variety and has been planted across one half of the Orchard. It is the most widely grown almond variety in the world because of its consistently high productivity and high market appeal as kernel and inshell. Non Pareil is the preferred table almond because of its size, shape, light colour, mild taste and ease of hand shelling which minimises kernel damage. The nut has a thin shell often referred to as 'papershell' which gives a high kernel to shell ratio and sells at a premium to all other varieties.

The tree is large and moderately spreading and harvests early. In full bearing it produces well and continues to grow in size. It is relatively resistant to frost damage and is vigorous but easy to shape and train.

As the preferred table almond, Non Pareil usually attracts a price premium.

### Carmel

Carmel is a pollinator that is sold as kernel and manufacturing product and, to a lesser extent, inshell. It is highly productive when young and is second only to Non Pareil in popularity worldwide. Carmel blooms shortly after Non Pareil and matures ready for harvest approximately one week after the conclusion of the Non Pareil harvest, allowing for an efficient harvest program.

The tree is more upright than Non Pareil and is of medium size. It is a strong pollinator of Non Pareil and is highly productive when young but may lose some tree vigour over time. Carmel has a long elongated kernel of medium size and is generally darker than Non Pareil with a stronger flavour. The nut is versatile from a marketing perspective and can be used as a table nut or a manufacturing nut. Shelling damage is usually higher than Non Pareil due to a thicker shell. Approximately one third of the Orchard will be planted with Carmel.



## Price

Price is a minor yet significant variety pollinator because it blooms within a day or two of Non Pareil. Price kernel tends to be smaller than Non Pareil and Carmel and has a similar shape to Non Pareil and is generally lighter in colour than Carmel. It is a versatile nut from a marketing perspective, much the same as Carmel. The crop matures for harvest slightly after Non Pareil but before Carmel, again allowing for an efficient harvest.

The tree generally has good vigour and is somewhat spreading but more upright than the Non Pareil tree. Price can have a tendency to have a lower bloom density on alternate years and can bear lighter crops in those years. As a pollinator, it is secondary to Carmel and is planted at no more than a 1:2 ratio to Carmel. Accordingly, the Price variety will be planted across approximately 17% of the Orchard on every sixth row.

## THE ALMOND CROP, YIELDS, HARVEST AND PROCESSING

It is expected that the Orchard will yield its first commercial crop in February-April 2006, and reach full maturity in the seventh year after the establishment of the Orchard. At full maturity, it is expected that the weighted average yield across the Orchard will be 3.46 metric tonnes per hectare.

The table below sets out the forecasted long term average yields from the first year of commercial crop to full maturity and beyond. These forecasts have been independently reviewed and endorsed by the Independent Almond Orchard Expert.

Year ended 30 June	Almond yields	
	(kilograms/ Almondlot)	(kilograms/ hectare)
2006	93	371
2007	340	1,359
2008	463	1,853
2009	803	3,212
2010 onwards p.a.	865	3,460

Of course, actual yields may vary from year to year because anticipated events may not materialise as expected, whilst unanticipated events may occur. Furthermore, some Almondlots may produce yields which are higher or lower than the estimated yields. However, all almonds produced from the Project will be pooled and Early Growers and Post 30 June Growers will share in the proceeds of sale of the pooled almonds.

Following the assessment and testing of Almonds in February each year to determine their maturity and readiness for harvest, the Almonds will be shaken to the ground with the use of mechanical tree shakers. Some Almonds may in fact fall to the ground before this process commences as a result of wind conditions.

After being shaken onto the ground, the Almonds will be swept into rows ready for pick up. Almond pick up machines will collect the rows of Almonds and transfer them into trailers for removal to stock-piles, where they will be covered prior to being transported to Select Harvests' hulling and cracking plant at Kyndalyn Park.

At the hulling and cracking plant, the harvested Almonds are first put through a pre-cleaner to remove excess dirt, sticks and stones. Then, subject to individual customers' orders and specifications, either the husk is removed to produce inshell, or in addition, the shell is cracked to produce whole kernel. After the Almonds are dried to remove excess moisture content, if necessary, they are graded having regard to size, variety and defects, if any, using United States Department of Agriculture specifications as a guide. Finally, the Almonds are put through quality control before being stockpiled in the warehouse.

As required, Almonds will be transported to Select Harvests' sorting, processing and packaging plant at Euston. All Almonds produced from the Project will be of a high grade variety and will be marketed by Select Harvests through established domestic and export channels in accordance with the selling arrangements described in section 3.



# KEY PARTICIPANTS

## THE RESPONSIBLE ENTITY

### TIMBERCORP SECURITIES LIMITED

We are the Responsible Entity of the 2003 Timbercorp Almond Project. As Responsible Entity we are required to operate the Project and perform the functions conferred on us by the Constitution and the Corporations Act. We have the power to appoint an agent or engage a person to do anything that we are authorised to do in relation to the Project. If we do so, we remain responsible for anything the agent or person has done.

On 20 December 2002, the Project was registered by the ASIC as a managed investment scheme. Our securities dealers licence enables us to operate the Project and to carry on a securities business in relation to the Project.

### COMPLIANCE MEASURES

As required by the Corporations Act, we have prepared and implemented a compliance plan for the Project. The Compliance Plan is designed to ensure your protection in light of the particular characteristics of the Project.

The Plan:

- provides an overview of the Project including its key features, documents and parties;
- describes our internal compliance framework and structures, within which the Compliance Plan is intended to operate;
- considers our ongoing obligations under the Constitution and the Corporations Act and identifies the outcomes those obligations are designed to deliver;
- identifies the investment and other risks associated with the Project and the safeguards that we have established to minimise those risks; and
- establishes the structures, processes and systems designed to meet the risks of non-compliance by us in key areas of the Project and to deliver the intended outcomes of the Project.

Within the framework of the Compliance Plan we have developed compliance procedures to meet the outcomes set out in the plan. We have engaged a registered company auditor to audit our compliance with the plan annually.

## COMPLIANCE COMMITTEE

In order to monitor our compliance with the Compliance Plan and other statutory obligations, we have established a Compliance Committee. The Committee will be required to report to our Board any breaches of the Compliance Plan and regularly assess the adequacy of the Compliance Plan. The Compliance Committee will meet regularly following the issue of this prospectus. The Committee comprises two external members and one of our representatives. The members of the Compliance Committee are as follows:

Michael J Walter FCA  
(*external member*)

Michael Walter has over 30 years' experience in advising small and medium businesses across a range of industries on accounting, audit and taxation issues. From 1978 to 1998 he was a partner with Coopers & Lybrand (later PricewaterhouseCoopers), first joining the firm in 1963. He is a fellow of the Institute of Chartered Accountants and currently practises as a chartered accountant under his own name.

Greg Bush LLB BA  
(*external member*)

Greg Bush is a commercial lawyer with over eight years experience in advising both small and medium businesses on general corporate and legal issues.

Andra Lazarescu LLB  
(*our representative*)

Andra Lazarescu is Timbercorp's legal and compliance manager and is responsible for the delivery of all legal compliance services to the Timbercorp group. She also performs a range of legal services for the Timbercorp group. Prior to joining Timbercorp, she worked in the corporate and commercial practices of a number of legal firms.





## THE DIRECTORS

Our directors and other staff have extensive experience in forestry, viticulture and other forms of irrigated agriculture. In August 2000, Punters Corner Pty Ltd, which is associated with Timbercorp's largest shareholder and Chief Executive Officer, was awarded Australia's most prestigious wine award, the Jimmy Watson Trophy, for the best one year old red wine. Our directors are as follows:



**Gary W Liddell**  
*Non Executive Chairman*

Mr Liddell is an Associate of the Institute of Chartered Accountants in Australia and is a partner in the chartered accounting firm, Liddell Weight & Co. He has been the external accountant to the Timbercorp group of companies since the commencement of operations.

Mr Liddell has vast experience in financial management and compliance work and has a detailed knowledge of primary production structures and operations.



**Robert J Hance**  
*Chief Executive Officer*

Mr Hance is a co-founder of the Timbercorp group of companies and is the Chief Executive Officer of Timbercorp. He has been in charge of the design and marketing of Timbercorp's agribusiness investment projects since incorporation.

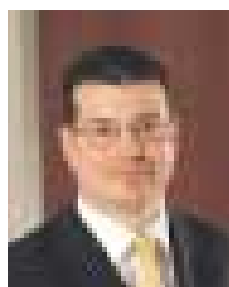
He has extensive experience in the analysis, design and marketing of primary industries based investment products.



**John M Vaughan**  
*Executive Director*

Mr Vaughan has been a director of Timbercorp Limited since its incorporation in 1992. He is a Fellow of the Australian Society of Certified Practising Accountants. He has worked with several Australian and overseas listed natural resource companies at senior or board level and has extensive experience in project development, treasury and corporate management.

Mr Vaughan oversees the group's forestry and horticultural operations.



**Sol C Rabinowicz**  
*Executive Director*

Mr Rabinowicz was appointed to the Board of Timbercorp Limited on 1 July 2000 and oversees the group's corporate operations. He commenced employment with Timbercorp in 1996 following its ASX listing and has served as both Company Secretary and General Manager – Corporate, responsible for the Company's corporate, legal, IT and administrative functions.

Prior to joining Timbercorp, Mr Rabinowicz was a senior associate in the corporate and financial services division of a Melbourne law firm. He has experience in securities industry and taxation law, having provided both corporate and legal advice to a range of clients, including Timbercorp.

## **ALMOND ORCHARD CONTRACTOR SELECT HARVESTS LIMITED**

Almond Management has engaged Select Harvests, Australia's leading integrated almond producer, processor and marketer of almonds to provide full farm management services in relation to the Orchard. Select Harvests will undertake day-to-day management of the Orchard, process the Almonds and market them in a variety of packs and sizes, ranging from 50g retail packs to 1 tonne bags, through established domestic and overseas channels.

Select Harvests' appointment is a significant factor in the offer outlined in this prospectus. It is a public company listed on the Australian Stock Exchange and is responsible for the production of approximately 30% of Australia's total crop of almonds on orchards that cover approximately 2,900 hectares of land. The orchards managed by Select Harvests are situated in northwest Victoria along the Murray River, which provides the valuable water resource for growing almonds. These orchards are producing yields and quality in line with world's best practice.

To ensure the quality of its almonds, Select Harvests has invested heavily in recent years in modern harvesting equipment and state-of-the-art processing facilities, which it owns and operates. The processing facilities have the capacity to process the yields anticipated for this Project and enable Select Harvests to control all stages of production to ensure high quality almonds are produced at the most efficient cost.

In 2001/2002, Select Harvests sold 3,140 tonnes of almonds of which 40% were exported, mainly to India and Europe. Importantly, under this Project, Select Harvests guarantees the sale of the entire crop produced each year by the end of the financial year following the year in which Almonds will be harvested. However, Select Harvests does not guarantee the sale price of the Almonds.

Following the acquisition of Lucky Candy Co. in October 1998, the largest retail packer of almonds in Australia, Select Harvests processes, packages and markets almonds and other nut and dried fruit products through Australian supermarkets under the 'Lucky' brand.

Select Harvests is a financially sound and successful company with reported net assets of \$49.3 million as at 30 June 2002, up 16% from the previous year. For the year ended 30 June 2002, group operating profit after tax increased by 30% to \$8.6 million on the back of a 36% increase for the year ended 30 June 2001.

Select Harvest's 2002 almond crop yielded 2,300 tonnes, maintaining the major yield improvement and record crop of 2,280 achieved in 1999 (2000: 2,250 tonnes). Significantly, the 2002 almond crop was produced from a smaller almond orchard estate following the sale of small orchards during the 2002 financial year. The yields are now in line with best practice and have increased by almost 135% in the past 5 years. During the same period, production has increased by over 130%. The increased yields and production reflect a major focus in recent years on improved management and horticultural practices.

As a result of increased yields and improved efficiencies in growing and processing activities, Select Harvests has maintained reduced costs of almond production by 4% on a per kilogram produced basis over the past two years, further consolidating the 13% cost reduction achieved in 1999. This places Select Harvests as one of the most efficient producers in the world.

The efficiency gains were assisted by the upgrading of the company's operations in recent years, particularly the modernisation and increased production capacity of its new hulling and shelling facility. Experienced Californian managers were engaged to run its hulling and cracking operation for the 1999 and 2000 seasons and to train its staff. This proved very successful for the company in terms of both efficiency gains and product quality.

Select Harvests has a strong track record as a producer, marketer and exporter of almonds. The yields produced to date have been achieved on mature orchards established over 15 years ago. More recent orchards, including the orchard established under this Project have been developed with modern growing techniques and best practice farm management.

Select Harvests has been appointed to oversee the establishment of the infrastructure and other capital works on the Land and the planting of the Almond Trees on the Orchard. Its appointment will ensure that when completed, the Orchard will have been established consistently with proven techniques that have been developed by it over time. This factor, together with Select Harvests' proven orchard management record, will help maximise almond yields.

Select Harvests' expertise and experience in growing, harvesting, processing and marketing almonds, as well as its established relationships with domestic and overseas almond buyers underpin the commercial viability of the Project.

## **LAND OWNER**

Almond Land Pty Ltd

Almond Land is a subsidiary of our parent company, Timbercorp Limited. It owns the Land and will own the entire infrastructure and other capital works necessary to operate the Orchard, including the irrigation equipment and Water Licences.

## **PROJECT MANAGER**

Almond Management Pty Ltd

Almond Management is also a subsidiary of our parent company, Timbercorp Limited. The board of directors and key personnel of Almond Management have substantial expertise in the management of almond orchards and other horticultural projects.

# THE TIMBERCORP GROUP



We are a wholly owned subsidiary of Timbercorp. It is, therefore, appropriate that we provide you with information about our parent company and the Timbercorp group.

## THE TIMBERCORP GROUP

The Timbercorp group of companies was established in 1987 to bring together the forestry, viticulture and silviculture management expertise built up by its founders. In 1991 and 1992, the Timbercorp group began establishing Tasmanian Bluegum plantations with approximately 150 hectares in western Victoria and 840 hectares in the south west of Western Australia.

Timbercorp was incorporated on 21 February 1992 specifically to act as project manager of an annual series of forestry projects called the Timbercorp Eucalypts Projects. Following a period of substantial growth, the company listed on the Australian Stock Exchange in May 1996.

## WHAT DOES THE TIMBERCORP GROUP DO?

Timbercorp is Australia's leading integrated agribusiness investment management company. It specialises in developing, promoting, managing and financing a continuing series of agribusiness investment projects, including olive, almond and eucalypts projects.

The Timbercorp group employs over 80 full time staff in the areas of land acquisition, forestry and horticulture operations, marketing, finance and corporate and legal administration. It has corporate and marketing offices in all capital cities as well as a number of regional offices with an experienced team of scientists qualified in a number of agricultural disciplines including, olive grove management, tree physiology, forestry and research and support staff who have many years' combined experience in large scale agribusiness project development.

Timbercorp also has a research and development and technical forestry and horticultural division. This division provides a range of services including the use of global positioning systems to locate farms accurately and soil sample analysis for optimum planting, maintenance and harvesting. With the consolidation of information technology operations and services in this division, the Timbercorp group is well placed to evaluate agribusiness opportunities as public interest in agricultural investments remains high.

## Almond division

In August 2000, the Timbercorp group announced a further expansion of its horticultural interests into the almond industry. As a 75% shareholder in Almond Australia Pty Ltd, the Timbercorp group expects to establish up to 4,000 hectares of almond orchards in the Sunraysia region of north west Victoria.

Under the group's inaugural project, the 2001 Timbercorp Almond Project, the group sold interests in approximately 220 hectares of almond orchards to participants. Both the 2002 Timbercorp Almond Project and the 2002 Timbercorp Project (Private Offer No 1) closed heavily oversubscribed and the group now has over 1,350 hectares of almond orchards under management, with the first commercial crop expected in February 2004.

The strategic alliance with Australian Stock Exchange listed Select Harvests, Australia's leading integrated producer, processor and marketer of Almonds is considered a major benefit to participants in the Timbercorp group's almond projects. Selects Harvests will manage the day-to-day farming operations, harvest and process almonds grown on orchards established by the Timbercorp group and market those almonds through established domestic and export markets.

### **Forestry division**

After more than a decade of plantation operations, Timbercorp is regarded as one of Australia's leading hardwood plantation investment managers. To date, Timbercorp has raised in excess of \$310 million to establish more than 73,000 hectares of Tasmanian Bluegums on more than 400 separate properties in Western Australia, western Victoria and south east South Australia.

In July 1998, Timbercorp established a treefarming division, Timbercorp Forestry, which employs a number of the leading participants in the hardwood plantation industry. The group now also produces and supplies genetic eucalypt seedlings comprising superior genetics.

As the Bluegum industry moves into the development phase, Timbercorp has recognised the importance of harvesting, wood processing (primarily chipping) and sale. Over the past three years, Timbercorp has developed an advanced harvesting and in-field chipping system which has been successfully harvesting and processing plantation Bluegums for a leading paper manufacturer. Timbercorp is now operating the harvesting and in-field chipping equipment and

technology, as a contractor, in Western Australia in preparation for the first harvest of its growers' wood in February 2003. Timbercorp expects that this technology combined with anticipated improvements in harvesting and processing of Bluegum plantations, will enhance returns to growers participating in plantation projects. To date, the in-field chipping process is performing far in excess of expectations.

### **Olive division**

Approximately four years ago, Timbercorp decided to expand its activities and commenced investigating a range of primary production projects. Following a detailed study of the olive oil industry, the company formed the view that the industry fundamentals were conducive to the establishment of large scale olive plantations. As a result of this work, the company, through its subsidiary, Olivecorp Land Pty Ltd, successfully established its first olive grove, approximately 362 hectares, in the 2000 financial year. The grove was established in Boort, in north-central Victoria.

The 2000 project was heavily oversubscribed. Interests in approximately 1,000 hectares of olive groves were sold to participants in the 2001 Timbercorp Olive Project, which was also heavily oversubscribed and interests in a further approximately 600 hectares of olive groves were sold to participants in the 2002 Timbercorp Olive Project. A further project is on offer in the 2003 financial year, on the way to a planned 3,500 hectare grove.

Timbercorp's 2,100 hectare olive plantation estate at Boort is the largest in Australia and significant on a world scale. The development is intended to comprise a processing facility for more than 50,000 tonnes of olives a year that is capable of producing up to 10 million litres of export grade premium olive oil a year. The first stage of the processing plant is well advanced and is expected to be commissioned by April 2003.



## Financial accounts of Timbercorp

As a listed public company, Timbercorp is required to lodge periodic accounts and other relevant information with the Australian Stock Exchange. Extracts of the Timbercorp group's consolidated audited accounts in respect of the three months ended 30 September 2002 and the financial years ended 30 June 2002 and 30 June 2001 are set out on this page. Effective 30 September 2002, Timbercorp changed its financial year end from 30 June to 30 September.

A full set of Timbercorp's financial statements including the Notes to the financial statements is available on request.

## EXTRACT OF AUDITED STATEMENT OF FINANCIAL PERFORMANCE

for the period ended

	30 Sept 2002 \$'000 3 months	30 June 2002 \$'000 12 months	30 June 2001 \$'000 12 months
<b>Profit From Ordinary Activities Before Income Tax Expense</b>			
<b>Tax Expense</b>	128	37,864	37,834
Income tax (expense) / benefit relating to ordinary activities	7	(11,021)	(11,774)
<b>Net Profit</b>	135	26,843	26,060
Net result attributable to outside equity interests	251	(4,043)	(704)
<b>Net Profit Attributable to Members of the Parent Entity</b>	386	22,800	25,356
<b>Total Changes in Equity Other than those Resulting from Transactions with Owners as Owners</b>	386	22,800	25,356

## EXTRACT OF AUDITED STATEMENT OF FINANCIAL POSITION

as at

	30 Sept 2002 \$'000	30 June 2002 \$'000	30 June 2001 \$'000
<b>Current Assets</b>			
Cash	21,518	30,033	14,316
Receivables	15,018	6,426	5,144
Inventories at cost	1,402	1,495	832
Other financial assets	10,221	22,355	28,200
Other	4,152	4,868	4,880
<b>Total Current Assets</b>	52,311	65,177	53,372
<b>Non-Current Assets</b>			
Other financial assets	115,213	119,979	112,124
Property, plant and equipment	201,567	196,990	189,361
Self-generating and regenerating assets (SGARAs)	33,586	32,470	18,575
Intangibles	1,111	1,148	921
Deferred tax assets	1,490	1,641	713
Other	5,516	4,958	5,083
<b>Total Non-Current Assets</b>	358,483	357,186	326,777
<b>Total Assets</b>	410,794	422,363	380,149
<b>Current Liabilities</b>			
Payables	13,671	22,514	31,282
Interest-bearing liabilities	9,978	6,633	7,731
Current tax liabilities	8,019	20,744	10,500
Provisions	5,813	588	811
Receipts in advance	13,368	16,608	18,220
<b>Total Current Liabilities</b>	50,849	67,087	68,544
<b>Non-Current Liabilities</b>			
Payables	500	500	1,110
Interest-bearing liabilities	101,965	92,909	103,398
Deferred tax liabilities	10,419	10,390	19,174
Provisions	158	158	91
Receipts in advance	49,301	48,680	52,116
<b>Total Non-Current Liabilities</b>	162,343	152,637	175,889
<b>Total Liabilities</b>	213,192	219,724	244,433
<b>Net Assets</b>	197,602	202,639	135,716
<b>Equity</b>			
Contributed equity	99,330	99,330	57,418
Retained profits	92,654	97,443	76,547
Parent entity interest	191,984	196,773	133,965
Outside equity interest	5,618	5,866	1,751
<b>Total Equity</b>	197,602	202,639	135,716

### Financial accounts of Timbercorp Securities

As a licensed responsible entity, we are required to lodge periodic accounts and other relevant information with ASIC. Extracts of our audited accounts in respect of the three months ended 30 September 2002 and the financial years ended 30 June 2002 and 30 June 2001 are set out on this page. Effective 30 September 2002, Timbercorp Securities changed its financial year end from 30 June to 30 September.

A full set of our financial statements including the Notes to the financial statements is available on request.

### EXTRACT OF AUDITED STATEMENT OF FINANCIAL PERFORMANCE

for the period ended

	30 Sept 2002 \$'000 3 months	30 June 2002 \$'000 12 months	30 June 2001 \$'000 12 months
<b>Profit From Ordinary Activities Before Income Tax Expense</b>			
<b>Tax Expense</b>	189	2,100	5,974
Income tax expense relating to ordinary activities	(57)	(630)	(2,016)
<b>Net Profit</b>	132	1,470	3,958

### EXTRACT OF AUDITED STATEMENT OF FINANCIAL POSITION

as at

	30 Sept 2002 \$'000	30 June 2002 \$'000	30 June 2001 \$'000
<b>Current Assets</b>			
Cash	1,758	29,660	12,990
Receivables	2,464	492	-
Other financial assets	3,041	-	-
Other	837	1,175	837
<b>Total Current Assets</b>	8,100	31,327	13,827
<b>Total Assets</b>	8,100	31,327	13,827
<b>Current Liabilities</b>			
Payables	1,690	3,877	2,155
Interest-bearing liabilities	-	18,998	5,648
Current tax liabilities	800	2,646	799
Receipts in advance	-	328	-
<b>Total Current Liabilities</b>	2,490	25,849	8,602
<b>Non-Current Liabilities</b>			
Deferred tax liabilities	-	-	1,217
<b>Total Non-Current Liabilities</b>	-	-	1,217
<b>Total Liabilities</b>	2,490	25,849	9,819
<b>Net Assets</b>	5,610	5,478	4,008
<b>Equity</b>			
Contributed equity	50	50	50
Retained profits	5,560	5,428	3,958
<b>Total Equity</b>	5,610	5,478	4,008





# RISK ANALYSIS



The Project is a long-term commercial horticultural project and like any agricultural venture involves risks. You should carefully consider the risks detailed below before making an application to participate in the Project.

We have considered these risks and have developed strategies to reduce the incidence, and minimise the impact, of such risks.

## PROJECT SPECIFIC RISKS

### Almond Trees

Select Harvests will source and plant all of the Almond Trees on the Orchard based on advice given to the Land Owner of the appropriate mix of almond tree varieties. As one of the largest growers of almonds in Australia, Select Harvests' nurseries adopt best horticultural practices to ensure the production of superior quality almond trees.

Select Harvests has agreed with the Land Owner that it will, at its cost, replace and replant any Almond Tree which fails on the Orchard in the first six months after planting where Select Harvests causes such failure.

### Yields, pests and diseases

As with any horticultural crop, there are a number of factors that may affect yield including rainfall, storms, water supply, variations in soil types, pestilence, vermin, disease, frost and wind, as well as poor horticultural practices. While we will make every effort to minimise annual variations in yields and production, yields may vary from tree to tree and from harvest to harvest.

Where practicable, we will arrange appropriate insurance cover to protect the Orchard against the risks of fire and other insurable risks but not crop insurance. We will apply disease and pest management practices to control the onset and spread of these risks. The health of the Almond Trees will be constantly monitored and sick trees will be replaced if required.

### Water

The irrigation water from the Murray River is suitable for almonds, having particular regard to its salinity. This may change over time.

### Irrigation infrastructure

The Land Owner has incorporated the most advanced design features in the internal irrigation system, as well as the pipeline, dams, pump and other components of the irrigation infrastructure installed or to be installed on the Land. The substantial capital outlay involved in acquiring the high quality plant and equipment should reduce the possibility of major equipment failure. Regular maintenance and insurance cover will also assist in mitigating this risk.

### Water Licences

An adequate supply of water is crucial to the success of the Project. The Land Owner has adopted a policy to secure sufficient Water Licences prior to the commencement of each irrigation season. Although these are permanent rights, unexpected changes in climatic conditions may affect future allocation of water rights. The risk of this occurring is small. In fact, according to records held by the Sunraysia Rural Water Authority, holders of water licences received their full water

entitlements in 96 of the past 100 years. In the remaining 4 years, holders of water licences received between 60-80% of their full entitlements.

Importantly, despite the severe present drought conditions, the Sunraysia Rural Water Authority has confirmed to the Land Owner that it will receive its full allocation of water rights this year.

### Infrastructure and services

The success of the Project will also depend on our continued access to infrastructure, including power, irrigation and transport, and our ability to obtain all necessary regulatory approvals to operate the Orchard, including a licence to divert water to the Orchard from the Murray River and market the almonds. This may be jeopardised as a result of changes in government policy or the law.

## REVENUE AND FINANCIAL RISKS

### Almond prices

Being the world's major supplier of almonds, the size of the Californian crop will have a significant bearing on global almond prices and Growers' returns from year to year. Prices will fluctuate over the life of the Project.

Almonds in world markets are priced in US\$. Therefore, fluctuations in the US\$/A\$ exchange rate will also influence Growers' returns. Further, global economic conditions and actions taken by individual world governments and regulatory authorities, particularly those of the United States, will have an impact on the supply and world price of almonds.



### Select Harvests

The Almond Orchard Management Agreement addresses the risk of not selling the almond crop in any year. Under that agreement, Select Harvests guarantees to the Project Manager that the entire annual crop of Almonds available for harvest in a particular season will be sold by 30 June in the Financial Year following the year in which the harvest for that season commences and that it will endeavour to maximise returns. However, Select Harvests does not guarantee the sale price of the Almonds.

### Returns

The ultimate financial success of the Project will depend on yield rates achieved, the prevailing market conditions when almonds are sold and the other factors discussed in section 4.

## OTHER RISKS

### Changes in the law

The success of the Project and the returns achieved by Growers may also be affected by changes in the taxation, regulatory or legal environment, including changes in legislation and the imposition of new levies, imposts or other taxes.

Product Ruling PR 2003/2 protects Growers provided that the Project is carried out materially in accordance with the details we provided to the Australian Taxation Office and described in the ruling. The ruling is withdrawn from 30 June 2006, although it continues to apply to all persons who became Growers prior to its withdrawal. However, Growers should be mindful of the fact that adverse changes in income tax laws may affect the timing and ability of Growers to claim deductions for payments incurred in the Project. Although Product Rulings PR 2003/2 constitutes a binding public ruling in respect of the Project, it may be superseded by a legislative change in tax laws.

We do not, nor does any other person, firm or corporation associated with the issue of this prospectus guarantee the amount or timing of any tax deduction and there remains the risk that the Australian Taxation Office may disallow any claim in this regard or not give a favourable product ruling for the Project. If income tax deductions are disallowed, Growers may be required to pay penalty tax and interest.

The use of appropriate systems and safeguards may mitigate a number of these risks. However, it must be appreciated that many are outside our control.

### Consumer demand

While current trends suggest otherwise, there is a risk that local and overseas consumer preference for almonds and almond related products may change during the life of the Project.

### Changes in technology

Changes in technology may make other almond orchards more competitive and, therefore, have an impact on forecasted returns. We are committed to using world best management practices and to upgrading these practices, as appropriate, with the best available technology. As Australia's largest producer, processor and marketer of almonds, Select Harvests is focused on leading the market in technology.

### Local competition

There is a risk that local competition may develop for the supply of almonds to the domestic and export markets and this could have a material adverse affect on the Project's operating and financial performance.

### Default by Growers

Our ability and the ability of the Project Manager to provide quality services may be affected by Growers' failure to pay annual management and licence fees when due. If a Grower defaults, we may take all appropriate action to ensure that fees are paid when they fall due. Default provisions are contained in the Constitution and the other Project Agreements.

### Project Agreements

Anything that affects our ability to meet our obligations under the Almondlot Management Agreement and the ability of the Land Owner to meet its obligations under the Licence and Joint Venture Agreement could also constitute a risk to Growers.

### Illiquid interests

The Project is not intended to be a short-term investment and should be viewed as being one for a fixed term of approximately 20 years. It is expected that interests issued under this prospectus will be relatively illiquid because there is unlikely to be a formal secondary market for the sale of interests.

We are not under any obligation to buy back the interest of Growers in any Almondlot. We will, however, maintain a register of interested buyers and sellers to the extent permitted by law and make the register available for inspection to Growers free of charge. If you wish to sell your interest in any Almondlot during the life of the Project, you should seek independent professional advice, as there may be legal and taxation implications.

## RISK MANAGEMENT

We are preparing an initial management plan with the assistance of Select Harvests for the financial years ending 30 June 2003 and 30 June 2004. The plan includes risk mitigation plans that, to the maximum extent possible, will reduce the effect of the risks described above. We will also prepare a management plan for each subsequent financial year, again with the assistance of Select Harvests.

The management plan also includes a horticultural plan and an operational plan, including human resources and machinery requirements and farming programmes. Each year a horticultural program will be prepared together with financial and operational budgets.

We will manage the Project at all times in the best interests of Growers and in consultation with Select Harvests personnel to ensure that best horticultural and industry practices are used.

Select Harvests' proven ability to undertake:

- the day to day management of the Orchard;
- the processing of the Almonds at a processing facility in which it has recently invested substantial capital outlay; and
- the marketing of the entire crop of Almonds each year through established domestic and overseas channels,

are considered to be a major benefit to Growers participating in the Project. For details on Select Harvests' expertise refer to the section 7 of this prospectus.

# PRODUCT RULING PR 2003/2

## INCOME TAX: 2003 TIMBERCORP ALMOND PROJECT

(revised arrangement)

### Preamble

*The number, subject heading, and the What this Product Ruling is about (including Tax law(s), Class of persons and Qualifications sections), Date of effect, Withdrawal, Arrangement and Ruling parts of this document are a 'public ruling' in terms of Part IVAAA of the Taxation Administration Act 1953. Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.*

### No guarantee of commercial success

The Australian Taxation Office (ATO) does not sanction or guarantee this product. Further, we give no assurance that the product is commercially viable, that charges are reasonable, appropriate or represent industry norms, or that projected returns will be achieved or are reasonably based.

Potential participants must form their own view about the commercial and financial viability of the product. This will involve a consideration of important issues such as whether projected returns are realistic, the 'track record' of the management, the level of fees in comparison to similar products, how this product fits an existing portfolio, etc. We recommend a financial (or other) adviser be consulted for such information.

This Product Ruling provides certainty for potential participants by confirming that the tax benefits set out below in the Ruling part of this document are available provided that the arrangement is carried out in accordance with the information we have been given and have described below in the Arrangement part of this document.

If the arrangement is not carried out as described below, participants lose the protection of this Product Ruling. Potential participants may wish to seek assurances from the promoter that the arrangement will be carried out as described in this Product Ruling.

Potential participants should be aware that the ATO will be undertaking review activities to confirm the arrangement has been implemented as described below and to ensure that the participants in the arrangement include in their income tax returns income derived in those future years.

### Terms of Use of this Product Ruling

This Product Ruling has been given on the basis that the person(s) who applied for the Ruling, and their associates, will abide by strict terms of use. Any failure to comply with the terms of use may lead to the withdrawal of this Ruling.

### What this Product Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the 'tax laws' identified below apply to the defined class of persons who take part in the arrangement to which this Ruling refers. In this Ruling this arrangement is sometimes referred to as the 2003 Timbercorp Almond Project or simply as 'the Project'.

### Tax law(s)

2. The tax laws dealt with in this Ruling are:
  - Section 6-5 of the Income Tax Assessment Act 1997 ('ITAA 1997');
  - Section 8-1 (ITAA 1997);
  - Section 17-5 (ITAA 1997);
  - Section 25-25 (ITAA 1997);
  - Section 70-35 (ITAA 1997);
  - Division 27 (ITAA 1997);
  - Division 35 (ITAA 1997);
  - Division 40 (ITAA 1997);
  - Division 328 (ITAA 1997);
  - Section 82KL of the Income Tax Assessment Act 1936 ('ITAA 1936');
  - Section 82KZL (ITAA 1936);
  - Section 82KZME (ITAA 1936);
  - Section 82KZMF (ITAA 1936); and
  - Part IVA (ITAA 1936).

### Goods and Services Tax

3. In this Ruling all fees and expenditure referred to include Goods and Services Tax ('GST') where applicable. In order for an entity (referred to in this Ruling as a Grower) to be entitled to claim input tax credits for the GST included in its expenditure, it must be registered or required to be registered for GST and hold a valid tax invoice.

### Changes in the Law

4. The Government is currently evaluating further changes to the tax system in response to the Ralph Review of Business Taxation and continuing business tax reform is expected to be implemented over a number of years. Although this Ruling deals with the taxation legislation enacted at the time it was issued, later amendments may impact on this Ruling. Any such changes will take precedence over the application of this Ruling and, to that extent, this Ruling will be superseded.
5. Taxpayers who are considering participating in the Project are advised to confirm with their taxation adviser that changes in the law have not affected this Product Ruling since it was issued.

### Note to promoters and advisers

6. Product Rulings were introduced for the purpose of providing certainty about tax consequences for participants in projects such as this. In keeping with that intention, the Tax Office suggests that promoters and advisers ensure that participants are fully informed of any legislative changes after the Ruling is issued.

### Class of persons

7. The class of persons to whom this Ruling applies is the persons who are more specifically identified in the Ruling part of this Product Ruling and who enter into the arrangement specified below on or after the date this Ruling is made. They will have a purpose of staying in the arrangement until it is completed (i.e., being a party to the relevant Agreements until their term expires) and deriving assessable income from this involvement. In this Ruling these persons are referred to as 'Growers'.
8. The class of persons to whom this Ruling applies does not include persons who intend to terminate their involvement in the arrangement prior to its completion, or who otherwise do not intend to derive assessable income from it.

### Qualifications

9. The Commissioner rules on the precise arrangement identified in the Ruling. If the arrangement described in the Ruling is materially different from the arrangement that is actually carried out, the Ruling has no binding effect on the Commissioner. The Ruling will be withdrawn or modified.
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### Date of effect

11. This Ruling applies prospectively from 29 January 2003, the date this Ruling is made. However, the Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

12. If a taxpayer has a more favourable private ruling (which is legally binding), the taxpayer can rely on that private ruling if the income year to which it relates has ended or has commenced but not yet ended. However if the arrangement covered by the private ruling has not commenced, and the income year to which it relates has not yet commenced, this Ruling applies to the taxpayer to the extent of the inconsistency only (see Taxation Determination TD 93/34).

### Withdrawal

13. This Product Ruling is withdrawn and ceases to have effect after 30 June 2006. The Ruling continues to apply, in respect of the tax law(s) ruled upon, to all persons within the specified class who enter into the arrangement specified below. Thus, the Ruling continues to apply to those persons, even following its withdrawal, who entered into the specified arrangement prior to withdrawal of the Ruling. This is subject to there being no change in the arrangement or in the person's involvement in the arrangement.

### Previous Ruling

14. This Ruling replaces Product Ruling PR 2002/143 which is withdrawn on and from the date this Ruling is made 29 January 2003. Product Ruling PR 2002/143 will continue to apply to participants who entered into the Project on or before 29 January 2003.

### Arrangement

15. The arrangement that is the subject of this Ruling is specified below. This description incorporates the following documents:
- Application for a Product Ruling dated 27 August 2002;
  - Draft Management Agreement between Timbercorp Securities Limited ('TSL') and Almond Management Pty Ltd ('AMPL'), dated 23 August 2002;
  - Draft **Constitution** for the 2003 Timbercorp Almond Project, dated 27 August 2002;
  - Draft Compliance Plan for the 2003 Timbercorp Almond Project, dated 27 August 2002;
  - Draft Custody Agreement for the 2003 Timbercorp Almond Project, dated 27 August 2002;
  - Draft **Almondlot Management Agreement** between TSL and each Grower, dated 28 October 2002;
  - Draft Prospectus for the 2003 Timbercorp Almond Project, dated 28 November 2002 ('the Prospectus');
  - Draft Lease Agreement for the 2003 Timbercorp Almond Project (Yungera Site) between ALPL as Lessor and TSL as Lessee, provided on 5 December 2002;
  - Draft Sub-lease Agreement for the 2003 Timbercorp Almond Project (Yungera Site) between TSL as Sub-lessor and ALPL as Sub-lessee, provided on 5 December 2002;
  - Draft **Licence and Joint Venture Agreement** between ALPL, TSL and each Grower, dated 9 December 2002;
  - Draft Almond Orchard Management Agreement for the 2003 Timbercorp Almond Project between AMPL, Select Harvests Limited ('Select'), TSL, Timbercorp Limited, Almond Investments Australia Pty Ltd and ALPL, undated;
  - Draft Tree Supply and Capital Works Agreement for the 2003 Timbercorp Almond Project between ALPL, Select, Timbercorp Limited and Almond Investments Australia Pty Ltd, undated;
  - Draft 2003 Timbercorp Almond Project Finance Package, undated; and
  - Correspondence and attachments from the Applicant dated 28 October 2002, 22 November 2002, 25 November 2002, 26 November 2002, 28 November 2002 5 December 2002, 9 December 2002 and 20 January 2003.

**Note: certain information has been provided on a commercial-in-confidence basis and will not be disclosed or released under Freedom of Information legislation.**

16. The documents highlighted are those Growers enter into or become a party to. The Loan Agreement referred to in the Finance Package will be executed where a Grower successfully applies for finance from Timbercorp Finance Pty Ltd. There are no other agreements, whether formal or informal, and whether or not legally enforceable, which a Grower, or any associate of a Grower, will be a party to, which are part of the arrangements to which this Ruling applies. All Australian Securities and Investments Commission (ASIC) requirements are, or will be, complied with for the term of the agreements. The effect of these agreements is summarised as follows.

### Overview

17. This arrangement is called the 2003 Timbercorp Almond Project.

Location	Yungera site, near Boundary Bend north west Victoria
Type of business each participant is carrying on	Cultivating almond trees on their designated 0.25 hectare Almondlots and harvesting the almonds for processing and sale
Area under cultivation	Up to 500 hectares will be divided into 2000 Almondlots of 0.25 hectares each. There is an option to accept oversubscriptions and cultivate additional land.
Minimum subscription	No minimum subscription
Minimum number of Almondlots than can be subscribed for	Two (2), although TSL reserves the right in its absolute discretion to accept applications for less than two Almondlots.
Number of almond trees	An average of 247 trees per hectare or 62 trees per Almondlot
Term of the Project	Approximately 20 years commencing on acceptance of a Grower's application and ending on 30 June 2023
Initial cost to Growers	\$6,065 per Almondlot, comprising initial Management Fee of \$5,200 and Licence Fee of \$865
Initial cost per hectare	\$24,260
Other costs to Growers	On going costs will be payable (refer to paragraph 27).
Joint Venture	Each Grower will enter into a joint venture with ALPL. The Grower will be entitled to 90% of the joint venture assets and will be entitled to 90% of the almonds and of the proceeds of sale. The Grower will also be responsible for 90% of the management fees.

18. The Land Owner, ALPL, will establish an almond orchard on land known as the Yungera site which is situated within close proximity to Boundary Bend, in north west Victoria. The Land Owner will also establish all infrastructure and other capital works necessary to operate a commercial almond growing operation.
19. The offer to participate in the Project is open until the expiry of the prospectus. Application moneys payable by applicants who are accepted into the Project on or before 15 June 2003 will be in respect of services to be wholly provided by 30 June 2003. TSL will only accept applicants during the period 16 June 2003 to 30 June 2003 if the services in consideration of the application moneys payable by these applicants can be wholly provided by 30 June 2003. Applicants who are accepted on or before 30 June 2003 are described as 'Early Growers'. Applicants who are accepted into the Project on or after 1 July 2003 and before the offer period closes are referred to as 'Post 30 June Growers'. The application moneys payable by 'Post 30 June Growers' on application are payable in respect of services to be wholly provided by 30 June 2004. It should be noted that

TSL will only provide services following the execution of the Licence and Joint Venture Agreement and the Almondlot Management Agreement.

20. Growers (in joint venture with ALPL) will enter into the Almondlot Management Agreement with TSL, to perform services in relation to the cultivation and management of their Almondlots. Under the Management Agreement, TSL will engage AMPL to carry out the Orchard Services required under the Almondlot Management Agreement and to sell the almonds. Under the Almond Orchard Management Agreement, AMPL has engaged Select to undertake the day to day management of the Almondlots, harvest, process and sell the almonds.
21. Under the Almond Orchard Management Agreement, Select guarantees to AMPL that the entire annual crop of almonds available for harvest in a particular season will be sold by 30 June in the financial year after the year in which the harvest for that season commences. This Agreement also provides that until the almonds from the Project are sold, they will be kept separate from all other almonds that have been processed or stored by Select. Select will pool the Growers' almonds with all other almonds sold by it. As contemplated by Schedule 1 of this Agreement, sub-pools will be established by Select. These sub-pools will be based on grades that will be marketed separately and for which substantial price differentials will exist. Prices will be calculated separately for each sub-pool. Based on this calculation, each Grower will receive the same price as Select receives for each sub-pool. Accordingly, each Grower will receive a pro-rata share of the net sale proceeds less his or her annual costs.
22. TSL will endeavour to arrange insurance on the Growers' behalf. Where this is available, Growers are required to insure their Almondlots against damage or destruction by fire and other insurable risks. TSL will arrange payment of insurance premiums to the appropriate insurers.

#### **Licence and Joint Venture Agreement**

23. Under the Licence and Joint Venture Agreement, ALPL warrants that it will use best endeavours to establish the Orchard by 30 June 2003. Under this agreement each Grower will be given a right to use and occupy a minimum of two 0.25 hectare Almondlots for a period of approximately 20 years ending on 30 June 2023, for the purpose of cultivating the Almondlots for the production of almonds for processing and sale. TSL has the discretion to accept an application for less than two Almondlots.
24. Under the agreement, each Grower will enter into a joint venture arrangement with ALPL (on a 90%:10% basis) in respect of the cultivation and management of their Almondlots. As a result, each Grower will be responsible for 90% of all management costs associated with the cultivation and management of their Almondlots and will be entitled to 90% of all produce. In return for paying an annual licence fee, each applicant Grower obtains a non-exclusive licence to use and occupy Almondlots (in joint venture with ALPL). Under the terms of the agreement, a Grower may only use the land for the purpose of cultivating and harvesting almonds for processing and sale.
25. At the expiration of the Project, each Grower must return the Almondlots to ALPL in good condition but is not required to remove the almond trees or restore the Almondlots to their original condition.

#### **Almondlot Management Agreement**

26. Under the Almondlot Management Agreement, each Grower (in joint venture with ALPL) engages TSL to manage the orchard on behalf of the Grower. TSL is required to perform the services listed in a proper and efficient manner in accordance with good horticultural and environmental practices. Included in the listed services are pruning of the almond trees, vermin control, obtaining water licences and irrigating the orchard, soil testing, fertilising the trees, destruction of diseased trees, keeping improvements in good repair, maintaining fire breaks, soil management, weed control, keeping records of chemicals applied, inspection of stakes, fences and equipment, retying trees to stakes or trellising where required and replacement of trees where required.
27. TSL will also prepare, or arrange for the preparation of, annual Management Plan for the Project, including a horticultural plan for the Orchard, horticultural program, operational plan and annual financial and

operational budgets in relation to these horticultural matters, review the Management Plan and, if necessary, make amendments to it. The initial Management Plan for the Financial Year ended 30 June 2003 will be prepared on or about the Commencement Date or before 30 June 2003, whichever date is earlier and attached to the Agreement as the Second Schedule. TSL will also be responsible for harvesting, processing and sale of almonds as well as the provision of administrative services.

#### **Fees**

28. Under the terms of the Licence and Joint Venture Agreement and the Almondlot Management Agreement, Growers will make the following payments per Almondlot:

##### *Early Growers*

- \$5,200 management fee in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2003 payable in advance on or before the Commencement Date ('initial management fee');
- \$1,870 management fee in respect of services to be provided in the period 1 July 2003 to 30 June 2004 payable on 31 October 2003;
- \$1,870 management fee in respect of services to be provided in the period 1 July 2004 to 30 June 2005 payable on 31 October 2004;
- \$865 licence fee for the period from the Commencement Date until 30 June 2003 payable on or before the Commencement Date;
- \$865 licence fee for each of the Financial Years ending 30 June 2004 and 30 June 2005 payable on 31 October 2003 and 31 October 2004, respectively.

##### *Post 30 June Growers*

- \$5,200 management fee in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2004 payable in advance on or before the Commencement Date ('initial management fee');
- \$1,870 management fee in respect of services to be provided in the period 1 July 2004 to 30 June 2005 payable on 31 October 2004;
- \$865 licence fee for the period from the Commencement Date until 30 June 2004 payable on or before the Commencement Date;
- \$865 licence fee for the Financial Year ending 30 June 2005 payable on 31 October 2004.

##### *All Growers*

From and including the Financial Year ending 30 June 2006 all Growers will pay the following fees in each Financial Year:

- management fee in respect of services to be provided in each Financial Year to be estimated in the first instance by TSL and adjusted once the actual costs of managing the Grower's Almondlots are determined, payable on 31 October each year;
- an additional management fee of 3% of the proceeds of sale;
- an incentive fee, of 25% of so much of the proceeds of sale (after deducting the fee referred to in the previous dot point) payable to a Grower in a financial year as exceeds the proceeds estimated in the prospectus, less any allowance for inflation arriving at such estimate, but indexed from the date of the Almondlot Management Agreement. This fee will be calculated on a 2 year rolling basis to allow for variations in yields from year to year;
- licence fee the amount being the licence fee payable on the immediately preceding 31 October, indexed, payable on 31 October each year.

29. If a Grower fails to pay an amount payable by the due date, the Constitution sets-out the manner in dealing with such default.

## Finance

30. Growers can either fund their participation in the Project themselves, borrow from an independent lender, or may elect to use the financing packages offered by Timbercorp Finance Pty Ltd (a lender associated with the Responsible Entity).
31. Under the financing package offered by Timbercorp Finance Pty Ltd ('the Lender'), Growers may enter into the following finance arrangement.
32. A loan application fee of \$250 is payable. The minimum loan is \$5,000. The Lender will lend, generally, up to 80% of the fixed fees payable by Growers during the first three years of the Project at commercial interest rates. In the event of default, a higher interest rate will apply. In all instances, the loan is repayable by equal monthly installments of principal and interest deducted from the borrower's bank account under a direct debit authority. All or part of a loan may be repaid at any time without penalty. Corporate borrowers are required to provide guarantees and indemnities. The provision of finance involves full recourse loans and the Lender will pursue legal action against defaulting borrowers.
33. This Ruling does not apply if the finance arrangement entered into by the Grower includes or has any of the following features:
  - there are split loan features of a type referred to in Taxation Ruling TR 98/22;
  - there are indemnity arrangements or other collateral agreements in relation to the loan designed to limit the borrower's risk;
  - 'additional benefits' are or will be granted to the borrowers for the purpose of section 82KL or the funding arrangements transform the Project into a 'scheme' to which Part IVA may apply;
  - the loan or rate of interest is non-arm's length;
  - repayments of the principal and payments of interest are linked to the derivation of income from the Project;
  - the funds borrowed, or any part of them, will not be available for the conduct of the Project but will be transferred (by any mechanism, directly or indirectly) back to the lender or any associate of the lender;
  - lenders do not have the capacity under the loan agreement, or a genuine intention, to take legal action against defaulting borrowers; or
  - entities associated with the Project, other than Timbercorp Finance Pty Ltd, are involved or become involved in the provision of finance to Growers for the Project.

## RULING

### Application of this Ruling

34. This Product Ruling applies to Growers who are accepted to participate in the Project:
  - on or before 30 June 2003, where the Grower has executed the Licence and Joint Venture Agreement and the Almondlot Management Agreement on or before that date ('Early Growers'). Application to participate in the Project that is received during the period 16 June 2003 to 30 June 2003 will only be accepted (and Agreements executed) if TSL can wholly provide the services in consideration of the moneys payable on application by 30 June 2003; and/or
  - on or after 1 July 2003 and before the expiry date of the Prospectus where the Grower has executed the Licence and Joint Venture Agreement and the Almondlot Management Agreement on or between those dates ('Post 30 June Grower').
35. The Grower's participation in the Project must constitute the carrying on of a business of primary production. A Grower is not eligible to claim any tax deductions until the Grower's application to enter the Project is accepted and the Project has commenced.

## The Simplified Tax System ('STS')

### Division 328

36. For a Grower participating in the Project, the recognition of income and the timing of tax deductions is different depending on whether the Grower is an 'STS taxpayer'. To be an 'STS taxpayer' a Grower:
  - must be eligible to be an 'STS taxpayer'; and
  - must have elected to be an 'STS taxpayer'.

### Qualification

37. This Product Ruling assumes that a Grower who is an 'STS taxpayer' is so for the income year in which their participation in the Project commences. A Grower may become an 'STS taxpayer' at a later point in time. Also, a Grower who is an 'STS taxpayer' may choose to stop being an 'STS taxpayer', or may cease to be eligible to be an 'STS taxpayer', during the term of the Project. These are contingencies relating to the circumstances of individual Growers that cannot be accommodated in this Ruling. Such Growers can ask for a private ruling on how the taxation legislation applies to them.

## TAX OUTCOMES FOR GROWERS WHO ARE NOT 'STS TAXPAYERS'

### Assessable Income

#### Section 6-5

38. That part of the gross sales proceeds from the Project attributable to the Grower's share of the gross proceeds from the sale of the product of the joint venture, less any GST payable on the Grower's share of those proceeds (section 17-5), will be assessable income of the Grower under section 6-5. Note that the term 'joint venture' is used in this Product Ruling in a general accounting and legal sense, and not as a reference to entities that are entitled to apply to the Commissioner to be treated as an approved GST joint venture within the meaning of Division 51 of A New Tax System (Goods and Services Tax) Act 1999.
39. The Grower recognises ordinary income from carrying on the business of growing almonds for processing and sale at the time that income is derived.

### Trading stock

#### Section 70-35

40. During the term of the Project a Grower who is not an 'STS taxpayer' may hold almonds that will constitute trading stock on hand. Where, in an income year, the value of trading stock on hand at the end of an income year exceeds the value of trading stock on hand at the start of an income year a Grower must include the amount of that excess in assessable income.
41. Alternatively, where the value of trading stock on hand at the start of an income year exceeds the value of trading stock on hand at the end of an income year, a Grower may claim the amount of that excess as an allowable deduction.
42. During each year of the Project TSL will provide the Grower with sufficient information to enable the Grower to determine the value of trading stock on hand at the end of the relevant income year.

### Deductions for management fees, licence fees and interest

#### Section 8-1

43. An Early Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses.

Fee Type	ITAA 1997 Section	30/6/2003	30/6/2004	30/6/2005
Management fee	8-1	\$5,200 - See Notes (i) & (ii) (below)	\$1,870 - See Notes (i) & (ii) (below)	\$1,870 - See Notes (i) & (ii) (below)
License fee	8-1	\$865 - See Notes (i) & (ii) (below)	\$865 - See Notes (i) & (ii) (below)	\$865 - See Notes (i) & (ii) (below)
Interest on borrowed funds	8-1	As incurred - See Note (iii) (below)	As incurred - See Note (iii) (below)	As incurred - See Note (iii) (below)

44. A Post 30 June Grower who is not an 'STS taxpayer' may claim tax deductions for the following revenue expenses.

Fee Type	ITAA 1997 Section	30/6/2004	30/6/2005	30/6/2006
Management fee	8-1	\$5,200 - See Notes (i) & (ii) (below)	\$1,870 - See Notes (i) & (ii) (below)	As incurred See - Notes (i) & (ii) (below)
License fee	8-1	\$865 - See Notes (i) & (ii) (below)	\$865 - See Notes (i) & (ii) (below)	Indexed See - Notes (i) & (ii) (below)
Interest on borrowed funds	8-1	As incurred - See Note (iii) (below)	As incurred - See Note (iii) (below)	As incurred - See Note (iii) (below)

**Notes:**

- (i) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 123;
- (ii) The management fees and the licence fees shown in the Almondlot Management Agreement and the Licence and Joint Venture Agreement are deductible in full in the year that they are incurred. However, if a Grower chooses to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the income year the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 96 unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000;
- (iii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd, the internal financier, is outside the scope of this Ruling. However all Growers, including those who finance their participation in the Project other than with Timbercorp Finance Pty Ltd, should read the discussion of the prepayment rules in paragraphs 90 to 104 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

## TAX OUTCOMES FOR GROWERS WHO ARE 'STS TAXPAYERS'

### Assessable Income

#### Section 6-5 and section 328-105

45. That part of the gross sales proceeds from the Project attributable to the Grower's share of the gross proceeds from the sale of the product of the joint venture, less any GST payable on the Grower's share of those proceeds (section 17-5), will be assessable income of the Grower under section 6-5. Note that the term 'joint venture' is used in this Product Ruling in a general accounting and legal sense, and not as a reference to entities that are entitled to apply to the Commissioner to be treated as an approved GST joint venture within the meaning of Division 51 of A New Tax System ( Goods and Services Tax ) Act 1999 .

46. The Grower recognises ordinary income from carrying on the business of growing almonds for processing and sale at the time the income is received (paragraph 328-105(1)(a)).

### Trading stock

#### Section 328-285

47. During the term of the Project, a Grower who is an 'STS taxpayer' may hold almonds that will constitute trading stock on hand. Where the difference between the value of all of a Grower's trading stock at the start of an income year and a reasonable estimate of it at the end of an income year is less than \$5,000, the Grower does not have to account for that difference under the ordinary trading stock rules in Division 70 (subsection 328-285(1)).

48. Alternatively, a Grower who is an 'STS taxpayer' may instead choose to account for trading stock in an income year under the provisions of Division 70 (subsection 328-285(2)).

49. During each year of the Project, TSL will provide the Grower with sufficient information to enable the Grower to determine the value of trading stock on hand at the end of the relevant income year.

### Deductions for management fees, licence fees and interest

Section 8-1 and section 328-105

50. An Early Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses.

Fee Type	ITAA 1997 Section	30/6/2003	30/6/2004	30/6/2005
Management fee	8-1 & 328-105	\$5,200 - See Notes (iv), (v) & (vi) (below)	\$1,870 - See Notes (iv), (v) & (vi) (below)	\$1,870 - See Notes (iv), (v) & (vi) (below)
License fee	8-1 & 328-105	\$865 - See Notes (iv), (v) & (vi) (below)	\$865 - See Notes (iv), (v) & (vi) (below)	\$865 - See Notes (iv), (v) & (vi) (below)
Interest on borrowed funds	8-1 & 328-105	As incurred - See Note (vii) (below)	As incurred - See Note (vii) (below)	As incurred - See Note (vii) (below)

51. A Post 30 June Grower who is an 'STS taxpayer' may claim tax deductions for the following revenue expenses.

Fee Type	ITAA 1997 Section	30/6/2004	30/6/2005	30/6/2006
Management fee	8-1 & 328-105	\$5,200 - See Notes (iv), (v) & (vi) (below)	\$1,870 - See Notes (iv), (v) & (vi) (below)	As incurred - See - Notes (iv), (v) & (vi) (below)
License fee	8-1 & 328-105	\$865 - See Notes (iv), (v) & (vi) (below)	\$865 - See Notes (iv), (v) & (vi) (below)	Indexed - See - Notes (iv), (v) & (vi) (below)
Interest on borrowed funds	8-1 & 328-105	As incurred - See Note (vii) (below)	As incurred - See Note (vii) (below)	As incurred - See Note (vii) (below)

**Notes:**

- (iv) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 123;
- (v) If, for any reason, an amount shown in the table above is not fully paid in the year in which it is incurred by a Grower who is an 'STS taxpayer' then the amount is only deductible to the extent to which it has been paid, or has been paid for the Grower. Any amount or part of an amount shown in the table above, which is not paid in the year in which it is incurred, will be deductible in the year in which it is actually paid;
- (vi) Where a Grower who is an 'STS taxpayer', pays the management fees and the licence fees in the relevant income years shown in the Almondlot Management Agreement and the Licence and Joint Venture Agreement, those fees are deductible in full in the year that they are paid. However, if a Grower chooses to prepay fees for the doing of a thing (e.g., the provision of management services or the leasing of land) that will not be wholly done in the same income year as the fees are incurred, the prepayment rules of the ITAA 1936 may apply to apportion those fees. In such cases, the tax deduction for the prepaid fee must be determined using the formula shown in paragraph 96, unless the expenditure is 'excluded expenditure'. 'Excluded expenditure' is an 'exception' to the prepayment rules, and is deductible in full in the year in which it is incurred. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000;
- (vii) The deductibility or otherwise of interest arising from loan agreements entered into with financiers other than Timbercorp Finance Pty Ltd, the internal financier is outside the scope of this Ruling. However, all Growers, including those who finance their participation in the Project other than with Timbercorp Finance Pty Ltd, should read the discussion of the prepayment rules in paragraph 90 to 104 (below) as those rules may be applicable if interest is prepaid. Subject to the 'excluded expenditure' exception, the prepayment rules apply whether the prepayment is required under the relevant loan agreement or is at the Grower's choice.

## TAX OUTCOMES THAT APPLY TO ALL GROWERS

### Deduction for the loan application fee

#### Section 25-25

52. The Loan Application fee of \$250 is a borrowing expense and is deductible under section 25-25. It is incurred for borrowing moneys that are used or are to be used during that income year solely for income producing purposes. The expense is deductible over the period of the loan specified in the loan agreement, or five years, whichever is the shorter period, beginning with the year in which they were incurred (subsections 25-25(4) and (5)).

### Division 35 - Deferral of losses from non-commercial business activities

#### Section 35-55 - Commissioner's discretion

53. For a Grower who is an individual and who enters the Project during the year ended 30 June 2003 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2003 to 30 June 2008 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.
54. For a Grower who is an individual and who enters the Project during the year ended 30 June 2004 the rule in section 35-10 may apply to the business activity comprised by their involvement in this Project. Under paragraph 35-55(1)(b) the Commissioner will decide for the income years ending 30 June 2004 to 30 June 2008 that the rule in section 35-10 does not apply to this activity provided that the Project is carried out in the manner described in this Ruling.
55. This exercise of the discretion in subsection 35-55(1) will not be required where, for any year in question:
- the 'exception' in subsection 35-10(4) applies (see paragraph 109 in the Explanations part of this ruling, below); or
  - a Grower's business activity satisfies one of the tests in sections 35-30, 35-35, 35-40 or 35-45; or
  - a Grower's business activity produces assessable income for an income year greater than the deductions attributable to it for that year (apart from the operation of subsection 35-10(2)).
56. Where, the 'exception' in subsection 35-10(4) applies, the Grower's business activity satisfies one of the tests, or the discretion in subsection 35-55(1) is exercised, section 35-10 will not apply. This means that a Grower will not be required to defer any excess of deductions attributable to their business activity in excess of any assessable income from that activity, i.e., any 'loss' from that activity, to a later year. Instead, this 'loss' can be offset against other assessable income for the year in which it arises.
57. Growers are reminded of the important statement made on Page 1 of this Product Ruling. Therefore, Growers should not see the Commissioner's decision to exercise the discretion in paragraph 35-55(1)(b) as an indication that the Tax Office sanctions or guarantees the Project or the product to be commercially viable. An assessment of the Project or the product from this perspective has not been made.

### Deductions for horticultural plant

#### Division 40

58. A Grower will also be entitled to tax deductions relating to the almond trees on the Almondlot. The deductions shown in the table below are determined under Division 40.

ITAA 1997 Section	30/6/2003	30/6/2004	30/6/2005	30/6/2006
Section 40-515	nil - See Note (ix) (below)	nil - See Note (ix) (below)	nil - See Note (ix) (below)	\$102.38 - See Notes (viii) & (ix) below

**Notes:**

- (viii) If the Grower is registered or required to be registered for GST, amounts of outgoing would need to be adjusted as relevant for GST (e.g., input tax credits): Division 27. See example at paragraph 123;
- (ix) An almond tree is considered to be a 'horticultural plant' as defined in subsection 40-520(2). A Grower holds a licence to cultivate almond trees on a designated land called an Almondlot for the growing of almonds for commercial gain in Joint Venture with ALPL. This licence is limited to that Grower's Prescribed Proportion of the Joint Venture Assets of 90%. As a Grower holds the land under a licence, one of the conditions in subsection 40-525(2) is met and a deduction for 'horticultural plants' is available under paragraph 40-515(1)(b) for their decline in value.

The deduction is determined using the formula in section 40-545. The establishment expenditure that can be written-off by a Grower is limited to 90% of the capital expenditure incurred that is attributable to the establishment of the almond trees. As the almond trees have an 'effective life' of greater than 13 but fewer than 30 years for the purposes of section 40-545, this results in a straight-line write-off at a rate of 13%. The deduction is allowable when the almond trees enter their first commercial season (section 40-530, item 2).

#### **Sections 82KZME - 82KZMF, 82KL, and Part IVA**

59. For a Grower who participates in the Project and incurs expenditure as required by the Almondlot Management Agreement and the Licence and Joint Venture Agreement the following provisions of the ITAA 1936 have application as indicated:
- expenditure by a Grower does not fall within the scope of sections 82KZME - 82KZMF (but see paragraphs 90 to 104);
  - section 82KL does not apply to deny the deductions otherwise allowable; and
  - the relevant provisions in Part IVA will not be applied to cancel a tax benefit obtained under a tax law dealt with in this Ruling.

## **EXPLANATIONS**

### **Is the Grower carrying on a business?**

60. For the amounts set out in the tables above to constitute allowable deductions the Grower's activities of cultivating almond trees and harvesting the almonds for eventual sale as a participant in the 2003 Timbercorp Almond Project must amount to the carrying on of a business of primary production.
61. Where there is a business, or a future business, the gross proceeds from the sale of the almonds will constitute gross assessable income in their own right. The generation of 'business income' from such a business, or future business, provides the backdrop against which to judge whether the outgoings in question have the requisite connection with the operations that more directly gain or produce this income.
62. For schemes such as that of the 2003 Timbercorp Almond Project, Taxation Ruling TR 2000/8 sets out in paragraph 89 the circumstances in which the Grower's activities can constitute the carrying on of a business. As Taxation Ruling TR 2000/8 sets out, these circumstances have been established in court decisions such as *FCT v. Lau* 84 ATC 4929; (1984) 16 ATR 55.
63. Generally, a Grower will be carrying on a business of cultivating almond trees and harvesting the almonds for eventual sale, and hence primary production, if:
- the Grower has an identifiable interest (by lease or by licence) in the land on which the Grower's trees are established;
  - the Grower has a right to harvest and sell the almonds produce from those trees;
  - the cultivating almond trees and harvesting the almonds are carried out on the Grower's behalf;
  - the activities of the Grower are typical of those associated with a business of cultivating almond trees and harvesting the almonds for commercial gain; and
  - the weight and influence of general indicators point to the carrying on of a business.
64. In this Project, each Grower enters into a Licence and Joint Venture Agreement and an Almondlot Management Agreement.
65. Under the Licence and Joint Venture Agreement, each individual Grower will have rights over a specific and identifiable area of 0.25 hectares or more of land. The Licence and Joint Venture Agreement provides the Grower with an ongoing interest in the specific trees on the licenced area for the term of the Project. Under the Licence, the Grower must use the land in question for the purpose of carrying out activities of cultivating almond

trees and harvesting the almonds for eventual sale and for no other purpose. The Licence allows TSL, as the Manager, to come onto the land to carry out its obligations under the Almondlot Management Agreement.

66. Under the Almondlot Management Agreement the Manager is engaged by the Grower to maintain an Almondlot on the Grower's identifiable area of land during the term of the Project. The Manager has provided evidence that it holds the appropriate professional skills and credentials to provide the management services to maintain the Almondlot on the Grower's behalf.
67. The Manager is also engaged to harvest the almonds grown on the Grower's Almondlot for processing and eventual sale on the Grower's behalf.
68. The general indicators of a business, as used by the Courts, are described in Taxation Ruling TR 97/11. Positive findings can be made from the Project's description for all the indicators.
69. The activities that will be regularly carried out during the term of the Project demonstrate a significant commercial purpose. Based on reasonable projections, a Grower in the Project will derive assessable income from the sale of almonds that will return a before-tax profit, i.e., a profit in cash terms that does not depend in its calculation on the fees in question being allowed as a deduction.
70. There will be a pooling of almonds from trees grown on the Grower's Almondlot with almonds from other sources. Each Grower's proportionate share of the sale proceeds of the pooled almonds will reflect the proportion of the trees contributed from their Almondlot (see paragraph 21 for more details).
71. The Manager's services are also consistent with general horticultural practices. They are of the type ordinarily found in horticultural ventures that would commonly be said to be businesses. While the size of an Almondlot is relatively small, it is of a size and scale to allow it to be commercially viable (see Taxation Ruling IT 360).
72. The Grower's degree of control over the Manager as evidenced by the Almondlot Management Agreement, and supplemented by the Corporations Act, is sufficient. During the term of the Project, the Manager will provide the Grower with regular progress reports on the Grower's Almondlot and the activities carried out on the Grower's behalf. Growers are able to terminate arrangements with the Manager in certain instances, such as cases of default or neglect.
73. The activities of cultivating almond trees and harvesting the almonds for eventual sale, and hence the fees associated with their procurement, are consistent with an intention to commence regular activities that have an 'air of permanence' about them. For the purposes of this Ruling, the Grower's activities of cultivating almond trees and harvesting the almonds for eventual sale in the 2003 Timbercorp Almond Project will constitute the carrying on of a business.

### **The Simplified Tax System**

#### **Division 328**

74. Subdivision 328-F sets out the eligibility requirements that a Grower must satisfy in order to enter the STS and Subdivision 328-G sets out the rules for entering and leaving the STS.
75. The question of whether a Grower is eligible to be an 'STS taxpayer' is outside the scope of this Product Ruling. Therefore, any Grower who relies on those parts of this Ruling that refer to the STS will be assumed to have correctly determined whether or not they are eligible to be an 'STS taxpayer'.

### **Deductibility of management fees and licence fees**

#### **Section 8-1**

76. Consideration of whether the initial management fee and licence fee are deductible under section 8-1 begins with the first limb of the section. This view proceeds on the following basis:



- the outgoing in question must have a sufficient connection with the operations or activities that directly gain or produce the taxpayer's assessable income;
  - the outgoings are not deductible under the second limb if they are incurred when the business has not commenced; and
  - where all that happens in a year of income is that a taxpayer is contractually committed to a venture that may not turn out to be a business, there can be doubt about whether the relevant business has commenced, and hence, whether the second limb applies. However, that does not preclude the application of the first limb in determining whether the outgoing in question has a sufficient connection with activities to produce assessable income.
77. The management fees and licence fees associated with the activities of cultivating almond trees and harvesting the almonds for eventual sale will relate to the gaining of income from the Grower's business of cultivating almond trees and harvesting the almonds for eventual sale (see above), and hence have a sufficient connection to the operations by which income (from the harvesting and sale of almonds) is to be gained from this business. They will thus be deductible under the first limb of section 8-1. Further, no 'non-income producing' purpose in incurring the fee is identifiable from the arrangement. The fee appears to be reasonable. There is no capital component of the management fee. The tests of deductibility under the first limb of section 8-1 are met. The exclusions do not apply.

#### Possible application of prepayment provisions

78. Under the Almondlot Management Agreement and the Licence and Joint Venture Agreement neither the management fees nor the licence fees are for things to be done beyond 30 June in the year in which the relevant amounts are incurred. In these circumstances, the prepayment provisions in sections 82KZME and 82KZMF have no application to these fees.
79. However, where a Grower **chooses** to prepay these fees for a period beyond the income year in which the expenditure is incurred, the prepayment provisions (see paragraphs 90 to 104) will apply to determine the amount and timing of the deductions regardless of whether the Grower is an 'STS taxpayer' or not. These provisions apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF. This is subject to the 'excluded expenditure' exception. For the purpose of this Ruling 'excluded expenditure' refers to an amount of expenditure of less than \$1,000.

#### Timing of deductions

80. In the absence of any application of the prepayment provisions, the timing of deductions for the management fees or the licence fees will depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.
81. If the Grower is not an 'STS taxpayer', the management fees and the licence fees are deductible in the year in which they are incurred.
82. If the Grower is an 'STS taxpayer' the management fees and the licence fees are deductible in the income year in which they are paid, or are paid for the Grower (paragraph 328-105(1)(b)). If any amount that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid or is paid for the Grower.

#### Interest deductibility

##### Section 8-1

##### (i) Growers who use Timbercorp Finance Pty Ltd as the finance provider

83. Some Growers may finance their participation in the Project through a loan facility with Timbercorp Finance Pty Ltd. Whether the resulting interest costs are deductible under section 8-1 depends on the same reasoning as that applied to the deductibility of management and licence fees.

84. The interest incurred for the year ended 30 June 2003 and in subsequent years of income will be in respect of a loan to finance the Grower's business operations - the cultivation and growing of almond trees and the licence of the land on which the trees will have been planted - that will continue to be directly connected with the gaining of 'business income' from the Project. Such interest will, therefore, have a sufficient connection with the gaining of assessable income to be deductible under section 8-1.
85. As with the management fees and the licence fees, in the absence of any application of the prepayment provisions (see paragraphs 90 to 104), the timing of deductions for interest will again depend upon whether a Grower is an 'STS taxpayer' or is not an 'STS taxpayer'.
86. If the Grower is not an 'STS taxpayer', interest is deductible in the year in which it is incurred.
87. If the Grower is an 'STS taxpayer' interest is not deductible until it has been both incurred and paid, or is paid for the Grower. If interest that is properly incurred in an income year remains unpaid at the end of that income year, the unpaid amount is deductible in the income year in which it is actually paid, or is paid for the Grower.

##### (ii) Growers who DO NOT use Timbercorp Finance Pty Ltd as the finance provider

88. The deductibility of interest incurred by Growers who finance their participation in the Project through a loan facility with a bank or financier other than Timbercorp Finance Pty Ltd is outside the scope of this Ruling. Product Rulings only deal with arrangements where all details and documentation have been provided to, and examined by the Tax Office.
89. While the terms of any finance agreement entered into between relevant Growers and such financiers are subject to commercial negotiation, those agreements may require interest to be prepaid. Alternatively, a Grower may choose to prepay such interest. Unless such prepaid interest is 'excluded expenditure' any tax deduction that is allowable will be subject to the prepayment provisions of the ITAA 1936 (see paragraphs 90 to 104).

#### Prepayment provisions

##### Sections 82KZL to 82KZMF

90. The prepayment provisions contained in Subdivision H of Division 3 of Part III of the ITAA 1936 affect the timing of deductions for certain prepaid expenditure. These provisions apply to certain expenditure incurred under an agreement in return for the doing of a thing under the agreement (e.g., the performance of management services or the leasing of land) that will not be wholly done within the same year of income as the year in which the expenditure is incurred. If expenditure is incurred to cover the provision of services to be provided within the same year, then it is not expenditure to which the prepayment rules apply.
91. For this Project only section 82KZL (an interpretive provision) and sections 82KZME and 82KZMF are relevant. Where the requirements of sections 82KZME and 82KZMF are met, taxpayers determine deductions for prepaid expenditure under section 82KZMF using the formula in subsection 82KZMF(1). These provisions also apply to 'STS taxpayers' because there is no specific exclusion contained in section 82KZME that excludes 'STS taxpayers' from the operation of section 82KZMF.

##### Sections 82KZME and 82KZMF

92. Where the requirements of subsections 82KZME(2) and (3) are met, the formula in subsection 82KZMF(1) (see below) will apply to apportion expenditure that is otherwise deductible under section 8-1 of the ITAA 1997. The requirements of subsection 82KZME(2) will be met if expenditure is incurred by a taxpayer in return for the doing of a thing that is not to be wholly done within the year the expenditure is made. The year in which such expenditure is incurred is called the 'expenditure year' (subsection 82KZME(1)).
93. The requirements of subsection 82KZME(3) will be met where the agreement (or arrangement) has the following characteristics:

- the taxpayer's allowable deductions under the agreement for the 'expenditure year' exceed any assessable income attributable to the agreement for that year;
- the taxpayer does not have effective day to day control over the operation of the agreement. That is, the significant aspects of the arrangement are managed by someone other than the taxpayer; and
- either:
  - (a) there is more than one participant in the agreement in the same capacity as the taxpayer; or
  - (b) the person who promotes, arranges or manages the agreement (or an associate of that person) promotes similar agreements for other taxpayers.

94. For the purpose of these provisions, the agreement includes all activities that relate to the agreement (subsection 82KZME(4)). This has particular relevance for a Grower in this Project who, in order to participate in the Project may borrow funds from a financier other than Timbercorp Finance Pty Ltd. Although undertaken with an unrelated party, that financing would be an element of the arrangement. The funds borrowed and the interest deduction are directly related to the activities under the arrangement. If a Grower prepays interest under such financing arrangements, the deductions allowable will be subject to apportionment under section 82KZMF.

95. There are a number of exceptions to these rules, but for Growers participating in this Project, only the 'excluded expenditure' exception in subsection 82KZME(7) is relevant. 'Excluded expenditure' is defined in subsection 82KZL(1). However, for the purposes of Growers in this Project, 'excluded expenditure' is prepaid expenditure incurred under the arrangement that is less than \$1,000. Such expenditure is immediately deductible.

96. Where the requirements of section 82KZME are met, section 82KZMF applies to apportion relevant prepaid expenditure. Section 82KZMF uses the formula below, to apportion prepaid expenditure and allow a deduction over the period that the benefits are provided.

$$\text{Expenditure} * (\text{Number of days of eligible service period in the year of income} / \text{Total number of days of eligible service period})$$

97. In the formula 'eligible service period' (defined in subsection 82KZL(1)) means, the period during which the thing under the agreement is to be done. The eligible service period begins on the day on which the thing under the agreement commences to be done or on the day on which the expenditure is incurred, whichever is the later, and ends on the last day on which the thing under the agreement ceases to be done, up to a maximum of 10 years.

#### **Application of the prepayment provisions to this Project**

98. In this Project, an initial management fee of \$5,200 and an initial licence fee of \$865 per Almondlot will be incurred on execution of the Almondlot Management Agreement and the Licence and Joint Venture Agreement. The management fee and the licence fee are charged for providing management services or licencing land to a Grower by 30 June of the year of execution of the Agreements. Under the Agreements, further annual expenditure is required each year during the term of the Project for the provision of management services and land until 30 June in those years.
99. In particular, the management fee is expressly stated to be for a number of specified services. No explicit conclusion can be drawn from the description of the arrangement that the initial management fee has been inflated to result in reduced fees being payable for management fees in subsequent years.
100. There is also no evidence that might suggest the management services covered by the fee could not be provided within the relevant expenditure year. Thus, for the purposes of this Ruling, it can be accepted that no part of the initial management fee and the fees for subsequent years, is for the Manager doing 'things' that are not to be wholly done within the expenditure year. Under the Licence and Joint Venture Agreement, licence fees are payable annually on 31 October for the licence to use and occupy

the land from 1 July to 30 June during the expenditure year. Similarly, under the loan agreements to be executed between Growers and Timbercorp Finance Pty Ltd interest is payable monthly in arrears.

101. On this basis, provided a Grower incurs expenditure as required under the Project agreements, as set out in paragraph 28, then the basic precondition in subsection 82KZME(2) is not satisfied and, in these circumstances, section 82KZMF will have no application.

#### **Growers who choose to pay fees for a period in excess of that required by the Project's agreements**

102. Although not required under either the Almondlot Management Agreement, the Licence and Joint Venture Agreement, or the Loan Agreement with Timbercorp Finance Pty Ltd, a Grower participating in the Project may **choose** to prepay fees/interest for a period beyond the 'expenditure year'. Similarly, Growers who use financiers other than Timbercorp Finance Pty Ltd may either choose, or be required to prepay interest. Where this occurs, contrary to the conclusion reached in paragraph 101 above, section 82KZMF will apply to apportion the expenditure and allow a deduction over the period in which the prepaid benefits are provided.

103. For these Growers, the amount and timing of deductions for any relevant prepaid management fees, prepaid licence fees, or prepaid interest will depend upon when the respective amounts are incurred and what the 'eligible service period' is in relation to these amounts.

104. However, as noted above, prepaid fees of less than \$1,000 incurred in an expenditure year will be 'excluded expenditure' and will be not subject to apportionment under section 82KZMF.

#### **Deductibility of the loan application fee**

##### **Section 25-25**

105. Borrowing expenses are deductible under section 25-25 where the borrowed moneys are used or are to be used during that income year for income producing purposes. The expenses are deductible over the period of the loan specified in the loan agreement, or five years, whichever is the shorter period, beginning with the year in which they were incurred (subsections 25-25(4) and (5)). Borrowing expenses of \$100 or less are deductible in the year in which they are incurred (subsection 25-25(6)).

#### **Deferral of losses from non-commercial business activities**

##### **Division 35**

106. Division 35 applies to losses from certain business activities for the income year ended 30 June 2001 and subsequent years. Under the rule in subsection 35-10(2) a deduction for a loss incurred by an individual from certain business activities will not be allowable in an income year unless:

- the 'Exception' in subsection 35-10(4) applies;
- one of four objective tests in sections 35-30, 35-35, 35-40 or 35-45 is met; or
- if one of the objective tests is not satisfied, the Commissioner exercises the discretion in section 35-55.

107. Generally, a loss in this context is, for the income year in question, the excess of an individual taxpayer's allowable deductions attributable to the business activity over that taxpayer's assessable income from the business activity.

108. Under the loss deferral rule in subsection 35-10(2) the relevant loss is not able to be taken into account in the calculation of taxable income in the year that loss arose. Instead, in a later year it may be offset against any income from the same or similar business activity, or, if one of the objective tests is passed, or the Commissioner's discretion exercised, against other income.

109. For the purposes of applying the objective tests, subsection 35-10(3) allows taxpayers to group business activities 'of a similar kind'. Under subsection 35-10(4), there is an 'exception' to the general rule in subsection 35-10(2) where the loss is from a primary production business activity and the individual taxpayer has other assessable income for the

income year from sources not related to that activity, of less than \$40,000 (excluding any net capital gain). As both subsections relate to the individual circumstances of Growers who participate in the Project they are beyond the scope of this Product Ruling and are not considered further.

110. In broad terms, the objective tests require:

- at least \$20,000 of assessable income in that year from the business activity (section 35-30);
- the business activity results in a taxation profit in 3 of the past 5 income years (including the current year) (section 35-35);
- at least \$500,000 of real property is used on a continuing basis in carrying on the business activity in that year (section 35-40); or
- at least \$100,000 of certain other assets are used on a continuing basis in carrying on the business activity in that year (section 35-45).

111. A Grower who participates in the Project will be carrying on a business activity that is subject to these provisions. Information provided with the application for this Product Ruling indicates that a Grower who acquires the minimum participation of two Almondlots (although TSL reserves the right to accept applications for one Almondlot) in the Project is unlikely to pass one of the objective tests until the income year ended 30 June 2011. Growers who acquire more than the minimum participation in the Project may however, find that their activity meets one of the tests in an earlier income year.

112. Therefore, prior to this time, unless the Commissioner exercises an arm of the discretion under paragraphs 35-55(1)(a) or (b), the rule in subsection 35-10(2) will apply to defer to a future income year any loss that arises from the Grower's participation in the Project.

113. The first arm of the discretion in paragraph 35-55(1)(a) relates to 'special circumstances' applicable to the business activity, and has no relevance for the purposes of this Product Ruling. However, the second arm of the discretion in paragraph 35-55(1)(b) may be exercised by the Commissioner where:

- (i) the business activity has started to be carried on;
- (ii) because of its nature, it has not satisfied one of the objective tests; and
- (iii) there is an objective expectation that the business activity of an individual taxpayer will either pass one of the objective tests or produce a taxation profit within a period that is commercially viable for the industry concerned.

114. For a Grower who is an individual and who enters the Project during the years ended 30 June 2003 and/or 30 June 2004, information provided with this Product Ruling indicates that a Grower in the Project is expected to be carrying on a business activity that will either pass one of the objective tests, or produce a taxation profit, for the year ended 30 June 2009. The Commissioner will decide for such a Grower that it would be reasonable to exercise the second arm of the discretion until the year ended 30 June 2008.

115. This Product Ruling is issued on a prospective basis (i.e., before an individual Grower's business activity starts to be carried on). The Project, however, may fail to be carried on during the income years specified above (see paragraph 53 & 54), in the manner described in the Arrangement (see paragraphs 15 to 33). If so, this Ruling, and specifically the decision in relation to paragraph 35-55(1)(b), that it would be unreasonable that the loss deferral rule in subsection 35-10(2) not apply, may be affected, because the Ruling no longer applies (see paragraph 9). Growers may need to apply for private rulings on how paragraph 35-55(1)(b) will apply in such changed circumstances.

116. In deciding that the second arm of the discretion in paragraph 35-55(1)(b) will be exercised on this conditional basis, the Commissioner has relied upon:

- the draft report of the independent Almond Orchard Expert; and
- independent, objective, and generally available information relating to the almond growing industry.

## Section 82KL - recouped expenditure

117. Section 82KL is a specific anti-avoidance provision that operates to deny an otherwise allowable deduction for certain expenditure incurred, but effectively recouped, by the taxpayer. Under subsection 82KL(1), a deduction for certain expenditure is disallowed where the sum of the 'additional benefit' plus the 'expected tax saving' in relation to that expenditure equals or exceeds the 'eligible relevant expenditure'.

118. 'Additional benefit' (see the definition of 'additional benefit' at subsection 82KH(1) and paragraph 82KH(1F)(b)) is, broadly speaking, a benefit received that is additional to the benefit for which the expenditure is ostensibly incurred. The 'expected tax saving' is essentially the tax saved if a deduction is allowed for the relevant expenditure.

119. Section 82KL's operation depends, among other things, on the identification of 'additional benefit(s)'. Here, there may be a loan provided to the Grower. The loan will be provided on a full recourse basis, and on commercial terms. Insufficient 'additional benefits' will be provided in respect of this Project, to trigger the application of section 82KL. It will not apply to deny the deductions otherwise allowable under section 8-1.

## Part IVA - general anti-avoidance provisions

120. For Part IVA to apply there must be a 'scheme' (section 177A), a 'tax benefit' (section 177C) and a dominant purpose of entering into the scheme to obtain a tax benefit (section 177D).

121. The 2003 Timbercorp Almond Project will be a 'scheme'. A Grower will obtain a 'tax benefit' from entering into the scheme, in the form of tax deductions for the amounts detailed at paragraphs 43, 44, 50, 51 and 58, that would not have been obtained but for the scheme. However, it is not possible to conclude the scheme will be entered into or carried out with the dominant purpose of obtaining this tax benefit.

122. Growers to whom this Ruling applies intend to stay in the scheme for its full term and derive assessable income from the sale of almonds. There are no facts that would suggest that Growers have the opportunity of obtaining a tax advantage other than the tax advantages identified in this Ruling. There is no non-recourse financing or round robin characteristics, and no indication that the parties are not dealing at arm's length or, if any parties are not dealing at arm's length, that any adverse tax consequences result. Further, having regard to the factors to be considered under paragraph 177D(b) it cannot be concluded, on the information available, that participants will enter into the scheme for the dominant purpose of obtaining a tax benefit.

## EXAMPLE

### Example - Entitlement to GST input tax credits

123. Susan, who is a sole trader and registered for GST, contracts with a manager to manage her viticulture business. Her manager is registered for GST and charges her a management fee payable every six months in advance. On 1 December 2001 Susan receives a valid tax invoice from her manager requesting payment of a management fee in advance, and also requesting payment for an improvement in the connection of electricity for her vineyard that she contracted him to carry out. The tax invoice includes the following details:

Management fee for period 1/1/2002 to 30/6/2002	\$4,400*
Carrying out of upgrade of power for your vineyard as quoted	\$2,200*
Total due and payable by 1 January 2002 (includes GST of \$600)	<u>\$6 600</u>

\* Taxable supply

Susan pays the invoice by the due date and calculates her input tax credit on the management fee (to be claimed through her Business Activity Statement) as:

$$(1 / 11) * \$4400 = \$400.$$

Hence her outgoing for the management fee is effectively \$4400 less \$400, or \$4000.

Similarly, Susan calculates her input tax credit on the connection of electricity as:

$(1 / 11) * \$2200 = \$200$ .

Hence her outgoing for the power upgrade is effectively \$2,200 less \$200, or \$2,000.

In preparing her income tax return for the year ended 30 June 2002, Susan is aware that the management fee is deductible in the year incurred. She calculates her management fee deduction as \$4,000 (not \$4,400).

Susan is aware that the electricity upgrade is deductible 10% per year over a 10 year period. She calculates her deduction for the power upgrade as \$200 (one tenth of \$2,000 only, not one tenth of \$2,200).

ITAA 1936 177D(b)  
ITAA 1997 6-5  
ITAA 1997 8-1  
ITAA 1997 17-5  
ITAA 1997 25-25  
ITAA 1997 25-25(4)  
ITAA 1997 25-25(5)  
ITAA 1997 25-25(6)  
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ITAA 1997 35-10  
ITAA 1997 35-10(2)  
ITAA 1997 35-10(3)  
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ITAA 1997 35-35  
ITAA 1997 35-40  
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ITAA 1997 35-55(1)  
ITAA 1997 35-55(1)(a)  
ITAA 1997 35-55(1)(b)  
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ITAA 1997 Subdiv 328-F  
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ITAA 1997 328-105(1)(a)  
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ITAA 1997 328-285(1)  
ITAA 1997 328-285(2)  
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**Case References:**  
FCT v. Lau  
84 ATC 4929  
(1984) 16 ATR 55

**Commissioner of Taxation**

29 January 2003

Not previously released in draft form.

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**ATO references:**

NO 2002/012043

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**Related Rulings/Determinations:**

TR 92/1  
TR 92/20  
TD 93/34  
TR 97/11  
TR 97/16  
TR 98/22  
TR 2000/8  
PR 1999/95  
IT 360

**Subject References:**

carrying on a business  
commencement of business  
fee expenses  
interest expenses  
management fee expenses  
producing assessable income  
product rulings  
public rulings  
schemes and shams  
taxation administration  
tax avoidance

**Legislative References:**

TAA 1953 Part IVAAA  
ITAA 1936 82KH(1)  
ITAA 1936 82KH(1F)(b)  
ITAA 1936 82KL  
ITAA 1936 82KL(1)  
ITAA 1936 82KZL  
ITAA 1936 82KZL(1)  
ITAA 1936 82KZME  
ITAA 1936 82KZME(1)  
ITAA 1936 82KZME(2)  
ITAA 1936 82KZME(3)  
ITAA 1936 82KZME(4)  
ITAA 1936 82KZME(7)  
ITAA 1936 82KZMF  
ITAA 1936 82KZMF(1)  
ITAA 1936 Pt IVA  
ITAA 1936 177A  
ITAA 1936 177C  
ITAA 1936 177D

# INDEPENDENT ALMOND ORCHARD EXPERT'S REPORT

## PREPARED FOR THE 2003 TIMBERCORP ALMOND PROJECT

By Graham Johns [Roseworthy Diploma Agriculture, South Australia]  
Horticultural Development Services Pty. Ltd.

11 March 2003

## INTRODUCTION

This independent expert's report has been commissioned by Timbercorp Securities Limited and has been prepared by Mr. Graham Johns from Horticultural Development Services Pty. Ltd. The report will be included in the 2003 Timbercorp Almond Project Prospectus for the cultivation and management of almond orchards near the town of Boundary Bend in Northern Victoria ('Project').

Graham Johns, (Roseworthy Diploma Agriculture, Roseworthy South Australia), has had extensive experience in the Australian and International Almond industries, with over twenty years of continuous involvement. As a result he is very familiar with all aspects of almond development, production, management, processing and marketing. Currently Mr. Johns is a member of the Australian Almond Industries Research And Development Committee. Mr. Johns was invited to participate in the Australian Almond Industry Strategic Planning And Review Forum held in Adelaide South Australia in November 2000. The Forum brought together leaders in the Australian Almond Industry from the key segments including, research, production, processing and marketing to identify detailed development strategies for each segment over the next five years.

This report has been prepared, based on information supplied to Horticultural Development Services Pty. Ltd. by representatives of Timbercorp Securities Limited, various government and regulatory authorities, companies and individuals associated with the Project and on site inspections.

The evaluation of the 2003 Timbercorp Almond Project has been made after consideration of:

1. Site maps locating the properties on which the development is proposed.
2. Soil Survey Irrigation And Drainage Management Plans produced by Sunraysia Environmental based in Mildura Victoria.
3. Climatic data for the area.
4. An assessment of parameters being used to design an irrigation system being prepared by Agri-Hort Developments Pty. Ltd.
5. A forecast water budget, showing annual consumption of water by almonds in mega litres per hectare, from year one to year six of the development, produced by Select Harvests Limited.
6. Forecast almond yields during the development of the orchard supplied by Timbercorp Securities Limited.
7. Information sourced from an on site inspection of the proposed development site and existing orchards managed by the orchard manager, Select Harvests Limited.
8. Yield estimates of mature and young tree production supplied from actual harvest and hulling and cracking records provided by Select Harvests Limited.
9. Draft prospectus for the Project.

Graham Johns and Horticultural Development Services Pty. Ltd. do not have any personal interest in the Project. We would be prepared to consult to the Project if required. A fixed fee for the preparation of this report was agreed in advance.

## GENERAL DESCRIPTION OF THE ALMOND ORCHARD DEVELOPMENT

The site selected for the 'Project' is known as Yungera.

Yungera is in close proximity to the township of Boundary Bend in North West Victoria. The project site is adjacent to an existing 145 Ha almond orchard owned and managed by Select Harvests Limited. Yungera is approximately 5,000 Ha in area of which 1,150 ha will be developed for the 2003 Timbercorp Almond Project. The land topography is undulating throughout and is characterised by the existence of steep predominantly east/west sand dunes with some closed depressions and low-lying country.

The size of the Project will allow for excellent economies of scale to be employed in the management of the orchards, which should minimise the unit costs of production. In addition, the proposed orchard is approximately 7.0 km from a state of the art almond cracking plant and approximately 35km from packing facilities owned and operated by Select Harvests Limited. The close proximity to these facilities to the Project will minimise the handling and transport costs of field weight product during harvest and processed kernel. These facilities are ISO 9002 and HACCP accredited.

Almond production has provided consistent profits to commercial and efficient producers in the industry over many years and has not been subject in the past to boom and bust economic fluctuations. The Australian almond industry is undergoing rapid expansion at present.

## CLIMATE EVALUATION

The major almond growing areas in the southern and northern hemispheres of the world are located between 35° and 40° latitude. At approximately 34° 43'S latitude the Project is well positioned for almond production. The area is a Mediterranean semi arid climate, with a mean annual rainfall of 353.8mm (14.32"), which most closely resembles the southern end of the San Joaquin valley in California around Bakersfield, which is one of the largest almond growing areas in the world.

Rainfall is distributed quite evenly throughout the year with approximately 20 to 35mm falling each month of the year. This is important as at critical periods of the year crop losses can occur with high rainfall. Minimal rainfall is required in August during flowering, when pollination of the crop occurs and from mid January when hull split starts to prevent the occurrence of Hull Rot and from late February to late April during the harvest period. With average rainfall in these periods below 34.5 mm, there is minimal risk of rain having a significant economic impact on the almond crop in most years. It is possible that when the highest monthly rainfall is received in these critical months, that some crop loss could occur, however there are management practices, which can mitigate any potential losses in high rainfall situations. Select Harvests Limited, the orchard manager, is aware of such practices and does employ them. In recent history when large rainfall events have occurred during critical times of the crop cycle, these events have not resulted in significant economic losses. Select Harvests Limited will need to ensure it maintains a modern fleet of harvest equipment of sufficient size when the trees are producing, to minimise the risk of crop loss in years of early and high rainfall.

During August when almond trees flower, bees are used to cross-pollinate the crop. Bee flight as well as the physiological processes of dehiscence (pollen shedding), pollen germination and pollen tube growth, all have minimum, maximum and optimum temperature ranges to occur. All these processes are critical to good nut set. With a mean daily maximum temperature for August of 17.3°C the temperature is high enough to allow all these processes to occur within the optimal range. During harvest drying temperatures in excess of 20°C are required. Drying temperatures above 20°C are required to allow the kernel to dry in a timely manner in the field to not more than 6.5% prior to being harvested. Mean daily maximum temperatures for the months of harvest, which are February, March and April, are approximately, 32.1°C, 28.8°C and 23.5°C respectively. These temperatures ensure that there will be sufficient drying time available during the harvest period at the proposed site. Should rain at harvest become a risk to full nut recovery, continuous dryers can be installed ahead of the cracking plant to dry field weight product prior to cracking.

Bee flight is restricted when wind speed below tree level is above 24 km/hour. Mildura weather data suggests that wind speed during the month of August would be lower than at any other time of the year with the exception of the months of April and May. Crop pollination due to reduced bee flight is not likely to be affected by wind speed in the Boundary Bend district.

Winds can gust to significant speeds in the spring period of between 100 and 139 km/hour. High winds at this time of the year can bend and break soft rapidly growing wood in the first two to three years of tree growth. The integrity of new wood needs to be managed carefully through pruning and fertiliser management, to avoid the need to tie the trees. Tying trees in response to wind damage is not a practical solution on large developments. Healthy mature almond trees and nuts are not affected to any degree by high winds. Select Harvests Limited is aware of the potential for wind damage in young trees and would adopt appropriate practices to minimise any damage by wind in young orchards. An inspection of the new almond orchards being managed by Select Harvests confirmed that young trees were being managed satisfactorily to avoid damage from high wind events.

Frost and hail damage pose the most serious risk of all climatic factors to profitability at the location chosen for this almond development. Frosts are most likely and more severe in low lying areas where cold air accumulates. Areas which have been assessed as having a high frost risk in the development, and that are significantly large enough should be excluded. The critical period for frost risk is from August to late October. During this period the mean number of days in which temperatures are below 2 degrees Celsius for Euston, a town within approximately 28km of the Project, is 6.7 days. Developing almond kernels are susceptible to frost damage if the temperature is less than or equal to zero. Experience has shown that economically significant frost damage is usually confined to the low lying areas of orchards, where in past years the almonds had been planted fence line to fence line, with no consideration to the impact of frost on production. There could be some years during the life of the development when the occurrence of frosts will reduce yield in that year, however frosts are not likely to be economically significant in most years. Therefore frost events over the life of the development are not likely to significantly impact on the economic performance of the Project. The risk of frost damage has been minimised by excluding from planting low-lying areas.

Hail damage in the region is less prevalent than frost damage, but significant damage to an almond crop can be incurred if the hail is large in diameter or falls for extended periods of time. As with frosts, hail affects the nut rather than the tree. The crop is at risk of hail damage during the same months it is at risk from frost damage, being August to October inclusive. During this period however the mean number of days at Mildura in which hail occurs is 0.4 days. Hail in the district tends to fall in bands rather than blanket coverage, which means that when infrequent hail events do occur only isolated damage results. There is a reasonable probability that damage to orchards would be localised rather than general. From local knowledge it has been determined that in the last twenty years there has only been one incidence of severe hail damage in the Robinvale district, which occurred in late October 1999. On this occasion an almond orchard approximately 32km from the proposed development, which is 174 hectares in area, incurred significant crop loss on approximately 40 hectares. No losses due to this hail event occurred in the almond orchard adjacent to the Project. Hail is not expected to have a significant economic effect on the financial performance of the orchard during the term of the Project.

## SOIL SUITABILITY EVALUATION

Almonds are most productive on loam textured, deep, uniform soils. Loam soils are preferable to sandy soils because they are inherently more fertile and retain more moisture, allowing for more manageable irrigation. They are also preferable to clay loam or clay soils because drainage and aeration are much better in loam soils than in finer textured soils. Most orchards do not have uniform soils and the Yungera site is therefore not unusual in this respect.

Analysis of the soil survey results indicate that the Yungera development site has been categorised into seven major soil groups, four of which are considered suitable. The suitable soil groups have been assigned a range of amelioration requirements which have been identified on specific maps. The amelioration recommended allows limitations to satisfactory almond tree growth existing in the plantable soils to be overcome. We are satisfied that the Project management team is aware of the soil amelioration required and will carry out all recommendations in accordance with soil maps provided.

The steeper sand dunes identified in the soil survey, that account for approximately 5% (75Ha) of the land area surveyed, will need to be stabilised correctly if they have their tops mechanically pushed to enable orchard vehicles to travel along tree rows planted on the dunes. The stabilisation options detailed in the soil survey report are adequate for the Project managers to take the appropriate action in the event that the steep sand dunes have their tops pushed off. After discussions with the Project manager we believe the soil survey recommendations regarding the stabilisation of sand dunes, should a decision be made to push the tops off the dunes, will be implemented in accordance with those recommendations.

The soil survey assessment results have indicated that it would be reasonable to expect 70% to 75% of the surveyed area of 2,000 Ha to be suitable for planting to almond trees.

From our general knowledge of the soils in the proposed development and a review of the soil report obtained in respect of the site we believe soils identified as suitable for almond production at Yungera would be capable of sustaining commercial almond production.

## WATER SUPPLY

Water to the Project will be supplied by a mainline from the Murray River. A review of the almond water budget developed by the orchard manager, Select Harvests Limited, from year 1 through to year 6 inclusive, appears adequate with approximately 3.0 mega litres per hectare budgeted in years 1 through to 12.5 mega litres per hectare from year 6 onwards. Periods of hot weather could affect the water budget, which would mean additional water would need to be purchased or temporarily leased during a season. Drought conditions may also mean that additional water may have to be leased or purchased to compensate for any annual reductions in licence allocations.

The water supply salinity in the area of the development is well below any reading that would be detrimental to almond production. At the town of Euston, which is immediately downstream of Robinvale and Boundary Bend, the EC (Micro Siemens per centimetre) concentration of the Murray River ranges between 150EC (96ppm) and 300EC (192ppm) at varying times of the year.

## ORCHARD ESTABLISHMENT AND OPERATIONAL REVIEW

### Orchard geometry and varieties

The varieties selected for the Project are Non Pareil, Carmel and Price. Non Pareil represents 50% of the orchard, while Carmel and Price are termed pollinators, occupying 33% and 17% respectively of the orchard. All three varieties pollinate one another. Non Pareil is the most widely grown almond variety in the world because of its consistently high productivity and high market demand as kernel and inshell. Carmel is the second most popular variety worldwide at present with significant areas planted. Carmel is sold as kernel, manufacturing product and to a lesser extent inshell. Price is a minor pollinator but within this group is significant. The orchard development will be planted 1:1, pollinator to main variety, which is the acknowledged industry standard when planting an almond orchard. Carmel will be planted every other row alternating with Non Pareil, except for every sixth row, which will be Price.

Trees are to be planted 7.25m between the rows and 5.5m down the row. This spacing will allow orchard machinery to travel down the rows without damaging the crop. This planting pattern gives approximately 247 trees per hectare, which is a reasonable compromise between having sufficient tree density in the orchard to achieve early yields, while ensuring there is enough space for individual trees to grow without overcrowding.

Carmel is a good pollinator for Non Pareil and is highly productive when young, but its yields may decline along with tree vigour over time. Price blooms within a day of Non Pareil and therefore is a good pollinator, however it has a tendency toward significant biennial bearing if not properly managed. The close blooming dates of Non Pareil, Carmel and Price and proximity of all varieties in the orchard will ensure the best opportunity for good pollination and nut set each year. Our understanding is that Select Harvests Limited has the technical knowledge and skills to appropriately manage these situations.



Price can be harvested within fourteen days of Non Pareil and Carmel harvests within twenty one days of Non Pareil. This spread of harvest dates assists with the orderly progress of harvest and reduces the likelihood of different varieties being mixed in the orchard during harvest. Providing harvest progresses efficiently, Carmel, the latest harvesting variety would be harvested by mid April each year, minimising the risk of crop losses due to opening rainfall events.

The choice of varieties is commercially sound from a marketing and production perspective. Many new American varieties have been released from quarantine in 2000 such as: Wood Colony, Livingston, Butte, Padre, Sonora and Monterey, which still have to be commercially evaluated in Australia. The hybrid rootstock GF 677 is due for release from quarantine in March 2003.

#### **Irrigation system and fertigation design**

The orchard will be irrigated with a drip system. Drip systems are very efficient in the way they apply water. Drip systems minimise the capital investment in the irrigation system and the amount of water required to be purchased. The disadvantage of a drip irrigation system is that it only wets a percentage of the available soil volume that roots could occupy and therefore the tree has less reserves of soil moisture. The orchard manager needs to be able to monitor soil moisture accurately to enable the application of water and fertiliser in a precise and timely manner. We understand constant data-loggers radio linked to a central control point in the orchard will be installed on representative soil types. This soil moisture monitoring technology will enable soil moisture to be maintained within the optimum range. To achieve optimum tree growth rates and yields, soil moisture needs to be maintained within strict limits. The orchard manager (Select Harvests Limited) has significant experience and expertise with drip irrigated orchards and the maintenance of optimum soil moisture levels using drip systems.

Water is applied to the trees using two poly drip laterals with one lateral on each side of the tree row. Dripper outputs are 2.3 litres per hour and the drippers will be spaced at 0.7m along the lateral. This range of dripper outputs and spacings allows the system to apply water according to soil infiltration rates, drainage characteristics and moisture holding capacity. In addition, together with the use of two dripper lines per row, these system design parameters will enable a sufficiently large wetted soil volume to be maintained around each tree, to meet the daily water requirements of the tree. Primary and secondary filtration maintenance and regular system flushing will have to be maintained to ensure dripper outputs do not decrease with time. Lateral pressure will be maintained at a minimum of 19 psi across the orchard, which will be adequate to maintain dripper outputs and should be sufficient to enable adequate flushing volumes to clean the laterals.

The design application rate for the system is a maximum of 10.7mm/day. The maximum Mean Daily Pan Evaporation for the area is 9.8mm/day. Trees experiencing very high temperatures, for example in the upper thirties or forties, could extract at least 15mm/day of water from the soil, especially if the prevailing winds at the time are strong. With soil moisture reserves in the root zone of at least 31mm in areas planted, a buffer of at least two days exists before moisture stress develops in the trees. Some modern irrigation systems are designed to be able to apply 12mm/day as a minimum application rate, which gives a little more control in hot weather.

Providing irrigation cycling is well managed, the system designed will ensure no trees would be subject to economic losses caused by moisture stress, other than during prolonged days of extreme evapotranspiration. The irrigation dam capacity proposed is sufficient to supply the orchard development for seven days. This capacity is adequate to buffer the orchard from unexpected temporary interruptions to water supply. This dam capacity will ensure sufficient time exists to allow emergency repairs to the irrigation system to be done, without significant economic losses to trees. We are satisfied that under the Project reasonable capacity will exist in the on-site dam.

Fertigation of large areas of drip irrigated orchards needs to be done efficiently, accurately and evenly across the orchard. This is important to help ensure trees grow well and evenly and the labour costs associated with fertigation are minimised. We recommend that at the time of commissioning of the fertigation system, independent tests be undertaken to verify that satisfactory dissolution of fertiliser at the pump station and the accurate and even distribution of

fertiliser in the orchards can be achieved by the fertigation system installed. After discussion with the irrigation designers, we are satisfied that commissioning of the fertigation system will be carried out professionally.

The average irrigation block is 10 to 15 Ha hectares in area, which given the area to be managed is a reasonable compromise between keeping the number of irrigation valves in the orchard to within manageable limits, while still maintaining block units of manageable size. Each irrigation block can water Non Pareil and pollinating varieties separately, which is very important in the management of tree health during harvest. The irrigation blocks have been grouped, in so far as it is practical, within uniform soil types according to their different infiltration rates, water holding capacities and drainage characteristics of the soils.

#### **Orchard yields**

Orchard yield projections estimated for the Project have been included below in Table 1. The maximum yield assumed for the Project is 3,460 kg per hectare (1.4 metric tonnes per acre) in year seven. After reviewing Select Harvests Limited actual orchard production figures for mature trees from 2000 to 2002 inclusive and production from young trees planted since 1997, it is reasonable to assume that the production estimates in Table 1 below could be achieved. The experience gained by the orchard manager since their young orchards were planted in 1997, the very high quality irrigation system being installed, the timely planting of the orchard and the detailed soil amelioration to be done in accordance with the soil survey report, will all significantly contribute to the attainment of the projected early yields, which although challenging, are reasonable.

These yield projections are identical to those projected in respect of the 2002 Timbercorp Almond Project.

<b>Year ended 30 June</b>	<b>Kilograms per Almondlot</b>	<b>Kilograms per hectare</b>
2006	93	371
2007	340	1,359
2008	463	1,853
2009	803	3,212
2010 onwards p.a.	865	3,460

*Table 1 Yield estimates each year for almond production in the 2003 Timbercorp Almond Project commencing with the first crop in 2006 from trees 2 years and eight months of age.*

The production figures reflect long term averages that will be subject to annual fluctuations due to climatic factors and the effects of biennial bearing.

In December 2000 the Australian Almond Growers Association approved in principle an Almond Best Practice Management Demonstration Trial. The trial has been established and aims to develop data, which will provide the basis for the management and economic modelling for optimum economic performance in Australian almond orchards in six years time. To achieve this, crop and tree development during critical stages of the growth cycle will be analysed against various replicated inputs of nutrients, irrigation and pruning. It is planned to run the trial over 5 to 6 years. Assuming the outcomes of the trial are favourable, it could be expected the trial will assist in achieving future almond yield targets within the time frames set out above. This trial is producing encouraging results to date.

One important factor that will have significant influence upon the achievement of the early yield projections in the Project, is weed control. It will be necessary that a policy of zero weed tolerance be in place during the first few years of tree growth. Just a few weeds near a tree rob the young tree of essential water and nutrients and severely inhibit young tree growth rates. If the tree makes insufficient growth in the first few years in the orchard, the achievement of early forecast Project yields would be unlikely. The management team at Select Harvests is aware of the capability of weeds to reduce early tree growth and the subsequent impact on yields and has the knowledge to take appropriate measures to control orchard weed populations.

## Orchard management

The orchard manager Select Harvests Limited, has approximately 2,915 hectares of almonds under management of which 2,146 Ha (74%) are owned by external investors. Over the last five years Select Harvests Limited's Horticultural Division has established an ability to consistently produce almonds at world-class levels of production. The orchard manager Select Harvests Limited brings considerable experience to the operational and technical management of the Project. This experience has been clearly demonstrated with the timely and successful establishment to a high standard of 1,350 hectares of the new Timbercorp orchards at Liparoo and Carina sites over the past two years.

Resourcing the new development with suitably qualified personnel will need to happen progressively using internal expertise to train and support new managers and staff. In addition it will be essential to support internal operational and training programs with external professional advice. It would be of assistance to the orchard manager and the future success of the Project if communication channels were established with other large horticultural enterprises nationally and internationally. In addition the technical base to the existing orchard management structure and the strong projected performance of the Project would be further enhanced with the establishment of a scientific support group that conducted trial work on site, specific to the needs of the Project.

The recent appointment of a Timbercorp representative to the Research and Development Committee of the Almond Board of Australia Inc., will ensure the project managers can contribute to and take a leadership role in the future development of R&D programs in the Australian Almond Industry. We view the decision by Timbercorp to be involved in the development of R&D programs in the industry as a valuable initiative to assist with the success of the Project.

Ensuring that adequate and appropriate human resources are engaged in the Project and that technology transfer from external sources occurs in a timely manner, will be needed to ensure a high standard of project performance now and in the future.

From discussions with various members of the Project management team we believe these issues will be properly addressed.

## RISKS

There are a number of very large mature almond orchards, which are high yielding, situated in close proximity to the Project site. The location for the Project therefore has been well selected and has the potential to do very well. The soil survey report has identified areas to be planted to minimise the risk of tree and production losses associated with poor soil types and frost risks. The irrigation system designed will ensure the trees can be supplied with sufficient water to produce commercial yields under normal climatic conditions. The decision to contract Select Harvests Limited to be the orchard manager and marketer, brings considerable experience and expertise to areas of the 'Project' that will be critical to its success. While local climatic conditions and overseas price fluctuations could have an impact on the profitability of the Project from one year to the next, it is not envisaged that these factors will have an extreme impact over the life of the Project. A focus on internal training, ensuring a planned approach to human resourcing is adopted and the engagement of appropriate external expertise at regular intervals, will be valuable in assisting the orchard manager to realise Project targets.

## REPORT SUMMARY

The Australian almond industry is in a growth phase of its development. This growth is underpinned by the success of the leadership within the industry in the research, production, processing and marketing segments. The Project site is climatically well suited to almond production. The water supply to the orchards is of high quality and secure. Soils have been evaluated for their suitability and any unsuitable areas will be excluded from planting. The irrigation system will allow high and efficient almond production to occur. The topography of the site has been reviewed to exclude high frost risk areas. Varieties selected represent a good balance between horticultural and marketing requirements, which have the potential to produce world-class yields of high quality kernel. Consistent demand has existed for almonds nationally and internationally for many years and given the increasing awareness of the health benefits of almonds and the diversified range of uses for the product, it is reasonable to assume this situation will continue into the foreseeable future. Production will vary from long term projections with the occurrence of biennial crops and climatic events. There is a focused research and development commitment in the industry toward variety improvement through selection and importation and profit maximisation through understanding how best to manage inputs and production.

It would be anticipated that with the experienced and high quality management being engaged, the 2003 Timbercorp Almond Project has excellent prospects of success.

Graham Johns

Horticultural Development Services Pty. Ltd.

# LAWYERS' REPORT



11 March 2003

The Directors  
Timbercorp Securities Limited  
Level 8  
461 Bourke Street  
Melbourne Victoria 3000

Dear Sirs,

**2003 Timbercorp Almond Project**

This letter has been prepared for inclusion in a prospectus to be issued by Timbercorp Securities Limited for the offer to cultivate and manage up to 500 hectares of almond orchards, with an option to accept oversubscriptions.

In our opinion the summaries of the Constitution and agreements contained in the section of the prospectus titled "Summary of Significant Documents" are not false or misleading, do not have a material omission and contain a representation of the Constitution, the other agreements, the rights, terms and conditions that is fair and accurate.

Yours faithfully  
Norm Taylor  
N M Taylor Lawyers

# SUMMARY OF SIGNIFICANT DOCUMENTS

## INTRODUCTION

Terms or expressions used in this section that are capitalised and are not defined elsewhere in this prospectus have the same meaning as in the relevant document unless the context implies the contrary.

## THE CONSTITUTION

The 2003 Timbercorp Almond Project has been registered as a managed investment scheme under the Corporations Act. The Constitution establishing the Project is between each several Grower and us as Responsible Entity. The Constitution is a legally enforceable deed.

Important features of the Constitution and of the Corporations Act now follow. Figures in square brackets are references to clause numbers in the Constitution.

### 1 Appointment of Responsible Entity as agent, attorney and representative

Under the Constitution, each Grower (either alone or jointly with or in association with one or more other persons) appoints the Responsible Entity as its agent, attorney and representative. The Responsible Entity's powers and responsibilities include:

- (a) to receive and hold the Application Moneys;
- (b) to invest the moneys in the Agency Account in any Authorised Investment;
- (c) to use the Application Moneys of a Grower in discharging the Grower's obligations under the Agreements or under the Constitution;
- (d) to prepare reports and accounts in relation to the Orchard Services and in relation to the processing of Crop and the sale of Product or Crop;
- (e) to monitor the performance of all parties to the Project Documents and to exercise all rights and powers of the Grower under any Project Document;
- (f) to execute any deed, agreement, certificate or other document and to do all other things necessary or desirable in furtherance of the powers granted to the Responsible Entity;
- (g) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are a part of or relate to or are incidental to the Orchard Services on behalf of a Grower;
- (h) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Crop and Product from the Project; and
- (i) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and to bring legal or arbitration or alternative dispute resolution proceedings and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Grower and relating to any Agreement. [11]

In particular, the Grower authorises the Responsible Entity:

- (a) to store its Participating Interest in the Crop;
- (b) to procure the processing of its Participating Interest in the Crop;
- (c) to enter into any processing agreement as agent and attorney for the Grower; and
- (d) as its agent and attorney, to sell its Participating Interest in the Product or Crop using its reasonable endeavours to seek to maximise returns. [13.3 and 13.4]

Prior to the sale of the Product or Crop, the Responsible Entity may gather in all of the Growers' Product or Crop it may store, market and sell the Product or Crop gathered in without having regard to the quantity or quality of the particular Product or Crop from the particular Almondlots. [13.4]

## 2 Rights of Growers

### (a) Limitation of Liability

Except as provided by any express indemnity given by any Grower to the Responsible Entity, the entire liability of each Grower is limited to the balance of the Application Money and the Grower's Participating Interest in the Proceeds and no Grower has any liability to make any further contribution to the Project or payment to the Responsible Entity in respect of the Project, other than the amounts payable under the Constitution, the Almondlot Management Agreement and the Licence and Joint Venture Agreement. [24.1] It is not, however, possible to give an absolute assurance that each Grower will be protected from all liability to third parties.

### (b) Information

Each Grower has the right to inspect and copy any document or other information relevant to the activities of the Responsible Entity on its behalf (except for information which is confidential because its disclosure could in the reasonable opinion of the Responsible Entity assist competitors or otherwise prejudice the interests of all Growers), provided that on each occasion on which a Grower seeks to exercise such right the Grower will sign a suitable undertaking to keep confidential the document or other information. [19.1(a)]

### (c) Opinions

Each Grower has the right to express opinions and to give recommendations relating to any matters the subject of the Licence and Joint Venture Agreement and the Almondlot Management Agreement and the Responsible Entity will give due consideration to any such opinions or recommendations received in writing. [19.1(b)]

### (d) Right to Remove Responsible Entity and Auditors

Growers may take action under Part 2G.4 of the Corporations Act for the calling of a meeting of Growers to consider and vote on an extraordinary resolution that Timbercorp Securities should be removed as responsible entity of the Project. The resolution to remove Timbercorp Securities must be decided on a poll and will be passed if at least 50% of the votes cast by Growers entitled to vote on the resolution vote in favour of it. [section 601FM and Part 2G.4 of the Corporations Act].

### (e) Right to Extend Project

The Project may be extended for additional periods not exceeding three (3) years each, as Growers may by Special Resolution resolve. [26.2]

### (f) Right to Terminate Project

A meeting of Growers may by Special Resolution resolve to terminate the Project at any time. [26.4]

## 3 Almondlots

### (a) Rights of Growers Differ

Each Grower has rights to a particular Almondlot and in that regard the rights of that Grower differ from the rights of any other Grower.

### (b) Almondlot Statements

Almondlot Statements will be sent by the Responsible Entity to Growers not more than 2 months after the Almondlots are issued, the allocation of Almondlots to a Grower in substitution for other Almondlots or when next accounting to the Grower after any change in the holding of the Grower. [10.1]

### (c) Transfer or Assignment

No Grower may transfer, encumber or otherwise dispose of its Almondlots unless the Grower transfers, encumbers or disposes of the Almondlots individually to the one legal person including joint owners (unless the Responsible Entity otherwise agrees in its absolute discretion) who agrees to become a party to the Constitution and the Agreements. Otherwise, Growers may assign their Almondlots subject to a deed of assignment (set out in the Constitution) being delivered to the Responsible Entity [20.1, 21.1].

## 4 Provisions Relating to the Receipt of Applications and the Flow of Money

### (a) Application Moneys and Interest on those Moneys

The Responsible Entity holds all Application Money and any income earned on it as bare trustee for Applicants until Minimum Subscription (if any) is reached.

There is no Minimum Subscription. The moneys are held in a special Trust Account kept solely for the purpose and may be pooled with moneys of other Applicants. [4.1, 4.2, 4.3]

On an Applicant becoming a Grower, any interest earned from money in the special Trust Account will be paid to the Responsible Entity as part of its fees. [4.4]

On any refusal by the Responsible Entity of any Application, the Responsible Entity must repay to the Applicant the moneys paid by the Applicant to the extent refused with interest, if any, and without any deduction except for bank fees and government charges. [7.3]

If Minimum Subscription is not reached by the date specified in the Document, the Responsible Entity must within 7 days repay to each Applicant the moneys paid by the Applicant with any interest earned in relation to them and without deduction except for bank fees and government charges. [8.2] It should be noted again that there is no Minimum Subscription specified in this prospectus.

If Application Money is not released in payment of fees under the Licence and Joint Venture Agreement or the Almondlot Management Agreement within 13 months after the date of issue of the prospectus, then the Responsible Entity must, within 28 days, refund to the Grower the whole of the Application Money paid, with interest and without deduction except for bank fees and government charges. [9.3(b)]

(b) Application Procedure

Every Applicant must deliver to the Responsible Entity an Application and Power of Attorney Form signed by the Applicant appointing the Custodian or the Responsible Entity to be the Applicant's attorney to enter into the Agreements and, subject to the following paragraph, a cheque as required by the prospectus in payment of the Application Money. [6.3]

If an amount is shown in an Application against the words "LESS amount subject to finance" (if those words appear in the Application), the Application will only be accepted by the Responsible Entity on condition that a person (which person may include the Responsible Entity) agrees to lend that amount to the Applicant. The Responsible Entity does not warrant, undertake, covenant or agree that such finance will be provided or procured. [6.5]

The Responsible Entity may in its absolute discretion, within 15 Business Days after receipt of an Application, notify an Applicant that its Application has been refused, wholly or partly without giving reasons for the refusal. On repayment of the Application Moneys, the Applicant will cease to be an Applicant under the Constitution. [7.1, 7.2, 7.4]

On an Application being accepted in whole or in part, and Minimum Subscription being reached, the Applicant will become a Grower. [8.1] An Application received and not refused is deemed to be accepted immediately on receipt, subject to the Application Money being paid and Minimum Subscription being reached. [8.4]

Following acceptance of an Application, the Responsible Entity will prepare the Licence and Joint Venture Agreement and Almondlot Management Agreement in accordance with the details on the Application which will commence from such date as is determined by the Responsible Entity. [9.1]

(c) Allotment of Almondlots and Entry into Agreements

At the times specified in the prospectus, the Responsible Entity must:

- immediately allocate Almondlots to the Grower and within 21 days thereafter enter the Grower's details in the Register; and
- either itself or procure the Custodian to enter into the Licence and Joint Venture Agreement and Almondlot Management Agreement and any other ancillary or related documents. [8.7]

The Responsible Entity may at any time after the above agreements are entered into, allocate an Almondlot or Almondlots to a Grower on the Orchard in substitution for an Almondlot or Almondlots currently allocated to a Grower. The allocation of an Almondlot or Almondlots in substitution for another Almondlot or Almondlots does not affect, or detract from, any rights, interests, powers, privileges, obligations and liabilities held by the Grower under the Constitution and under the Licence and Joint Venture Agreement and Almondlot Management Agreement, other than that the Grower with the Land Owner will as joint venturers cultivate and harvest Almonds on the replacement Almondlot or

Almondlots on and from the date of substitution. [8.7]

(d) Release of Application Money

Before release of the Application Money, the Responsible Entity must be reasonably satisfied that:

- the Licence and Joint Venture Agreement, and Almondlot Management Agreement are in the form required by the Constitution and have been duly entered into by all parties;
- the Land Owner has the capacity to grant the Licence and that all necessary consents to the grant of the Licence and entry into the Agreements;
- the property the subject of the Licence and Joint Venture Agreement is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant and which is not disclosed in the prospectus;
- any other matter required to be attended to, which is necessary for the creation of the Licence and the effective vesting in the Grower of its Agreements, whether by reason of the Constitution or otherwise, has been attended to; and
- there are no outstanding material breaches of any of the provisions of the Constitution which are detrimental to the interests of the Growers whose Application Money is to be allocated. [9.2]

Within 2 Business Days of the Responsible Entity being satisfied of the above matters, it must release the Application Money and apply it in payment of the fees payable under the Agreements. [9.3(a)]

(e) Contribution of Further Moneys

Each Grower is required to contribute further moneys to the Responsible Entity on the dates, in the amounts and in the manner set out in the Constitution, the Licence and Joint Venture Agreement and Almondlot Management Agreement. The Responsible Entity will give to each Grower at least one month's prior written notice as to the amount due. [17.1]

(f) Payment of Expenses

Subject to the Responsible Entity's right under the Almondlot Management Agreement to a management fee for the estimated costs of operating the Almondlots, the Responsible Entity will be responsible for payment of all expenses relating to the operation and administration of the Project up to the harvest stage. [14.3]

(g) Agency Account

The Responsible Entity must keep one or more Agency Accounts for the purpose of recording Proceeds and other moneys held for a Grower, other than Application Money and interest thereon. [12.1] The Agency Account may be interest bearing and any such interest will be treated as Proceeds. [12.3] Moneys held for any of the Growers may be pooled in one or more bank accounts with moneys held for other Growers. [12.4] The Responsible Entity must as the agent for each of the Growers pay moneys pursuant to any obligations on the part of the Grower under the Constitution or under the provisions of the Agreements. [15.1] Expenditure will be shared between all of the Growers such that each Grower pays the Participating Interest (ie. its pro rata share) of the aggregate expenditure. [15.2]

(h) Authorised Investments

The Responsible Entity may apply moneys standing in any Agency Account to acquire Authorised Investments. [16.1] Any interest or other income earned from Authorised Investments will be paid to the Responsible Entity as fees. [16.3] Authorised Investments are defined as money, interest bearing deposits at call or for a term not exceeding three months with or without security with any Financial Institution, negotiable certificates of deposit issued by or bills of exchange drawn, accepted or endorsed by any Bank and deposits in the short term money market. [1.1 Definition of "Authorised Investments"]

(i) Payment into Agency Account

The Responsible Entity must pay into the Agency Account proceeds from the sale of Product or Crop attributable to the Growers' Almondlots, proceeds of any insurance policy to which the Growers are entitled to benefit and any other amount properly related to the proceeds from the Growers' Almondlots. [13.6]

(j) Grower's Entitlement

A Grower is entitled to the money in Agency Account which represents its Participating Interest in the gross income from the sale of the Product or the Crop, as applicable, for a particular Production Period less

- any fees payable under the Grower's Licence and Joint Venture Agreement plus interest;
- any fees payable under the Grower's Almondlot Management Agreement plus interest; and
- any other amounts payable by the Grower under the Constitution and the Agreements plus interest.

If, in any Financial Year in which there is a Production Period, there is insufficient money to make all the required payments, then the above deductions must be made in the priority in which they are listed. [13.7]

The surplus available to each Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Grower. The payment must be made within five (5) months after 30 June each year in which there is a Production Period. [13.7]

Subject to paragraph 18.4(e) and clause 18.5, a Grower is not entitled to its Participating Interest in each Financial Year where the Grower is a Defaulting Grower, in which case that Grower's Participating Interest in the Crop and Product will be used to satisfy the Grower's obligations in the manner set out in clause 13.7. [13.2]

## 5 Meetings

Under the Constitution, the Responsible Entity may at any time convene a meeting of Growers and must do so when required to do so by the Corporations Act. [22.1]

Meetings may be convened by Growers in accordance with Part 2G.4 of the Corporations Act.

Meetings of Growers must be called and convened in accordance with the Corporations Act, except that:

- (a) in relation to section 252R of the Corporations Act, no business will be transacted at any meetings of Growers unless a quorum is present when the meeting proceeds to business. The quorum necessary for a meeting at which an Ordinary Resolution is to be proposed is five persons holding or representing by proxy at least ten per cent of the aggregate number of Almondlots issued to the Growers concerned, and for a meeting at which a Special Resolution is to be proposed, is five persons holding or representing by proxy at least twenty-five per cent of the aggregate number of Almondlots issued to the Growers concerned;
- (b) in relation to section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Grower and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual more than once;
- (c) in relation to section 252R(3) of the Corporations Act, a proxy is entitled to speak and vote for a Grower (to the extent allowed by the appointment) even if the Grower is present at the meeting (but only so long as the Grower does not speak or vote, as the case may be);
- (d) in relation to section 252Z(5) of the Corporations Act, the Responsible Entity may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any shorter period before the meeting;
- (e) in relation to section 253K(2) of the Corporations Act, a poll cannot be demanded on any resolution concerning the election of the chair of a meeting or the adjournment of a meeting;
- (f) in relation to section 253L(2) of the Corporations Act, at a meeting of Growers, a poll may be demanded by at least one Grower concerned holding or representing by proxy at least ten per cent of the aggregate number of Almondlots for the time being on issue to the Growers concerned and entitling the holders to vote on the resolution or the chair. [22.2]

## 6 Liabilities and Indemnities

### (a) Liability of the Responsible Entity

To the extent permitted by the Corporations Act, the Responsible Entity is not liable for any loss or damage to any person (including any Grower) arising out of any matter unless, in respect of that matter, it acted both otherwise than in accordance with the Constitution and its duties, and without a belief held in good faith that it was acting in accordance with the Constitution and its duties. [23.1]

In particular, the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter, to the extent permitted by the Corporations Act, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity, it acted as required by Law, it relied in good faith upon any signature, marking or document, or it followed a direction given to it by a resolution passed at a duly convened meeting of Growers. [23.1]

The Responsible Entity may decide how and when to exercise its powers in its absolute discretion. [23.1]

### (b) Indemnity of Responsible Entity

In addition to any indemnity under any Law, the Responsible Entity has a right of indemnity out of the Agency Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of its duties.

Such right of indemnity in respect of a matter ("Indemnified Matter") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of the Constitution.

The right of indemnity continues to be available after the Responsible Entity retires or is removed as responsible entity. The Responsible Entity may pay out of the Agency Account any amount for which it is entitled to be indemnified. [23.2]

### (c) Liability and Indemnity of Growers (refer also paragraph 2.1)

The Responsible Entity indemnifies each Grower against all debts and liabilities which may be incurred by the Grower at any time in relation to the Project or otherwise in any way as a result of or arising out of any act, default or omission of the Responsible Entity. [24.2]

Despite any other provision of the Constitution or provisions deemed to be included in the Constitution, no Grower will, by reason of the Constitution or by reason of the relationship created under the Constitution with the Responsible Entity be under any obligation personally to indemnify the Responsible Entity in the event of there being any deficiency in relation to the Project except, in respect of the Almondlots, out of any Application Money of the Grower or other moneys held in the Agency Account in relation to the Grower or the payments required under the Constitution, the Licence and Joint Venture Agreement and the Almondlot Management Agreement. [24.3]

## 7 Default and Termination

If any Agreement is terminated for whatever reason, including failure to pay any further moneys, the parties acknowledge that the Responsible Entity has rights in respect of all Almondlots including rights of access to control pests, weeds, undergrowth or similar alien material, rights to continue to fertilise and irrigate the Almondlots and rights to enter the Almondlots to inspect their condition and the condition of the plant life growing on the Almondlots. [18.3]

If a Grower is in breach of any of the Agreements or the Constitution and has failed to rectify such breach after receiving written notice from Timbercorp Securities, or ceases to participate in the Project due to a breach of any of the Agreements or the Constitution, including where any of the Agreements in respect of an Almondlot of a Grower are terminated, the Responsible Entity may exercise any of the following rights:

- (a) sue the Defaulting Grower for any amount or amounts due; [18.4(b)]
- (b) assign the Defaulting Grower's Almondlots to the Land Owner or any other person nominated by the Responsible Entity at the market value of the relevant Almondlots determined by an independent valuer, and apply the proceeds in the following order of priority: in payment of fees owing to the valuer, in payment of the Responsible Entity's costs in connection with the Defaulting Grower's default, in payment of any amounts payable by the Defaulting Grower under the Licence and Joint Venture Agreement and then



the Almondlot Management Agreement, each plus interest, in payment of any amounts owing by the Grower under the Constitution plus interest and then treat any residue as Proceeds; [18.4(d)]

- (c) pay out of its own funds such fees, expenses, rent, costs or other amounts as may be due by the Grower, and be reimbursed out of the Agency Account in the amount of such fees plus the rate of interest fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) from the time of such payment until the date of reimbursement. [18.5]

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

- (a) the Responsible Entity may continue to manage the Almondlot in accordance with the Constitution and the Almondlot Management Agreement, in which case the Responsible Entity will be entitled to all amounts that it would have received under the Almondlot Management Agreement had it not been terminated in respect of the relevant Almondlot;
- (b) the Participating Interest in the gross income from the sale of the Product or Crop for a particular Production Period or any other Proceeds attributable to the relevant Almondlot of the Grower will be applied in payment of any amounts to which the Land Owner and the Responsible Entity are entitled to under the Agreements and the Constitution plus interest with any residue being treated as Proceeds for the benefit of the Land Owner. [18.4(e)]

A Grower must pay the reasonable costs and expenses incurred by the Responsible Entity and the Land Owner in connection with any default of the Grower under the Agreements or the Constitution within 1 month of receiving written notice to pay such amounts. [18.4(g)]

## 8 Accounts and Audit

The Responsible Entity will keep such accounting records as correctly record and explain the transactions and financial position of the Project in such a way as will enable true and fair financial statements to be prepared and conveniently and properly audited. The financial statements will be lodged in accordance with the requirements of the Corporations Act.

The Responsible Entity has appointed Deloitte Touche Tohmatsu to be the Auditor of the Project to audit its financial statements. The Responsible Entity, with the consent of the Commission, may remove the Auditor. The Auditor's fees are payable by Responsible Entity.

## 9 Complaints Procedure

The Responsible Entity is a member of Financial Industries Complaints Services Limited. The Responsible Entity must appoint an internal complaints officer with authority to review any complaints from Growers in relation to the Project or to the Responsible Entity. His roles and responsibilities include receiving and processing complaints from Growers, reviewing and considering complaints in a timely manner and communicating directly with Growers in relation to complaints. He must also:

- (a) make readily available to Growers information on how, when, where and to whom to make complaints and any documented policies and procedures for the resolution of complaints;
- (b) periodically develop and review the Responsible Entity's policies and procedures for the resolution of complaints, in accordance with Australian Standard AS 4269:1995, Complaints Handling; and
- (c) provide information relating to the Responsible Entity's complaints handling procedures to employees of the Responsible Entity. [25.2]

The Constitution sets out detailed procedures that apply to the receipt and processing of complaints. [25.3] If a complaint is not resolved within 45 days following the Lodgement Date, the Complaints Officer must inform the complainant of the reasons for the delay. No later than 90 days following the Lodgement Date, the Complaints Officer must notify the complainant of the decision of the Responsible Entity, the reasons for the decision, available remedies and further avenues available. [25.4]

If the complainant is dissatisfied with the decision of the Responsible Entity in relation to the complaint, the complainant may refer the complaint to the

external complaints resolution scheme for determination. Subject to any right of appeal, the complainant and the Responsible Entity agree to accept the determination of the external complaints resolution scheme as final and binding. If the Responsible Entity is not a member of an external complaints resolution scheme approved by the Commission, the complainant may take any appropriate lawful action. [25.5, 25.6.2]

## 10 Termination of the Project

The Project terminates on the completion by the parties of their obligations under the Constitution and the Agreements. [26.1]

On the termination of the Project, the Responsible Entity must realise all assets for the time being in relation to the Project after paying all proper outgoings and allowing for contingencies. The Responsible Entity must prepare final accounts of the Project and cause the Auditor to audit and report on those accounts. The balance obtained after the sale of all assets must be distributed by the Responsible Entity, as if the balance represented Proceeds payable under the Project Documents, but if the aggregate amount to be distributed is less than \$1,000, Indexed from 30 June 2003, then at the discretion of the Responsible Entity, the amount will be either distributed to Growers or donated to the Salvation Army of Victoria. [26.5]

On so distributing, the Responsible Entity must forward to the Grower a final statement setting out the details of the sale, calling in and conversion of the assets and the balance obtained in relation to the Project and the distribution and all payments otherwise made or allowed for, at which time the Responsible Entity will be released from all further duties and obligations incurred under the Constitution in relation to the Grower without prejudice to any liability of the Responsible Entity previously incurred under the Constitution to the Grower for any breach of its duties imposed by Law or otherwise. [26.6]

Each of the Growers will be released from all further duties and obligations incurred under the Constitution in relation to the Project, without prejudice to any liability of the Growers incurred under the Constitution to any party to the Constitution for any breach of its duties imposed by Law or otherwise. [26.7]

## 11 Modification of the Constitution

The Corporations Act provides for the Constitution to be modified either by a special resolution of Growers or by the Responsible Entity if it reasonably considers that the proposed change to the Constitution does not adversely affect the interests of Growers.

## SUMMARY OF THE CUSTODY AGREEMENT

We have elected to appoint Permanent Trustee Company Limited as custodian in relation to the Project under the terms of the Custody Agreement summarised below.

Important features of the Custody Agreement follow.

### 1 Appointment as Custodian

Timbercorp Securities appoints Permanent as custodian to:

- (a) receive and hold the Scheme Assets and all income accruing in respect of them and any document of title to them in safe custody;
- (b) if directed by Timbercorp Securities and if duly appointed as attorney for and on behalf of the Growers, execute as attorney for and on behalf of the Growers, such of the Scheme Agreements as are entered into by the Growers; and
- (c) retain in safe custody executed copies of the Scheme Agreements.

"Scheme Assets" is defined as Application Moneys, until they are expended, and Proceeds, until they are distributed, in accordance with the Constitution.

### 2 Powers of the Custodian

The Custodian's powers include the following powers:

- (a) to establish bank accounts in Timbercorp Securities' name designating the Scheme Assets and to operate on the account in accordance with instructions from Timbercorp Securities;

- (b) to execute or make on behalf of Timbercorp Securities any certificates, declarations or affidavits which are required to receive into or transfer out of its custody any Scheme Assets;
- (c) to appoint or engage, at Timbercorp Securities' expense, professional advisers; or
- (d) to comply with any obligations imposed on it by law or do any other things which it considers necessary, desirable, incidental to or in furtherance of the above matters.

Subject to the Custody Agreement, the Custodian has absolute discretion as to the exercise of all powers, authorities and discretions vested in it under the Custody Agreement.

### 3 Duties of the Custodian

Timbercorp Securities is responsible for making all decisions in relation to the Scheme Assets and properly communicating to the Custodian instructions in relation to the Scheme Assets. Subject to the Custody Agreement, Permanent must act on Timbercorp Securities' instructions in relation to any Scheme Asset. If Permanent does not have any instructions, Permanent is required, subject to the Custody Agreement, not to make any payment or take any other action in relation to any matter concerning any Scheme Assets.

To the extent required by the Corporations Act, as modified by any relief granted by ASIC, the Custodian must ensure that the Scheme Assets are clearly identified as property of the Project and held separately from the Custodian's own assets, the assets of any other scheme or any other assets held by the Custodian in any other capacity whatsoever. The Custodian must notify Timbercorp Securities in writing immediately if the Custodian becomes aware that it no longer satisfies the requirements of ASIC Policy Statement 133.

### 4 Acting on Instructions

The Custodian is authorised to act, or to cause any other person to act, on any instructions given to it in accordance with the Custody Agreement by any of Timbercorp Securities' Authorised Persons. This includes instructions provided by electronic means or procedures agreed between Timbercorp Securities and the Custodian. The Custodian is not liable for acting on any instructions which appear to it to have been properly and regularly signed, transmitted electronically or given, nor is it liable for acting on any instructions which contain any error or ambiguity.

### 5 Books and Records

The Custodian must properly maintain adequate books and records relating to the Scheme Assets in accordance with generally accepted accounting principles. It must provide Timbercorp Securities and its auditor with certain information as required by the Custody Agreement.

### 6 Fees and Expenses

Timbercorp Securities agrees to pay the Custodian an initial fee of \$20,000 for processing up to 1,500 Growers' applications and a further amount of \$1,000 for each additional 100 Growers' applications, an ongoing annual fee of \$3,000, (Indexed) and a termination fee equivalent to the greater of 0.1% of total net Proceeds paid to all Growers or \$50,000 (together with any GST payable by the Custodian in respect of those amounts). The Custodian is also entitled to recover from Timbercorp Securities the amount of all Taxes and bank charges, and all other liabilities, costs, charges and expenses which it suffers or incurs in connection with the performance of its duties and the exercise of its powers under the Custody Agreement including, without limitation, settlement, delivery, registration and transactions charges and foreign currency costs and charges.

### 7 Termination

The Custody Agreement continues for the term of the Project. A party may terminate the Custody Agreement by notice to the other party if:

- (a) a receiver or a receiver and manager is appointed to the undertaking of the other party either in relation to the capacity in which it acts under the agreement or where such receiver or receiver and manager is reasonably likely to affect materially such other party's performance under the Custody Agreement;

- (b) the other party goes into liquidation, is subject to a scheme of compromise or arrangement with its creditors or has an administrator appointed to its affairs;
- (c) the other party ceases to carry on business in relation to the Project in the case of Timbercorp Securities and in relation to custodial services in the case of the Custodian;
- (d) the other party materially breaches any provision of the Custody Agreement or fails to observe or perform any representation, warranty, indemnity or undertaking pursuant to the Custody Agreement in a material respect, subject to a 14 day period to remedy the default; or
- (e) the other party sells or transfers or makes any agreement for the sale or transfer of its principal business and undertaking.

The Custodian may terminate the Custody Agreement if ASIC or a Court having jurisdiction makes a written order vesting any property of Timbercorp Securities in relation to the Project in ASIC or some body other than Timbercorp Securities.

## SUMMARY OF THE LICENCE AND JOINT VENTURE AGREEMENT

### 1 Parties

The Licence and Joint Venture Agreement will be between Almond Land Pty Ltd as the Landowner, Timbercorp Securities Limited as the Responsible Entity and each several Grower.

### 2 Joint Venture

Under the Agreement, the Grower and the Landowner associate themselves as Joint Venturers for the purposes of engaging in a primary production business of growing and cultivating an Almond Orchard and producing and processing Almonds for commercial gain. The Grower is entitled to a Prescribed Proportion of the Joint Venture Assets of 90% and the Landowner is entitled to a Prescribed Proportion of the Joint Venture Assets of 10%.

### 3 Grant of Licence

Under the Agreement, the Land Owner grants to the Grower a licence to use and occupy the JV Almondlots (in joint venture with the Land Owner) for the purpose of growing and cultivating Almond Trees on the JV Almondlots for the sole purpose of the joint venture operations between the Land Owner and the Grower. The licence granted under the Agreement does not entitle the Grower to exclusive occupation of the JV Almondlots.

### 4 Establishment of Orchard

The Land Owner will use best endeavours to complete the establishment of the Orchard, at its own cost, by 30 June 2003 or such later date agreed between the Land Owner and the Grower in accordance with good horticultural and environmental practices, and that it will construct necessary infrastructure and carry out the Capital Works and for those purposes it will:

- (a) identify the relevant parts of the Land which are suitable for growing almonds based on soil types, soil depths and contours;
- (b) organise various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
- (c) organise block layout in relation to the Almondlots and the pegging of those blocks;
- (d) acquire rights to, construct and install, as the case requires, the Internal Irrigation System and the Irrigation Infrastructure;
- (e) carry out drainage work and work to help prevent soil erosion on all Land;
- (f) clear any vegetation or trees from the Orchard, perform broadacre weed spraying, disc ploughing, ripping and mounding of tree rows, apply preplant fertiliser spreading and undertake discing, x-planning tree rows and marking out of tree location;
- (g) plant the Almond Trees on the Orchard during June 2003; and
- (h) provide or undertake, as the case requires, such other capital works, services or things which, in the reasonable opinion of the Land Owner, are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs (a) – (g) above.

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

## **5 Water Licences**

The Land Owner must do all things necessary to ensure that its rights under the Water Licences are fully exploited to maximise the use and enjoyment of them by the Grower. It must also take all steps to avoid interfering with the supply of water to the Grower's Almondlots and to avoid any actions that would prejudice the Grower's rights under the Agreement.

Furthermore, the Land Owner must purchase and maintain the Water Licences during the Project.

The Grower acknowledges that:

- (a) the Land Owner may purchase water licences in addition to the Water Licences (water licences up to 12.5 megalitres per hectare) attributed to the Project and make them available to the Responsible Entity on a temporary basis for the Responsible Entity to meet its obligations under the Almondlot Management Agreement; and
- (b) such additional water licences do not attach to the Grower's Almondlot, are not attributable to the Project and will at all times remain, the property of the Land Owner.

## **6 Term**

Unless terminated earlier by the Grower, the Land Owner or the Responsible Entity (see below), the term of the Agreement will be from the Commencement Date until the earlier of:

- (a) 30 June 2023;
- (b) the termination of the Joint Venturers' Participating Interest in the Project; and
- (c) the termination of the Project.

At the expiration of the term, the Grower must return the JV Almondlots to the Land Owner in good condition, but the Grower is not required to remove Almond Trees or restore the JV Almondlots to their original condition. Any structures or plant and equipment of any description which belong to the Joint Venture must be removed from the JV Almondlots within 30 days after the end of the Agreement and if the parties do not comply with this requirement, all structures and plant and equipment remaining on the JV Almondlots at the time will become the absolute property of the Land Owner. The Land Owner has no obligation to pay the Grower any compensation.

The Grower may terminate the Agreement:

- (a) immediately, if either the Land Owner or the Responsible Entity goes into liquidation or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or the Responsible Entity or any part of its undertaking;
- (b) immediately, if either the Land Owner or the Responsible Entity ceases to carry on business;
- (c) immediately, if either the Land Owner or the Responsible Entity fails or neglects to pay any moneys due to any Grower, or is in default of any material obligation under the Agreement and such default continues for a period of 3 months after receipt by the Land Owner or the Responsible Entity as appropriate of written notice from the Grower specifying the default and requesting that the default be remedied;
- (d) by giving four months' written notice to the Land Owner, if the whole or a substantial part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever, or if an independent horticultural consultant commissioned jointly by the Grower and the Land Owner reasonably determines that the whole or a substantial part of the JV Almondlots is no longer commercially viable (termination in these cases taking effect on and from the 30 June next following the expiration of the notice period);
- (e) in relation to only part of the JV Almondlots, by giving four months' written notice to the Land Owner, if that part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever, or if an

independent horticultural consultant commissioned jointly by the Grower and the Land Owner reasonably determines that part of the JV Almondlots is no longer commercially viable (termination in these circumstances taking effect on and from the 30 June next following the expiration of the notice period).

The Land Owner or the Responsible Entity may terminate the Agreement, with immediate effect, if the Grower fails to make a payment within the time required under the Agreement, or commits a material breach of the Agreement, and fails to remedy the breach or make reasonable compensation in money within 30 days after the Land Owner or the Responsible Entity has served a written notice on the Grower requiring the Grower to remedy the breach. If the Land Owner terminates the Agreement in this manner, the Grower will lose all its rights and interest as a participant in the Project.

Termination of the Agreement by the Grower or Land Owner in these circumstances is without prejudice to any rights and obligations which may have accrued prior to the date of termination and does not affect the rights or obligations of the parties in respect of any JV Almondlots or part of any JV Almondlot which continues to be subject to the Agreement.

## **7 Government Approvals**

The Responsible Entity must maintain for the Term of the Agreement all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the JV Almondlots.

## **8 Condition Precedent**

The Agreement is subject to and conditional on the Joint Venturers entering into the Almondlot Management Agreement with the Responsible Entity on or before the Commencement Date.

## **9 Licence Fees and Expenses**

For both an Early Grower and a Post 30 June Grower, the initial licence fee payable to the Land Owner for the period from the Commencement Date until 30 June 2003 for Early Growers or 30 June 2004 for Post 30 June Growers is \$786.36 per JV Almondlot. The licence fee payable by an Early Grower in respect of the Financial Year ending on 30 June 2004 and by both Early Growers and Post 30 June Growers in respect of the Financial Year ending on 30 June 2005 is also \$786.36 per JV Almondlot.

Thereafter, on each subsequent 31 October during the life of the Project, commencing 31 October 2005 in respect of the Financial Year ending 30 June 2006, the Grower must pay an annual licence fee of \$786.36 per JV Almondlot that is Indexed.

The Agreement provides that licence fees payable to the Land Owner are to be increased to cover the GST payable by the Land Owner.

If the Grower fails or neglects to pay the licence fee or its Prescribed Proportion of any amount due by the Joint Venturers under the Almondlot Management Agreement by the due date, the Land Owner may, after giving the Grower 30 days' prior written notice, terminate the Licence and Joint Venture Agreement and:

- (a) pay on behalf of the Grower, from its own funds, any such expense owing by the Grower and the Land Owner will be entitled to be reimbursed out of any Proceeds of the Grower the amount of such payment together with interest at a rate of 3% above the Commonwealth Bank of Australia's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full; and
- (b) deal with the Grower's interest in accordance with clause 18 of the Constitution.

## **10 The Grower's Obligations**

The Grower agrees at the Grower's expense to:

- (a) use the JV Almondlots solely for the purpose of the Joint Venture Operations;
- (b) comply with good horticultural and environmental practices;
- (c) comply with all laws and regulations relating to the use and occupancy of the JV Almondlots;

- (d) maintain the JV Almondlots in accordance with good horticultural practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) permit the Land Owner and its employees, agents or contractors to enter upon the JV Almondlots from time to time with or without equipment for the purposes of observing the state of the JV Almondlots and provide to the Land Owner sufficient rights of access to the Almond Trees in order for the Land Owner to perform its duties and obligations under the Agreement;
- (f) permit the Responsible Entity and its employees, agents or contractors to enter on the JV Almondlots for the purposes of performing its obligations under the Almondlot Management Agreement;
- (g) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (h) give such rights to occupiers of other Almondlots adjoining the JV Almondlots as are necessary for their proper use and enjoyment of their land, but such rights are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the JV Almondlots.

#### 11 The Land Owner's Obligations

The Land Owner must:

- (a) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent authority in respect of all Almondlots; and
- (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner or other persons.

#### 12 Terms of Joint Venture

Subject to the terms and conditions of the Almondlot Management Agreement, each of the Grower and the Land Owner:

- (a) is entitled to its Prescribed Proportion of the Almonds and the Proceeds;
- (b) must contribute to the Responsible Entity in proportion to its Prescribed Proportion of the management expenses; and
- (c) indemnifies the other against any losses or liability exceeding its Prescribed Proportion by reason of any joint liability incurred, or joint loss sustained, in connection with any contract or arrangement entered into by the Joint Venture.

The Joint Venture commences on the date that the Grower's application for Almondlots is accepted and, unless terminated earlier as set out above, terminates at the end of the Term as described in paragraph 6 of this summary of the Licence and Joint Venture Agreement.

On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Grower and the Land Owner in their Prescribed Proportions, or be sold. In the event that they are sold, the net proceeds of sale must be divided amongst the Grower and the Land Owner on a pro rata basis in accordance with their Prescribed Proportions.

#### 13 Assignment

The Land Owner or the Responsible Entity may assign its rights and interests under the Agreement, provided that the Land Owner or Responsible Entity enters into a deed with the assignee containing a covenant in favour of the Grower to observe and perform all of the covenants contained or implied in the Agreement and required to be observed or performed by the Land Owner or the Responsible Entity. This requirement also applies where the Land Owner sells the Land.

Subject to the requirements of the Constitution, the Grower may only assign its rights under the Agreement if the Grower: (a) first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner and the Responsible Entity stating that the assignee will at all times during the term of the Agreement observe and perform all of the terms and conditions of the Agreement, the Constitution and the Almondlot Management Agreement applying to the Grower; and (b) is not in default of any of its obligations under the Agreement, the Constitution and the Almondlot Management Agreement. Once the Grower has assigned its interest under the Agreement, it ceases to remain liable under the Agreement in respect of any act done or omitted to be done after the assignment is effected.

#### 14 Limitation of Liability of Grower

Subject to the terms of the Agreement, the Grower will not be obliged to incur any liability under the Agreement in excess of the annual licence fee, its Prescribed Proportion of the fees and expenses payable under the Almondlot Management Agreement and the Prescribed Proportion of the Joint Venture Proceeds and any other amounts payable by the Grower under the Constitution.

#### 15 Proper Law

The Agreement is governed by the laws of Victoria. The rights and obligations of the parties under the Agreement are subject to the terms and conditions of the Constitution.

### SUMMARY OF THE ALMONDLOT MANAGEMENT AGREEMENT

#### 1 Parties

The Almondlot Management Agreement will be between each several Grower together with the Land Owner as joint venturers, who are collectively referred to in this section as "the Grower" and Timbercorp Securities Limited as the "Responsible Entity".

#### 2 Appointment of Project Manager

The Grower engages the Responsible Entity, as an independent contractor, generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Grower, perform the Orchard Services.

The Responsible Entity must use reasonable endeavours to perform all its functions, exercise its powers under the Agreement and conduct the Project Operations:

- (a) in a commercially reasonable manner;
- (b) honestly;
- (c) generally in accordance with good horticultural management and environmental practices which are generally recognised and adopted in Australia and are known and acceptable to the Responsible Entity and suitable for use on the Orchard; and
- (d) in the best interests of all the Growers and not in the interests of the Responsible Entity if those interests are not the same as those of the Growers.

#### 3 Orchard Management

The Responsible Entity must cultivate and manage the Orchard in accordance with the Management Plan and good horticultural and environmental practices.

The Responsible Entity must commence to carry out the Orchard Services on behalf of the Grower on the Commencement Date of the Agreement.

The Orchard Services to be provided by the Responsible Entity include:

- (a) pruning the Almond Trees by mechanical or other methods;
- (b) as permitted by law, eradicating vermin which has caused or may cause damage to the Almond Trees or the Grower's Almondlots and putting in place measures to control such vermin;
- (c) providing the Orchard with necessary irrigation water made available by the Land Owner through Water Licences and operating the irrigation system licensed to Growers on the Grower's Almondlots at various times in order to irrigate the Grower's Almondlots;
- (d) at the Responsible Entity's discretion, conducting tests to ascertain the availability of nutrients in the soil on the Grower's Almondlots and, based on the results, taking whatever action is required to maintain the growth rate and productivity of the Almond Trees;
- (e) fertilising the Grower's Almondlots as required, in accordance with good horticultural practices, to maintain satisfactory rates of growth and productivity of the Almond Trees;
- (f) in the Responsible Entity's absolute discretion and without need for the Grower's consent, destroying any of the Almond Trees or Almonds which have contracted an exotic, noxious or incurable disease;

- (g) keeping the improvements on the Grower's Almondlots in good and substantial repair;
- (h) maintaining fire breaks in accordance with regulatory and insurance requirements and good horticultural practices;
- (i) maintaining the Grower's Almondlots in accordance with good horticultural practices including using soil management technique methods to reduce erosion and maintain soil quality;
- (j) as far as reasonably possible, keeping the Grower's Almondlots free from competitive weeds or other vegetation which may affect the growth or yield of the Almond Trees;
- (k) protecting the Almond Trees from insect infestation, disease and competition from competing growth using good horticultural practices, including applying herbicides or pesticides to the Grower's Almondlots and spraying under the Almond Trees as permitted by law;
- (l) keeping proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Grower's Almondlots or Almond Trees;
- (m) regularly inspecting and repairing all stakes, fences and irrigation equipment on the Grower's Almondlots;
- (n) inspecting and, where appropriate, re-tying the Almond Trees to stakes and attaching Almond Trees to trellising in accordance with good horticultural practices;
- (o) replanting any of the Almond Trees in need of replacement in accordance with the terms of any agreement made with suppliers of the Almond Trees;
- (p) complying with the Grower's licence obligations under the Licence and Joint Venture Agreement (except for those relating to payment of fees);
- (q) not discriminating between Growers in the supply of water under the Water Licences;
- (r) if additional water in excess of 3.125 megalitres per Almondlot is required from time to time in order to irrigate the Orchard and such water can be reasonably procured by way of temporary water rights, procuring such additional water and supplying it to Growers, at a cost to Growers under the Agreement in operating the Almondlots, calculated as the Responsible Entity's reasonable costs of procuring the additional water;
- (s) for each Financial Year commencing with the Financial Year ending 30 June 2003, preparing, or arranging for the preparation of, the Management Plan for the Project, including a horticultural plan for the Orchard, horticultural program, operational plan and financial and operational budgets in relation to those horticultural matters, reviewing the Management Plan and, if necessary, making amendments to it;
- (t) providing any other service or thing which, in the reasonable opinion of the Responsible Entity, is incidental or ancillary to the ongoing management of the Grower's Almondlots; and
- (u) complying with all laws and regulations relating to the use and occupancy of the Grower's Almondlots.

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

#### **4 Harvesting**

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

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

The Responsible Entity will promptly deliver all harvested Almonds to a delivery point or points to enable the Almonds to be processed or sold. Until the harvested Almonds are delivered, the Responsible Entity will store them in an appropriate manner to minimise the deterioration of the Almonds' quality. The Almonds may be stored on the Orchard or any other premises whether or not owned or operated by the Responsible Entity.

#### **5 Processing and Sale**

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

The Responsible Entity will:

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

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

The Grower acknowledges and agrees with the Responsible Entity that the Responsible Entity can call for a first and paramount lien at any time in respect of the Grower's Participating Interest in the Almonds until such time as any outstanding fees or expenses due and payable to the Responsible Entity under the Agreement have been paid.

#### **6 Administrative Services**

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

- (a) preparing reports to Growers on the allocation and location of Growers' Almondlots;
- (b) preparing reports to Growers detailing the work to be done on each Grower's Almondlot;
- (c) preparing all other reports to Growers required under the Almondlot Management Agreement;
- (d) preparing a statement to the Grower to assist with income tax preparation;
- (e) recording the Grower's transactions and make payments on behalf of the Grower;
- (f) general administrative management of the Project;
- (g) reviewing the sales and marketing plan for the Project; and
- (h) co-ordinating visits of Growers to inspect their Almondlots.

#### **7 Access to Orchard**

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

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

The Responsible Entity is entitled (but has no obligation) to construct and maintain roads and tracks on the Grower's Almondlots primarily and principally to provide access to and from the Orchard from a public road for the cultivation, maintenance and tending of the Almond Trees and the Almonds, harvesting of the Almonds and removal of the Almonds.

Provided the Grower first gives the Responsible Entity 7 days' prior written notice, the Responsible Entity must permit the Grower or its duly authorised representatives to have access, at the Grower's expense and risk, at all reasonable times to the Grower's Almondlots and the facilities located on them.

## 8 Responsible Entity's Fees

The Responsible Entity will be paid the following management fees and charges in respect of all services provided under the agreement in the periods set out below:

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

The Responsible Entity will be entitled to be paid the following additional management fees by all Growers in a Financial Year out of, and immediately prior to, any distribution:

- (a) on and from 31 October 2005 and each subsequent year thereafter on 31 October, the estimated costs of operating the Almondlots (which will include an allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$50 per Almondlot Indexed (adopting 30 June 2003 as the base date);
- (b) 3% of the proceeds of the sale of Crop and Product in a Financial Year; and
- (c) 25% of so much of the annual Net Proceeds payable to the Grower in a Financial Year in excess of the annual Net Proceeds specified in the prospectus for that Financial Year (the 'Incentive Fee Threshold'). But, if in the immediately preceding Financial Year, the actual Net Proceeds were less than the Incentive Fee Threshold specified for that preceding Financial Year, the amount of the deficit must be deducted from the actual Net Proceeds when calculating the incentive fee payable to the Responsible Entity in respect of the Financial Year to which reference is first made.

After the actual costs for a Financial Year are determined by the Responsible Entity, the Responsible Entity will, when notifying the Grower (under paragraph (a) above) of the forecasted costs for the succeeding Financial Year, notify the Grower of those actual costs per Almondlot, and either deduct the surplus per Almondlot from, or add the excess per Almondlot to, the fees payable for the next Financial Year, depending on whether they are more or less than the costs estimated by the Responsible Entity under paragraph (a) above.

The Agreement provides that fees payable to the Responsible Entity will be increased to cover the GST payable to the Responsible Entity.

It should be noted that the Grower, as a joint venturer with the Land Owner, will be required to pay 90% of all fees.

## 9 Insurance

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

## 10 Management Plan and Reports

In performing its obligations under the Agreement, the Responsible Entity must observe and act in accordance with the Management Plan.

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

Within four months after the end of each Financial Year, the Responsible Entity will send an annual report to the Grower that addresses, and contains information concerning, matters such as the results of the harvest of Almonds, the condition of the Orchard, the Almondlots and the Almond Trees, any other matters which the Responsible Entity considers material and which ought reasonably to be made known to the Grower or any other matter reasonably requested by the Grower.

Once the Almond Trees start producing Crop, the Responsible Entity will also send to Growers annual statements of income and expenses.

## 11 Distributions

Subject to the Agreement, the Responsible Entity must pay to each Grower the amount of Proceeds standing to the credit of the Grower in the Agency Account in accordance with the Constitution. Constitution (refer to paragraphs 4(j) and 7(c) of the summary of the Constitution).

If the Responsible Entity has calculated the reasonable costs on a per Almondlot basis incurred in operating the Almondlot (including the overhead costs incurred by the Responsible Entity or its contractors) for a Financial Year, the Responsible Entity may either add the surplus per Almondlot from, or deduct the excess per Almondlot to, the Proceeds distributed by the Responsible Entity depending on whether they are more or less than the costs estimated by the Responsible Entity for the preceding Financial Year, unless an adjustment has already been made to the estimated costs payable for that Financial Year.

## 12 Term and Termination

Unless terminated earlier by the Grower or the Responsible Entity (see below), the term of the Agreement will be from the Commencement Date and continue until the earlier of:

- (a) termination of the Grower's Participating Interest in the Project;
- (b) 30 June 2023; and
- (c) termination of the Project.

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

- (a) immediately, if the Responsible Entity:
  - goes into liquidation other than for the purposes of reconstruction or amalgamation or a Controller or Administrator is appointed in relation to its undertaking;
  - ceases to carry on business; or
  - fails or neglects to pay any moneys due to any Grower, or the Responsible Entity is in default of a material obligation under the Agreement and this default continues for a period of 3 months after receipt by the Responsible Entity of written notice from the Grower(s) specifying the default and requesting that the default be remedied; or
- (b) 6 months, or such shorter period as the parties may agree, after the Growers by Special Resolution at the meeting of Growers resolve to terminate the engagement of the Responsible Entity under the Agreement.

The Responsible Entity may terminate the Agreement if the Grower fails to make a payment within the required time under the Agreement or the Constitution, or commits a material breach of the Agreement and fails to remedy the breach or make reasonable compensation in money within 30 days after the Responsible Entity has served a written notice on the Grower specifying the breach and requiring the Grower to remedy the breach. If the Responsible Entity exercises its right to terminate the Agreement, then:

- (a) the Grower loses all rights as a participant in the Project;
- (b) the Grower remains liable for payment of all fees in respect of work done by the Responsible Entity; and
- (c) the procedure for the consequence of termination as set out in the Constitution must be followed.

Termination of the Agreement by the Grower or the Responsible Entity terminates the rights and obligations of the parties, but is without prejudice to any rights and obligations which may have accrued prior to the date of termination.



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

### 13 Excuses for Non-Performance

A party to the Agreement will not have any obligation to observe or comply with the terms of the Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

Force Majeure means any event or circumstance not reasonably within the control of the Responsible Entity or which the Responsible Entity is not reasonably able to prevent and 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.

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 an inability to use available funds resulting from Force Majeure.

A Party's failure to observe or comply with the terms of the Agreement will not give rise to any liability to the other Party for any direct or indirect, consequential or special loss of any kind to the extent that the failure to comply with those terms is attributed to Force Majeure.

### 14 Limitation of Grower's Liability

The Grower is not obliged to contribute any money in respect of the Project Operations beyond the fees and other costs payable to the Land Owner under the Licence and Joint Venture Agreement and the fees and other costs payable to the Responsible Entity under the Constitution, the Licence and Joint Venture Agreement and the Agreement.

The liability of the Grower is absolutely limited to the fees and costs paid or payable to the Responsible Entity or the Land Owner under the Constitution, the Licence and Joint Venture Agreement and the Agreement and to any Proceeds of the Grower.

### 15 Proper Law

The Agreement is governed by the laws of Victoria. The rights and obligations of the parties under the Agreement are subject to the terms and conditions of the Constitution.

## OTHER AGREEMENTS

### Management Agreement

The Almondlot Management Agreement permits us as the Responsible Entity to delegate any of our obligations under that Agreement to our contractors. Accordingly, under a Management Agreement between us as the Responsible Entity and Almond Management Pty Ltd ("AMPL"), the Responsible Entity will engage AMPL as an independent contractor to carry out the Orchard Services set out in the Almondlot Management Agreement and to market and sell the almonds. This delegation does not release us as the Responsible Entity from liability under the Almondlot Management Agreement.

Under the Management Agreement, AMPL agrees to:

- (a) manage and administer the Project;
- (b) cultivate and manage the Orchard;
- (c) cultivate and harvest the Almond Trees;
- (d) procure the processing of the Crop into Product and sell the Product or Crop, as agent for Growers, for commercial gain; and
- (e) provide certain administrative services.

In performing its obligations under the Management Agreement, AMPL must observe and act in accordance with the Management Plan.

### Almond Orchard Management Agreement

The Management Agreement permits AMPL to appoint agents and sub-contractors to perform any of its duties under the Management Agreement, provided that AMPL at all times remains primarily responsible to us as the Responsible Entity for the performance of those duties. AMPL has entered into the Almond Orchard Management Agreement with Select Harvests Limited ("Select Harvests") under which it has engaged Select Harvests, as an independent contractor, to:

- (a) provide Orchard Services, including cultivation, maintenance and management services, and harvesting the Almonds;
- (b) provide Processing Services relating to the Almonds; and
- (c) provide Marketing Services relating to the sale of the Almonds.

In performing its obligations under the Almond Orchard Management Agreement, Select Harvests must observe and act in accordance with the Management Plan.

Under the Almond Orchard Management Agreement, Select Harvests has guaranteed to AMPL that all Almonds produced from the Project and available from any harvest for a particular Season will be sold by Select Harvests by 30 June in the Financial Year after the Financial Year in which the harvest for that particular season commenced.

Following harvest, the Almonds from the Project will be pooled with all other almonds that are proposed to be sold by Select Harvests. It should be noted that under the Almond Orchard Management Agreement ownership of the Almonds will pass from the Growers to Select Harvests immediately prior to the payment for the pooled Almonds by the purchaser of them. However, Select Harvests will not be required to pay to AMPL the proceeds of sale of the Almonds until 7 days after the end of each month. Ordinarily, Growers would retain title to the Almonds until the proceeds of sale were received on their behalf. Therefore, there will be a short time gap, before receipt of sale proceeds, during which Growers will not have title to their Almonds. However, given the involvement of Select Harvests in the Project, and the nature of the pooling arrangements implemented by Select Harvests, we do not consider this will give rise to any difficulties.

### Tree Supply and Capital Works Agreement

The Licence and Joint Venture Agreement permits the Land Owner to appoint agents and sub-contractors for the purposes of exercising the powers or performing its obligations under that agreement. Accordingly, the Land Owner has engaged Select Harvests under the Tree Supply and Capital Works Agreement to assist it in carrying out its duties under the Licence and Joint Venture Agreement. Under the agreement:

- Select Harvests agrees to sell the Almond Trees to be planted on the Orchard to the Land Owner;
- the Land Owner engages Select Harvests to oversee the establishment of the Capital Works associated with the establishment of the Orchard, including preparing the establishment plan, identifying those parts of the Land suitable for growing almonds, designing the Orchard, preparing the Land and supervising and installing the irrigation system; and
- the Land Owner engages Select Harvests to plant the Almond Trees on the Orchard.

Select Harvests has agreed to replant, at its cost, any Almond Trees that fail in the first 6 months after planting, where such failure is due to a breach or default by Select Harvests or caused by Select Harvests, but not where the failure is due to an event of force majeure.

# ADDITIONAL INFORMATION

## 1 Registers

We will maintain the registers of Growers at our registered office at Level 8, 461 Bourke Street, Melbourne, Victoria. The registers may be inspected by a Grower between the hours of 9.00 am and 5.00 pm on Monday to Friday inclusive, excluding public holidays.

## 2 Our allocation and issue policy

Unless we agree otherwise with any particular Grower or financial intermediary and subject to our absolute discretion to refuse an application, we will allocate Almondlots in order of receipt of completed applications. We reserve the right, in our absolute discretion, to accept an application for less than two Almondlots. Almondlots will be allocated randomly across the Orchard.

## 3 Repurchase and secondary market

We are not obliged to purchase from any Grower any Almondlots issued under this prospectus. However, to the extent permitted by law, we will:

- maintain a register of interested buyers and sellers; and
- make that register available for inspection by Growers at no charge.

## 4 Commissions

We may pay out of our own funds commissions or brokerage of up to 5% of the funds subscribed in relation to Almondlots for which you apply to those persons who may legally receive such commissions or brokerage under the Corporations Act. In addition, we may reimburse those persons out of our own funds at standard rates of up to 3% of the funds subscribed for reasonable marketing and other administrative costs incurred in relation to Almondlots sold.

Alternatively, we may pay equivalent amounts out of our own funds by way of trailing commissions over periods not exceeding ten years.

## 5 Interests of directors

Directors' fees – Timbercorp Limited

Our directors, in their capacity as directors of Timbercorp (our parent company) are entitled to be paid an aggregate sum to be fixed by the directors, which sum may not exceed \$300,000 per annum or such sum as the members may at general meeting from time to time determine. For the financial year ending 30 June 2002, the directors' fees totalled \$73,200 plus out of pocket expenses. The only directors' fees paid or payable in the past 2 years were amounts of \$40,000 paid to G W Liddell and \$27,778 paid to W E Bessemer for the financial year ended 30 June 2002 and \$60,000 paid to D A Muir and G W Liddell for the financial year ended 30 June 2001. They have also been reimbursed for out of pocket expenses. No fees are otherwise payable to our directors. Mr Muir ceased to be a director of Timbercorp on 1 July 2001.

Directors' interests in shares and options

Our directors have the following interests in Timbercorp Limited:

Director	Ordinary Shares	Converting Preference Shares	Options
R J Hance*	64,211,332	Nil	780,000
G W Liddell**	189,791	Nil	480,000
J M Vaughan	300,866	Nil	340,000
S C Rabinowicz	460,169	Nil	868,000

\* The majority of shares are held by Timbercorp (WA) Pty Ltd in which Robert Hance has a 54% beneficial interest.

\*\* G W Liddell is a partner with the chartered accounting firm, Liddell Weight & Co, which derives fees for professional services provided to the Timbercorp group.

Service agreements and other benefits

As at the date of this prospectus, no director is party to an executive agreement and no amount has been agreed to be paid as a bonus in respect of this Project.

During the financial year ended 30 June 2002 Timbercorp paid an amount of \$48,500 to Liddell Weight & Co in which G W Liddell is a partner, and during the year ended 30 June 2001, Timbercorp paid an amount of \$89,100 to Liddell Weight & Co at normal commercial rates. Liddell Weight & Co will not receive any fees in respect of this issue.

## 6 Previous Issues

We were incorporated on 4 April 2000 as a wholly owned subsidiary of Timbercorp and this represents our third issue of interests in an almond project, following our previous issues under the 2001 and 2002 Timbercorp Almond Projects. We have also issued interests in the 2001 and 2002 Timbercorp Eucalypts and Olive Projects and will be issuing interests in the 2003 Timbercorp Eucalypts and Olive Projects.

## 7 Minimum subscription

There is no minimum number of Almondlots that must be applied for under this prospectus before any Almondlots will be allocated. This means that the Project will proceed irrespective of how many Almondlots are applied for.

## 8 Inspection of documents

During the application period of this prospectus, copies of the Constitution, Custody Agreement, Licence and Joint Venture Agreement and the Almondlot Management Agreement may be inspected or obtained, free of charge, during normal business hours at our registered office at Level 8, 461 Bourke Street, Melbourne, Victoria.

## 9 Experts and advisors

Other than as set out below or elsewhere in this prospectus, no expert or any person named in this prospectus as performing any functions nor any firm in which any expert or such person is a partner or employee has, or has had within the two years before lodgement of this prospectus, any interest in the formation or promotion of the Project, in any property proposed to be acquired in connection with the formation or promotion of the Project, or in the offer of interests in the Project.

Interests and fees

Horticultural Development Services Pty Ltd is entitled to receive fees of \$10,953 for the preparation of the Almond Orchard Expert's Report.

N M Taylor, Lawyers have acted, and continue to act, as our lawyers and performed work in respect of this prospectus, the due diligence enquiries, and other aspects of the Project. They have received, or are entitled to receive fees of \$70,000 (plus disbursements) for these services and further amounts for any future services in accordance with their usual time-based charges.

Deloitte Touche Tohmatsu has been paid a fee of \$95,000 (plus disbursements) for the audit of Timbercorp's financial statements for the 3 month period ended 30 September 2002, a fee of \$250,000 (plus disbursements) for the audit of Timbercorp's financial statements for the year ended 30 June 2002 and a fee of \$232,000 (plus disbursements) for the audit of Timbercorp's financial statements for the year ended 30 June 2001.

#### Consents

Horticultural Development Services Pty Ltd and N M Taylor Lawyers have given their written consents to the inclusion in this prospectus of their respective reports in the form and context in which they appear and have not withdrawn such consents prior to lodgement of this prospectus with the ASIC.

Deloitte Touche Tohmatsu has consented and has not before lodgement of this prospectus, withdrawn its written consent to the inclusion of extracts of Timbercorp's audited accounts in this prospectus in the form and context in which they appear.

#### Disclaimers

Horticultural Development Services Pty Ltd has acted as almond orchard expert and has authorised only the issue of the Almond Orchard Expert's Report and the inclusion of its report and the references to that report in this prospectus. Horticultural Development Services Pty Ltd disclaims and takes no responsibility for any other part of this prospectus.

N M Taylor, Lawyers have assisted in preparing the Project Agreements, our Compliance Plan and ancillary documents and in undertaking due diligence enquiries in relation to this prospectus. They have reviewed this prospectus to ensure that its contents are consistent with the Project Agreements and they have authorised the issue of the Lawyers' Report only. N M Taylor, Lawyers expressly disclaim and take no responsibility for any other matter referred to in this prospectus.

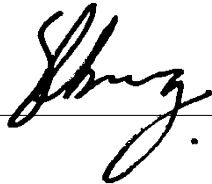
Deloitte Touche Tohmatsu has not been involved in any aspect of this prospectus. It expressly disclaims and takes no responsibility for any part of this prospectus.

#### **10 Directors' consents and signing of prospectus**

As required by law, each of the Directors of Timbercorp Securities Limited has given his written consent to the issue of this prospectus.

This prospectus has been signed by the director whose name appears below.

Sol C Rabinowicz

A handwritten signature in black ink, appearing to read 'Sol C Rabinowicz', is written over a horizontal line.

# HOW TO APPLY

- Before signing the Application and Power of Attorney Form, you should read the whole of the prospectus relating to the 2003 Timbercorp Almond Project.
- You should then carefully read the declarations relating to the Application and Power of Attorney Form and then complete the form in full.
- The form must be signed and dated by individuals in the presence of an adult witness who must also sign as witness.
- Please lodge your completed Application and Power of Attorney Form together with your Application Moneys with your financial advisor or deliver them to **Timbercorp Securities Limited** at level 8, 461 Bourke Street, Melbourne, Victoria 3000.
- For payment methods, see below.
- It should be noted that no applications for Almondlots will be processed until after the expiry of the exposure period for this prospectus and no preference will be conferred on applications received during the exposure period. The purpose of the exposure period is to enable the prospectus to be examined by market participants prior to the raising of funds. That examination may result in the identification of deficiencies in the prospectus, in which case any application that has been received may need to be dealt with in accordance with section 724 of the Corporations Act.

## Your details

- Applicants must be one or more individuals or a company.
- Joint applicants will be deemed to be holding their Almondlots as tenants in common.
- All communications from us will be sent to the address shown. For joint applicants, only one address is required.
- Please provide your full telephone, fax and e-mail details in case we need to contact you quickly.
- Please also provide your ABN if one has been issued to you.

## Your Almondlots and payment details

- You must apply for a minimum of two Almondlots, although we reserve the right, in our absolute discretion, to accept an application for less than two Almondlots. Thereafter, you may apply for any number of Almondlots.
- Complete the payment details in this section. Your Application Moneys per Almondlot payable on application are \$6,065 (including \$551.36 GST) made up of initial management fees of \$5,200 (including \$472.73 GST) and licence fees of \$865 (including \$78.64 GST). If you fill in the item "LESS amount subject to finance", your application will only be accepted on receipt of the Application Moneys in relation to your Almondlots. We do not warrant or undertake that such finance will be provided or procured.
- **Method of Payment:**
  - (a) You may pay by cheque made payable to "**Timbercorp – 2003 Almond Project**" and crossed 'Not Negotiable'; or
  - (b) alternatively, you may pay by credit card by completing your credit card details in the space provided on the Application and Power of Attorney Form.

## Signature and declarations

Each Application Form must be signed by the applicant personally. Joint applicants must each sign the Application Form. An application by a company does not require a company seal but must be signed in accordance with its constitution. A copy of its constitution need not be produced. The form should also be dated.

## Electronic Prospectus

The Corporations Act prohibits any person from passing on to another person the Application Form which is attached to the electronic copy of the Prospectus unless the Application Form is attached to a complete and unaltered copy of the electronic prospectus.

Timbercorp Securities will send you, at no charge, a paper copy of the electronic prospectus if you ask for one during the Offer Period described in the prospectus.

If you apply for Almondlots on the basis of the Application Form attached to the electronic prospectus, you are deemed to declare to us that you received personally the electronic prospectus, or a print out of it, attached to the Application Form before applying for Almondlots.

## Your Personal Information

The Timbercorp group comprises several companies which have specific functions in the establishment, promotion, administration, project management and resourcing of eucalypt, olive, almond and other agribusiness and related investment projects. It also includes a finance company and entities which have interests in land utilised for these projects.

When submitting your Application Form, you will be providing entities within the Timbercorp group with your personal information. Your personal information will be treated strictly in accordance with the National Privacy Principles outlined in the federal Privacy Act. At any time upon request you may gain access to the information the Timbercorp group holds about you in accordance with the National Privacy Principles.

We have requested this information to enable us to issue Almondlots offered under this prospectus in your name and to keep you updated during the life of the Project as to the progress of your Almondlots by, for example, sending you reports, Almondlot statements, invoices and other correspondence in relation to the Project and other activities of the Timbercorp group. We are required by law to maintain a register of Growers under the Corporations Act and to make the register available for inspection by any person. We may also be required to provide details of Growers to ASIC and other regulatory bodies from time to time.

The Timbercorp group may disclose your personal information to:

- financiers or other such organisations in connection with its corporate activities;
- rating agencies; and
- your financial planner or adviser.

The Timbercorp group may use your personal information for:

- marketing Timbercorp group products and services to you; and
- developing an understanding of the products and services you may be interested in obtaining from the Timbercorp group

By signing the Application Form, you consent to the Timbercorp group using and disclosing your personal information as described above.

You can gain access to any information the Timbercorp group holds about you by calling (03) 8615 1200 or going in person to Level 8, 461 Bourke Street, Melbourne Victoria 3000.

If you do not provide us with the information requested in the Application Form, we will be unable to allot Almondlots to you. If you provide us with incomplete or incorrect information, we will be unable to inform you as to the progress of your Almondlots.

## Cooling off rights

You have the right to "cool off" when you invest in certain financial products. This means that you can return these products within the cooling off period if you change your mind and get a refund, less any amounts for such things as taxes and administrative costs.

The cooling off period begins from the time your investment is confirmed by letter, fax or email and ends 14 days later. If you do not receive confirmation, your cooling off period begins at the end of the fifth day after your investment is issued to you. If you want to return a product and get a refund by exercising your cooling off rights, you must notify by letter, fax or email the person who issued you with the product. You must do this within the 14-day cooling off period.

#### *Cooling off and the Project*

The right to cool off applies to many managed investment products as well as other products. Interests in the Project are one type of managed investment product. However, it is unclear whether the cooling off rights apply to interests in the Project because upon acceptance of your application, your Application Moneys are immediately disbursed to us and the Land Owner in accordance with the prospectus, the Constitution, the Almondlot Management Agreement and the Licence and Joint Venture Agreement.

Furthermore, even if the cooling-off rights do apply to the Project, you will not be able to exercise the cooling-off rights once your application is accepted. That is because the right to return the product and obtain a refund cannot be exercised after you exercise a right or power that you have under the Project Agreements.

Under the Licence and Joint Venture Agreement which commences on acceptance on your application, you as a Grower are immediately entitled to a right of occupation of your Almondlots as a licensee in joint venture with the Land Owner. Contemporaneously under the Almondlot Management Agreement you are entitled to commence to receive management services.

#### *Refusal of Application*

If we reject your application, you will be notified and your Application Moneys will be returned to you within 15 business days of us receiving your application.

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**Timbercorp Securities Limited**  
**ABN 12 092 311 469**

**Application Form**

Persons intending to use an electronic version of the Application Form should note the following:

- 1 The Application Form relates to the 2003 Timbercorp Almond Project ARSN 103 197 299 ('**project**') pursuant to a prospectus dated 11 March 2003 ("**prospectus**") as amended by a supplementary prospectus dated 21 March 2003. The prospectus expires 13 months after the date of the prospectus.
- 2 The Application Form is accompanied by an electronic version of the prospectus which contains information regarding investing in securities referred to in the Application Form.
- 3 Persons who access the prospectus in electronic form should note that interests in the project offered by this prospectus are not intended to be a short-term investment and will be subject to the risks generally associated with commercial almond orchard plantations.
- 4 A person who gives another person access to the Application Form must at the same time and by the same means give the other person access to the prospectus and any supplementary document.
- 5 Interests in the project will only be processed and issued on receipt of the Application Form issued together with the prospectus.
- 6 The offer to subscribe for interests referred to in the prospectus is available to Australian residents. The prospectus does not constitute an offer of securities in any jurisdiction where, or to any person to whom, it would be unlawful to issue the prospectus.
- 7 Whilst the prospectus is current, Timbercorp Securities Limited will send copies of the prospectus and any supplementary document and the Application Form, on request and without charge. In this regard, please contact:

**Timbercorp Securities Limited**

Level 8, 461 Bourke Street,

Melbourne, Victoria, 3000

Telephone: 03 8615 1200

Facsimile: 03 9670 4271

Email: [r.coughlan@timbercorp.com.au](mailto:r.coughlan@timbercorp.com.au)

To be completed by the Advisor

Office use only - Invoice Number

## POWER OF ATTORNEY

I/we, the person(s) named in the "Your Details" section above irrevocably appoint PERMANENT TRUSTEE COMPANY LIMITED (ACN 000 000 993) of Level 3, 151 Rathdowne Street, Carlton, Victoria and TIMBERCORP SECURITIES LIMITED (ACN 092 311 469) of Level 8, 461 Bourke Street, Melbourne, Victoria ("Attorney") severally to be my/our attorney and in my/our name and on my/our behalf and as my/our act and deed to:

- enter into and execute on my/our behalf a Licence and Joint Venture Agreement and an Almondlot Management Agreement in respect of the Almondlots for which I/we have applied and which Timbercorp Securities Limited accepts ("the Project Agreements");
- vary, replace or cancel the Project Agreements and execute, vary, replace or cancel any other documents which are referred to in, or which are ancillary or related to, the Project Agreements;
- appoint one or more substitute attorneys to exercise the powers granted to the Attorney and to revoke any appointment of any substitute attorney or attorneys made under this document;

and to do all things necessary or expedient to give effect to those documents including but not limited to dating and completing any blanks in the Project Agreements, making any variations, replacements and cancellations to the documents which the Attorney considers not contrary to my/our interests, on the terms and conditions and subject to the acknowledgements contained on the reserves side of this form.

## DECLARATIONS

By signing the front of this application and power of attorney form, you make the following declarations:

- That you have read the prospectus for the 2003 Timbercorp Almond Project to which this application is attached.
- That you acknowledge that Timbercorp Securities Limited has the right to accept or reject your application.
- That you agree to be bound by the Constitution and irrevocably appoint Permanent Trustee Company Limited and Timbercorp Securities Limited, severally, as your attorney to enter into the Licence and Joint Venture Agreement and the Almondlot Management Agreement.
- That you understand that by becoming a party to the Constitution and the Almondlot Management Agreement you irrevocably appoint Timbercorp Securities Limited as your attorney to enter into any agreement for the sale of the Almonds.

### Terms and conditions of power of attorney

By granting the power of attorney to Timbercorp Securities Limited you do so on the following terms and conditions.

1. you will ratify and confirm whatever the Attorney does in the exercise of the power granted by you;
2. you will indemnify and keep indemnified the Attorney against all claims, demands, costs, damages, losses and expenses, however arising, consequent upon the exercise of the power granted by you except in the event of gross neglect, fraud or wilful default by the Attorney;
3. the Attorney may, and where required will, stamp and register this instrument at the cost of the applicant;
4. any person or corporation dealing with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this Power of Attorney has not been revoked as conclusive evidence of that fact;
5. this Power of Attorney is irrevocable until the expiration of the Project under the Constitution;
6. the authorisation in writing of any variations, replacements or cancellations referred to above may be by facsimile or any other form of written confirmation; and
7. this Power of Attorney will be governed by and construed in accordance with the laws of Victoria; and
8. words and expressions used in this Power of Attorney have the same meanings as in the Constitution unless the contrary requires.

**Timbercorp Securities Limited**  
**ABN 12 092 311 469**

**Application Form**

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To be completed by the Advisor

Please read the back of this form before signing it.

Full Name (individual or company) Dr/Mr/Mrs/Ms/Miss

AddressSuburb/Town/CityStatePostcode

Fax									
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Joint Applicant (if applicable) Full Name (individual or company) Dr/Mr/Mrs/Ms/MissAddressSuburb/Town/CityStatePostcode[illegible]

**NB:** Further payments of licence and management fees will be due each year.

**If Applicant is a person**

**If Applicant is a company**

Executed in accordance with its constitution by:

Director

(joint applicant signature)

Witness

Director/Secretary

**Return this form to Timbercorp Securities Limited – Level 8, 461 Bourke Street, Melbourne, Victoria 3000**

**Method of Payment** (whether for the deposit or the full Application Moneys)

☐ **Cheque enclosed**

(all cheques must be made payable to "Timbercorp – 2003 Almond Project" and crossed "Not Negotiable")

or

☐ **Credit Card** Please debit my: Visa Card ☐ Bankcard ☐ Master Card ☐Expiry DateName on credit card

Contact Phone No									
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For the amount of: \$

Note: A limit of \$40,000 applies to credit card payments

Card holder's signature  Date: \_\_\_\_\_

Office use only - Invoice Number \_\_\_\_\_

## POWER OF ATTORNEY

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- enter into and execute on my/our behalf a Licence and Joint Venture Agreement and an Almondlot Management Agreement in respect of the Almondlots for which I/we have applied and which Timbercorp Securities Limited accepts ("the Project Agreements");
- vary, replace or cancel the Project Agreements and execute, vary, replace or cancel any other documents which are referred to in, or which are ancillary or related to, the Project Agreements;
- appoint one or more substitute attorneys to exercise the powers granted to the Attorney and to revoke any appointment of any substitute attorney or attorneys made under this document;

and to do all things necessary or expedient to give effect to those documents including but not limited to dating and completing any blanks in the Project Agreements, making any variations, replacements and cancellations to the documents which the Attorney considers not contrary to my/our interests, on the terms and conditions and subject to the acknowledgements contained on the reserves side of this form.

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3. the Attorney may, and where required will, stamp and register this instrument at the cost of the applicant;
4. any person or corporation dealing with the Attorney in good faith may accept a written statement signed by the Attorney to the effect that this Power of Attorney has not been revoked as conclusive evidence of that fact;
5. this Power of Attorney is irrevocable until the expiration of the Project under the Constitution;
6. the authorisation in writing of any variations, replacements or cancellations referred to above may be by facsimile or any other form of written confirmation; and
7. this Power of Attorney will be governed by and construed in accordance with the laws of Victoria; and
8. words and expressions used in this Power of Attorney have the same meanings as in the Constitution unless the contrary requires.

# GLOSSARY

In this document, the following expressions have the meanings set out below:

## **Almondlot**

means a discrete area of the Orchard of 0.25 plantable hectares that is licensed to a Grower under the Licence and Joint Venture Agreement. The expression "**Almondlots**" means all of the Almondlots to which a Grower is entitled.

## **Almondlot Management Agreement**

means the agreement of that name between us and each several Grower (comprising the Grower and Almond Land) by which the Grower engages us to cultivate and manage the Grower's Almondlots.

## **Almond Orchard Management Agreement**

means the agreement of that name between Almond Management and Select Harvests by which Almond Management engages Select Harvests to undertake the day-to-day management of the Orchard, process the Almonds and sell the Almonds.

## **Almonds**

means the almonds grown on the Orchard.

## **Almond Land**

means Almond Land Pty Ltd (ACN 091 460 392).

## **Almond Management**

means Almond Management Pty Ltd (ACN 094 468 845).

## **Almonds Trees**

means the trees planted or to be planted on the Orchard.

## **Application Moneys**

means the amount of \$6,065 per Almondlot payable by an Early Grower or a Post 30 June Grower.

## **ASIC**

means the Australian Securities and Investments Commission.

## **Capital Works**

means the infrastructure and capital works that the Land Owner has agreed to carry out on the Orchard and any other capital works that the Land Owner may, in future, carry out on the Orchard, if required.

## **Constitution**

means the deed that governs the rights and obligations of Growers, and us as Responsible Entity under the Project.

## **Early Grower**

means a person whose application for Almondlots under the Project is made and accepted on or before 30 June 2003.

## **Grower or You**

means an Early Grower or Post 30 June Grower (or in the case of joint applicants, those persons) who becomes a party to the Licence and Joint Venture Agreement and the Almondlot Management Agreement as a Grower, as a result of either the allotment of Almondlots in the Project or a transmission, transfer, mortgage, assignment or other disposal of Almondlots.

## **GST**

means GST as defined in the GST Law.

## **GST Law**

means A New Tax System (Goods and Services Tax) Act 1999 (as amended).

## **Indexed**

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 formula:  $At = A0 \times CPIt / CPIO$  where  $At$  = the amount on the Adjustment Date;  $A0$  = the amount being adjusted;  $CPIt$  = the highest CPI for a full calendar quarter published between the date  $CPIO$  is published and the Adjustment Date, including  $CPIO$ ;  $CPIO$  = 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, 'CPIO' 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.

## **Land**

means the Yungera site on which the Orchard will be established and the Project will be conducted and includes the Almond Trees, Water Licences and Capital Works.

## **Land Owner**

means Almond Land Pty Ltd (ACN 091 460 392).

## **Lease**

means the lease of those parts of the Land on which the Project will be conducted between the Land Owner as lessor and us as lessee.

## **Licence and Joint Venture Agreement**

means the agreement between the Land Owner, us and each several Grower by which the Land Owner grants to the Grower a licence in respect of the Almondlots and enters into a joint venture with the Grower to cultivate and manage the Almond Trees on those Almondlots.

## **Management Agreement**

means the agreement of that name between us and the Project Manager by which we appoint the Project Manager to manage the Orchard and procure the processing of the Almonds and marketing of the Almonds.

## **Offer Period**

means the period commencing on the date of issue of the prospectus and expiring on the day which is 13 months after the date of this prospectus unless our directors determine in their absolute discretion to close the offer period earlier.

## **Orchard**

means the almond orchard to be established on that specified and identifiable part of the Land on which the Project will be conducted and on which Growers will each carry on the business of primary production.

## **Post 30 June Grower**

means a person whose application for Almondlots under the Project is made and accepted on or after 1 July 2003 and before the Offer Period closes.

## **Proceeds**

means proceeds from the sale of Almonds; any moneys payable to a Grower under any policy of insurance in relation to the Grower's Almondlots, the Almonds or the Project; interest earned on the proceeds; and any other moneys payable to a Grower from or in relation to the Project. The expression '**Net Proceeds**' means Proceeds to which a Grower is entitled under the Constitution less all annual licence and management fees and costs incurred by a Grower.

## **Project**

means the 2003 Timbercorp Almond Project.

## **Project Agreements**

means the Constitution, Licence and Joint Venture Agreement and the Almondlot Management Agreement.

## **Project Manager**

means Almond Management Pty Ltd (ACN 094 468 845).

## **Responsible Entity**

means us as Responsible Entity under the Project.

## **Select Harvests**

means Select Harvests Limited (ACN 000 721 380).

## **Sub-Lease**

means the sub-lease of those parts of the Land on which the Project will be conducted between us as sub-lessor and Almond Land as sub-lessee.

## **Tax Act**

means Income Tax Assessment Act 1997 (as amended)

## **Timbercorp**

means Timbercorp Limited (ACN 055 185 067) of Level 8, 461 Bourke Street, Melbourne, Victoria.

## **us, we or Timbercorp Securities**

means Timbercorp Securities Limited (ACN 092 311 469) of Level 8, 461 Bourke Street, Melbourne, Victoria.

## **Water Licences**

means permanent rights to draw water annually from the Murray River, up to a maximum of 3.125 megalitres per Almondlot.

## **Yungera site**

means those parts of the land described in Certificate of Title Volume 9481 Folio 888 on which part of the Orchard will be established.



# 2003 TIMBERCORP ALMOND PROJECT PROSPECTUS



**TIMBERCORP**  
AGRIBUSINESS  
INVESTMENT MANAGERS

**HEAD OFFICE**

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Melbourne Victoria 3000  
Telephone 03 8615 1200  
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**LAUNCESTON OFFICE**

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