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

**LIST E**

SCI 2009 10382

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(IN LIQUIDATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE  
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
AND ORS ACCORDING TO THE SCHEDULE OF THE ORIGINATING PROCESS**  
Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 30 November 2009  
Filed on behalf of: the Plaintiffs

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This is the exhibit marked "MAK-2" now produced and shown to **MARK ANTHONY KORDA**  
at the time of swearing his affidavit on 30 November 2009.

Before me: 

**BRIDGET ELLEN SLOCUM**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit "MAK-2"**  
**2004 Almond Scheme Sublease between TSL  
and Growers**

"MAK-2"

2004 005  
**Sub-lease Deed**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

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

## **2004 Timbercorp Almond Project**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## **Details of this Deed of Sub-lease**

### **Date of this Deed:**

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

### **Parties to the Deed:**

1. **ALMOND LAND PTY LTD**  
ACN 091 460 392  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
**(Land Owner)**
2. **TIMBERCORP SECURITIES LIMITED**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
**(Timbercorp Securities)**
3. The Participant Grower named in the Schedule to this Deed in relation to the relevant Almondlots.  
**(Participant Grower)**

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## **Background to the Deed**

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

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>Administrator:</b>	has the meaning given to it in section 9 of the Corporations Act;
<b>Almondlot:</b>	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of the Land comprising approximately 0.25 hectares on which a Participant Grower will conduct the Almondlot Operations and which includes the Almond Trees, the Capital Works and the Water Licences attributed to the Project;
<b>Almondlot Assets:</b>	the interest of the Participant Grower in assets on the Almondlots;
<b>Almondlot Management Agreement:</b>	the agreement of that name for the management of the Almondlot Operations conducted on the relevant Almondlots between Timbercorp Securities and the Participant Grower;
<b>Almondlot Operations:</b>	the growing and cultivation of Almonds on, and management of, the relevant Almondlots for the production of Product for commercial gain;
<b>Almonds:</b>	the almonds grown or growing on the relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable and whether harvested or unharvested;
<b>Almond Trees:</b>	the almond trees planted or to be planted on relevant Almondlots of the Participant Grower or the Orchard, whichever is applicable;
<b>ASIC:</b>	the Australian Securities and Investments Commission;
<b>Business Day:</b>	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
<b>Capital Works:</b>	the infrastructure and capital works that the Land Owner has carried out or agreed to carry out, and any other works that the Land Owner may be required in future to carry out, at its cost, on the Orchard;
<b>Commencement Date:</b>	in respect of each Participant Grower, the date of this Deed;
<b>Constitution:</b>	the deed for the Project entered into by the Responsible Entity and all the Participant Growers;
<b>Controller:</b>	has the meaning given to it in section 9 of the Corporations Act;
<b>Corporations Act:</b>	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
<b>CPI:</b>	the "Weighted Average of Eight Capital Cities All Groups

	Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 7.3;
<b>Crop:</b>	the Almonds taken from the Almond Trees planted on all the Participant Grower's Almondlots or the Orchard, whichever is applicable;
<b>Financial Year:</b>	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Deed and ending on 30 June 2004 and the period ending on the termination of this Deed and commencing on the preceding 1 July;
<b>GST:</b>	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;
<b>Head Lease:</b>	the Deed made between Timbercorp Securities, as lessee, and the Land Owner, as lessor, whereby Timbercorp Securities has been granted a lease of the Land;
<b>Indexed:</b>	<p>the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (<b>the Adjustment Date</b>) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p><b>A<sub>t</sub></b> = the amount on the Adjustment Date;</p> <p><b>A<sub>0</sub></b> = the amount being adjusted;</p> <p><b>CPI<sub>t</sub></b> = the highest CPI for a full calendar quarter published between the date CPI<sub>0</sub> is published and the Adjustment Date, including CPI<sub>0</sub>;</p> <p><b>CPI<sub>0</sub></b> = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (<b>the Base Date</b>), provided that if no Base Date is specified, "CPI<sub>0</sub>" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;</p>
<b>Land:</b>	the land on which the Project will be conducted as described in the PDS or such other land that is used for the Project;
<b>Orchard:</b>	all of the Almondlots;
<b>Participant Grower:</b>	(a) a several person (or if more than one person, those persons jointly) who is named or otherwise described in

	the Schedule; and
	(b) the term " <b>Early Grower</b> " refers to a Participant Grower whose application under the PDS is accepted on or before 30 June 2004; and
	(c) the term " <b>Post 30 June Grower</b> " refers to a Participant Grower whose application under the PDS is accepted on or after 1 July 2004 and before the offer period closes;
<b>Participating Interest:</b>	has the same meaning as in the Almondlot Management Agreement;
<b>PDS:</b>	has the same meaning as in the Constitution;
<b>Proceeds:</b>	has the meaning given in the Almondlot Management Agreement;
<b>Product:</b>	Almonds produced in a saleable condition from the relevant Participant Grower's Almondlots or the Orchard, whichever is applicable
<b>Project:</b>	the 2004 Timbercorp Almond Project promoted by Timbercorp Securities relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain;
<b>Responsible Entity</b>	means the responsible entity of the Project;
<b>Term:</b>	the term of this Deed set out in clause 4.1; and
<b>Water Licences:</b>	the water licences owned or acquired by the Land Owner and attributed to the Project as required from time to time, up to a maximum of 3.125 megalitres per Almondlot as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use.

## 1.2 Interpretation

In this Deed, unless expressed or implied to the contrary:

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



- 
- (i) if a party comprises two or more persons, this Deed binds them jointly and each of them severally unless a contrary intention is expressed in the Deed;
  - (j) if any of the persons comprising the Participant Grower is a trustee, this Deed binds that person in its capacity as a trustee and personally; and
  - (k) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "including" is to be read as if the expression "**(but not limited to)**" immediately followed such word.

### 1.3 Headings

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

### 1.4 Grower and Deed

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

### 1.5 Delegation

Timbercorp Securities and the Land Owner are each entitled to:

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

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

### 1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Deed its personal capacity.

### 1.7 Sub-lease is not Scheme Property

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

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## 2. ESTABLISHMENT OF ORCHARD

### 2.1 Agreement by Land Owner as to the Almondlots

- (a) The Land Owner agrees with the Participant Grower that it must, at its own cost, establish, or procure the establishment of the Almondlots on the Land in accordance with good horticultural and environmental practices and construct necessary infrastructure and carry out the necessary capital works, and without limiting the generality of this clause, it must:
  - (i) identify the relevant parts of the Land which are suitable for growing almonds based on soil types, soil depths and contours;

- 
- (ii) organise various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
  - (iii) organise block layout in relation to the Almondlots and the pegging of those blocks;
  - (iv) acquire rights to, construct and install, as the case requires, the Internal Irrigation System and the Irrigation Infrastructure;
  - (v) carry out drainage work and work to help prevent soil erosion on all Land;
  - (vi) clear any vegetation or trees from the Orchard, perform broadacre weed spraying, disc ploughing and ripping and mounding of tree rows, apply preplant fertiliser spreading and undertake discing, x-planning of tree rows and marking out of tree location; and
  - (vii) plant almond trees on the Orchard during June 2004; and
  - (viii) 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 2.1(a)(i)-(viii) above.
- (b) The Land Owner will use its best endeavours to complete the Capital Works in respect of the Almondlots in full by 31 May 2004 or such later date as may be agreed between the Land Owner and the Participant Grower. The Land Owner will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Participant Grower arising from any delay in so doing caused for any reason other than the negligence of the Land Owner, its officers, employees or agents.

## **2.2 Acknowledgments by the Participant Grower**

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

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## **3. GRANT OF SUB-LEASE**

### **3.1 Grant of Sub-lease**

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a sub-lease, effective from the Commencement Date, to use and occupy the relevant Almondlots for the sole purpose of conducting the Almondlot Operations.
- (b) Timbercorp Securities represents and warrants that:
  - (i) as at the date of execution of this Deed, the Head Lease is valid and subsisting;
  - (ii) Timbercorp Securities is entitled under the Head Lease to grant the sub-lease under this Deed; and

- 
- (iii) any consents which may be required to the granting of the sub-lease under this Deed, have been obtained.

### **3.2 Water Licences**

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

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## **4. TERM**

### **4.1 Term**

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 6, 10.1 to 10.3 and clauses 10.5 and 12, this Deed will continue until the earlier of:
  - (i) the date which is one day before the expiry or termination of the lease between Timbercorp Securities and the Land Owner;
  - (ii) termination of the Participating Grower's Participating Interest in the Project;
  - (iii) 30 June 2024; and
  - (iv) termination of the Project.

### **4.2 Grower's Obligations Upon Termination**

- (a) At the end of this Deed, the Participant Grower must return the relevant Almondlots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Almondlots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Almondlots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Almondlots at the time will become the absolute property of the Land Owner.

- 
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Almondlots that become the absolute property of the Land Owner in accordance with paragraph 4.2(b).
  - (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Almondlots that become the absolute property of the Land Owner in accordance with paragraph 4.2(b).
- 

## **5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS**

### **5.1 Obligations**

Timbercorp Securities must:

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

### **5.2 Rights**

Timbercorp Securities:

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

- 
- (c) may at its own expense erect and maintain a sign on the Almondlots detailing such matters as Timbercorp Securities reasonably considers appropriate.
- 

## **6. CONDITIONS PRECEDENT**

### **6.1 Conditions Precedent**

This Deed is subject to and conditional on:

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

### **6.2 Reasonable Endeavours**

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

---

## **7. RENT**

### **7.1 Fee**

- (a) Where the Participant Grower is an **Early Grower**, the Participant Grower must pay to Timbercorp Securities the following rent per Almondlot:
  - (i) for the period from the Commencement Date until 30 June 2004, \$113.63 payable on or before the Commencement Date;
  - (ii) for each of the financial years ending 30 June 2005, 2006, 2007, 2008 and 2009, 1,363.63 payable on 31 October 2004, 2005, 2006, 2007 and 2008 respectively.

Thereafter, the Participant Grower must pay an annual rent in accordance with clause 7.2 payable on 31 October of each subsequent year during the Term, commencing on 31 October 2009.

- (b) Where the Participant Grower is a **Post 30 June Grower**, the Participant Grower must pay to Timbercorp Securities the following rent per Almondlot:
  - (i) For the period from the Commencement Date until 30 June 2005, \$681.82 payable on or before the Commencement Date;
  - (ii) for each of the financial years ending 30 June 2006, 2007, 2008 and 2009, \$1,363.63 payable on 31 October 2005, 2006, 2007 and 2008 respectively.

Thereafter, the Participant Grower must pay an annual rent in accordance with clause 7.2 payable on 31 October of each subsequent year during the Term, commencing on 31 October 2009.

### **7.2 Adjustments to rent**

The rent payable by the Participant Grower on 31 October 2009 in respect of the Financial Year ending 30 June 2010 and each anniversary thereafter during the Term will be the rent payable on the immediately preceding 31 October, Indexed.

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### **7.3 Discontinuance or suspension of CPI**

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "**CPI**" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "**CPI**".
- (b) The cost of any expert determination carried out under this clause 7.3 must be borne equally between Timbercorp Securities and the Participant Grower.

### **7.4 Capacity**

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

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## **8. GROWER'S OBLIGATIONS**

### **8.1 Permitted use**

The Participant Grower must only use the Almondlots solely for the purpose of the Almondlot Operations.

### **8.2 Grower's duties**

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Almondlots;
- (b) use the relevant Almondlots solely for the purpose of Almondlot Operations;
- (c) comply with good horticultural and environmental practices;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Almondlots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Almondlots in accordance with good horticultural practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Almondlots from time to time with or without equipment for the purposes of observing the state of the relevant Almondlots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Almondlots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the relevant Almondlots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and

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- (k) give such rights of way and free access to the occupiers of any other Almondlots adjoining the relevant Almondlots and their agents and contractors, as are necessary for their proper use and enjoyment of their Almondlots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the relevant Almondlots.

### **8.3 Delegation by the Participant Grower**

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

### **8.4 Delegation does not limit Grower's liability**

Any delegation by the Participant Grower under clause 8.2 does not release the Participant Grower from liability under this Deed.

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## **9. LAND OWNER'S OBLIGATIONS AND RIGHTS**

### **9.1 Obligations**

The Land Owner must:

- (a) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent authority in respect of 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.

### **9.2 Rights**

The Land Owner:

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

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## **10. TERMINATION OF DEED**

### **10.1 Termination by the Participant Grower**

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;

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

## **10.2 Termination by Timbercorp Securities**

- (a) Subject to paragraph 10.2(b) and without prejudice to Timbercorp Securities' rights under clause 12, Timbercorp Securities may terminate this Deed in respect of all the Almondlots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Almondlot of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Almondlot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) The Deed will terminate if Timbercorp Securities exercises its rights under clause 12.

## **10.3 Damage to Almondlots**

If, in respect of the relevant Almondlots:

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

the Participant Grower may terminate this Deed in respect of the relevant Almondlots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

## **10.4 Reduction of Almondlots**

If, in respect of the relevant Almondlots:

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

the Participant Grower may terminate this Deed in respect of that part of the relevant Almondlots which is damaged or destroyed, by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.



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## **10.5 Effect of Termination**

- (a) Termination of this Deed under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Almondlots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Deed in respect of any number of all of the relevant Almondlots or part of the relevant Almondlots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Almondlots or any other part of the reduced relevant Almondlots.
- (c) If this Deed is terminated under clause 10.2 in relation to all of the Almondlots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project, and the procedures for consequences of default and termination as set out in the Constitution and, if applicable, clause 12 of this Deed may be followed.
- (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

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## **11. EXCUSES FOR NON PERFORMANCE**

### **11.1 Force Majeure**

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

### **11.2 Lack or unavailability of funds**

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

### **11.3 Liability**

The failure by Timbercorp Securities or the Land Owner to observe or comply with the terms of this Deed will not give rise to any liability to any party for any direct or indirect consequential or special loss or damage of any kind to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

### **11.4 Definition of Force Majeure**

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

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);

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- (e) epidemic or quarantine;
  - (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
  - (g) delays in transportation or communication; and
  - (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other.

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## **12. RENT AND EXPENSES**

### **12.1 Failure to Pay**

If the Participant Grower fails or neglects to pay:

- (a) the rent payable under this Deed; or
- (b) any amount due and payable by the Participant Grower under the Almondlot Management Agreement; or
- (c) any amount due and payable by the Participant Grower under the Constitution in respect of the Almondlots,

by the due date, Timbercorp Securities may, after giving the Participant Grower 30 days' prior written notice, terminate this Deed under clause 10.2 and exercise either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of Timbercorp Securities).

### **12.2 Timbercorp Securities may pay on Behalf of Defaulting Grower**

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled, the amount of such payment together with interest at a rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until Timbercorp Securities has been reimbursed in full.

### **12.3 Defaulting Participant Grower's Interest may be dealt with under the Constitution**

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1 then Timbercorp Securities may deal with the interest of the Participant Grower by exercising any of its powers and rights under the Constitution.

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## **13. ASSIGNMENT**

### **13.1 Assignment by Land Owner or Timbercorp Securities**

- (a) Subject to clause 13.2, the Land Owner and Timbercorp Securities may freely assign any of their rights and interests under this Deed so long as the Land Owner Timbercorp Securities (as the case requires) does not assign its interest in this Deed in any way without first entering a deed with the person

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with whom the Land Owner or Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

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

### **13.2 Agreements with Contractors**

The Land Owner or Timbercorp Securities may only assign their rights and interests in this Deed to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which it has delegated some or all of its obligations under this Deed, and for this purpose, the Land Owner or Timbercorp Securities has obtained the written consent to the assignment from the contractor.

### **13.2 Land Owner, Timbercorp Securities or Grantee to pay for deed**

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

### **13.3 Assignment by the Participant Grower**

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

### **13.4 Release of liability of Grower**

Once the Participant Grower has perfected an assignment of its interest in this Deed in accordance with clause 13.3, the Participant Grower no longer remains liable under this Deed in respect of any act done or omitted to be done after the assignment is effected in respect of the Almondlots assigned.

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## **14. GOODS AND SERVICES TAX**

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable

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supply represents the value of the taxable supply (the “**GST Exclusive Amount**”) and not the price for that taxable supply.

- (b) In addition to the GST Exclusive Amount for a taxable supply under this Deed, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- (c) The GST payable under paragraph 14(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Deed, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 14(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Deed for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Deed and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

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## **15. LIMITATION OF LIABILITY OF GROWER**

Subject to clause 12.2, in no circumstances will the Participant Grower be obliged to incur any liability under this Deed in excess of the annual rent payable under this Deed, the fees and expenses payable by the Participant Grower under the Almondlot Management Agreement in relation to the relevant Almondlots and its Participating Interest in the Proceeds.

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## **16. NOTICE**

### **16.1 Form of Notice**

Any notice to be given under or in connection with this Deed must be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

- (a) hand delivery;

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(b) post or registered or certified mail; or

(c) fax,

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

## **16.2 Receipt of Notice**

Any notice will be effective and will be deemed to be received:

(a) if hand delivered, then upon delivery;

(b) if posted, then 48 hours after the notice has been properly posted if that falls on a Business Day, and if not, on the first Business Day afterwards; and

(c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.

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## **17. PROPER LAW**

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

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## **18. AMENDMENTS**

(a) This Deed may be amended by another document in writing and duly signed by the parties to this Deed.

(b) Subject to paragraph 18(c), the Land Owner and Timbercorp Securities, may amend the provisions of this Deed to such extent as may be required to:

(i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;

(ii) comply with the effect of any judicial decision; or

(iii) enable the provisions of this Deed, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.

(c) Before Land Owner and Timbercorp Securities may amend the Deed as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.

(d) Timbercorp Securities may make the amendments on behalf of itself, and then on behalf of the Participant Grower. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Deed.

(e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a) of this clause.

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## **19. DISPUTES**

### **19.1 Referral by the Participant Grower**

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

### **19.2 Timbercorp Securities**

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
  - (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
  - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Deed to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
    - (B) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
    - (C) the arbitration will be conducted in Melbourne, Victoria.

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- (b) The Participant Grower and Timbercorp Securities:
    - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
    - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
  - (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.
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## **20. CONSTITUTION**

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

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## **21. TRANSFER OF LAND ACT**

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1958 are expressly excluded from this Deed and the sub-lease granted under this Deed.

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## **22. PROPERTY LAW ACT**

The provisions of section 144(1) of the Property Law Act 1958 do not apply this Deed and the sub-lease granted under this Deed.

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## **23. CAVEAT**

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

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

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## 25. FURTHER ASSURANCES

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

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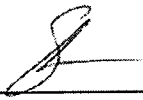
## 26. SEVERABILITY


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

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## Executed as a Deed

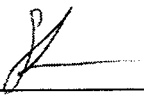
EXECUTED by ALMOND LAND )  
PTY LTD in accordance with )  
section 127 of the Corporations )  
Act: )

  
\_\_\_\_\_  
Signature  
**Sol Rabinowicz**  
\_\_\_\_\_  
Full Name  
**Director**  
\_\_\_\_\_  
Position Held

  
\_\_\_\_\_  
Signature  
**Mark H Pryn**  
\_\_\_\_\_  
Full Name  
**Secretary**  
\_\_\_\_\_  
Position Held

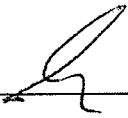


EXECUTED by TIMBERCORP )  
SECURITIES LIMITED in )  
accordance with section 127 of )  
the Corporations Act: )

  
\_\_\_\_\_  
Signature

**Sol Rabinowicz**  
\_\_\_\_\_  
Full Name

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

  
\_\_\_\_\_  
Signature

**Mark H Pryn**  
\_\_\_\_\_  
Full Name


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

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

  
\_\_\_\_\_  
Signature

**Sol Rabinowicz**  
\_\_\_\_\_  
Full Name

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

  
\_\_\_\_\_  
Signature

**Mark H Pryn**  
\_\_\_\_\_  
Full Name

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

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## **SCHEDULE**

Schedule of Growers follows