

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

LIST E

SCI 2009 10699

BETWEEN:

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

Plaintiff

and

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(ACN 005 357 522) & ORS (according to the attached Schedule)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 3 March 2010  
Filed on behalf of: the Second, Third and Fourth Defendants

Prepared by:  
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This is the exhibit marked '**MAK-6**' now produced and shown to MARK ANTHONY  
KORDA at the time of swearing this affidavit on 3 March 2010.

Before me:

  
**LUCY HANNAH KIRWAN**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Practitioners Act 2004

**Exhibit 'MAK-6'**

**Copy of 2002 Private Licence and  
Joint Venture Agreement  
(with variation of 15 July 2002)**

private 2002 007

*private*  
**Licence and Joint  
Venture Agreement**

**2002 TIMBERCORP ALMOND PROJECT  
(PRIVATE OFFER NO. 1)**

**Almond Land Pty Ltd**

**Each several Grower**

**Almond Management Pty Ltd**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

# Table of Contents

<b>1.</b>	<b>DEFINITIONS AND INTERPRETATION.....</b>	<b>2</b>
1.1	DEFINITIONS.....	2
1.2	INTERPRETATION.....	4
1.3	HEADINGS.....	4
1.4	DELEGATION.....	4
<b>2.</b>	<b>ESTABLISHED ORCHARD.....</b>	<b>4</b>
2.1	WARRANTY.....	4
2.2	CAPITAL WORKS AND WATER LICENCES.....	5
<b>3.</b>	<b>GRANT.....</b>	<b>5</b>
3.1	GRANT OF LICENCE.....	5
3.2	NO RIGHT OF EXCLUSIVE OCCUPATION.....	5
3.3	WATER LICENCES.....	5
<b>4</b>	<b>TERM.....</b>	<b>6</b>
4.1	TERM OF AGREEMENT.....	6
4.2	GROWER'S OBLIGATIONS UPON TERMINATION.....	6
<b>5.</b>	<b>GOVERNMENT APPROVALS.....</b>	<b>6</b>
<b>6.</b>	<b>CONDITION PRECEDENT.....</b>	<b>6</b>
<b>7.</b>	<b>LICENCE FEE.....</b>	<b>6</b>
7.1	FEE.....	6
7.2	ADJUSTMENTS TO LICENCE FEE.....	7
7.3	DISCONTINUANCE OR SUSPENSION OF CPI.....	7
<b>8.</b>	<b>GROWER'S OBLIGATIONS.....</b>	<b>7</b>
8.1	GROWER'S DUTIES.....	7
8.2	DELEGATION BY GROWER.....	7
8.3	DELEGATION DOES NOT LIMIT GROWER'S LIABILITY.....	7
<b>9.</b>	<b>LAND OWNER'S OBLIGATIONS.....</b>	<b>8</b>
<b>10.</b>	<b>TERMINATION OF AGREEMENT.....</b>	<b>8</b>
10.1	TERMINATION OF AGREEMENT BY GROWER.....	8
10.2	TERMINATION OF AGREEMENT BY LAND OWNER.....	8
10.3	DAMAGE TO ALMONDLOTS.....	8
10.4	REDUCTION OF JV ALMONDLOTS.....	9
10.5	TERMINATION OF PROJECT AND MANAGEMENT AGREEMENT.....	9
10.6	EFFECT OF TERMINATION.....	9
<b>11</b>	<b>JOINT VENTURE.....</b>	<b>9</b>
11.1	ACKNOWLEDGEMENT.....	9
11.2	CONSTITUTION OF JOINT VENTURE.....	9
11.3	NAME.....	10
11.4	JOINT VENTURER'S PRESCRIBED PROPORTION.....	10
11.5	ENTITLEMENTS AND OBLIGATIONS.....	10
11.6	COMMENCEMENT AND TERM OF THIS JOINT VENTURE.....	10
11.7	DISPOSITION OF JOINT VENTURE ASSETS ON TERMINATION.....	10
<b>12</b>	<b>LICENCE FEES AND EXPENSES.....</b>	<b>10</b>
12.1	FAILURE TO PAY.....	10
12.2	LAND OWNER MAY PAY ON BEHALF OF DEFAULTING GROWER.....	10
12.3	LAND OWNER MAY SELL DEFAULTING GROWER'S INTEREST.....	11
<b>13.</b>	<b>ASSIGNMENT.....</b>	<b>11</b>
13.1	ASSIGNMENT BY LAND OWNER.....	11
13.2	AGREEMENTS WITH CONTRACTORS.....	11

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13.3	LAND OWNER OR GRANTEE TO PAY FOR DEED .....	11
13.4	ASSIGNMENT BY GROWER.....	11
13.5	RELEASE OF LIABILITY OF GROWER.....	11
14.	GOODS AND SERVICES TAX .....	11
15.	LIMITATION OF LIABILITY OF GROWER .....	12
16.	NOTICE.....	12
16.1	FORM OF NOTICE.....	12
16.2	RECEIPT OF NOTICE.....	12
17.	PROPER LAW .....	13
18.	AMENDMENTS .....	13
19.	DISPUTES .....	13

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## **Details of this Licence and Joint Venture Agreement**

### **Date of the Agreement:**

In respect of each several Grower means the date on which the Project Manager has accepted the Grower's application for interests being offered under the Information Memorandum and Application and Documents Package as specified in Schedule 1 to this Agreement.

### **Parties to the Agreement:**

**1. ALMOND LAND PTY LTD**

ACN 091 460 392  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Land Owner)

**2. Each several Grower named in Schedule 1 to this Agreement  
(Grower)**

**3. ALMOND MANAGEMENT PTY LTD**

ACN 094 468 845  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Project Manager)

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## **Background to the Agreement**

- A.** The Project Manager intends to establish a project for the management of an almond orchard, the cultivation of almond trees and harvesting and processing of almonds for commercial gain. The Land Owner and the Grower will participate in that project and associate themselves as joint venturers.
- B.** The Land Owner is or is entitled to become the registered proprietor of the Land, the owner of the Water Licences and the Capital Works and any other capital works that may be established on the Land from time to time.
- C.** The Land Owner has agreed to grant a licence to the Grower to use and occupy the JV Almondlots in association with itself as joint venturers, for the cultivation of Almond Trees and harvesting of Almonds, subject to the terms and conditions of this Agreement.

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>Administrator:</b>	has the meaning given to it in section 9 of the Corporations Act;
<b>Almondlot:</b>	each separate identifiable area of the Land comprising approximately 0.25 hectares on which a Grower will carry on the business of primary production in a joint venture with the Land Owner and includes the Capital Works and the Water Licences attributed to the Project;
<b>Almond Trees:</b>	the almond trees planted on the Orchard;
<b>Almonds:</b>	the almonds grown or growing on the Grower's Almondlots or the Orchard, whichever is applicable, and whether or not harvested;
<b>Application and Documents Package</b>	means the application and documents package which comprise the application form for the Project, instructions on how to complete the application form and a pro forma copy of the Project Agreements;
<b>Business Day:</b>	any day other than a Saturday, Sunday or a public holiday on which banks are open for business with the public in Melbourne;
<b>Capital Works:</b>	the infrastructure and capital works, including the Almond Trees, that the Land Owner has carried out, at its cost, on the Land;
<b>Commencement Date:</b>	the date of this Agreement;
<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;
<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 Agreement and terminating on 30 June 2002 and the period ending on the termination of this Agreement 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 <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;
<b>Growers:</b>	all the Growers in the Project;
<b>Indexed:</b>	adjusted on the date on which a relevant payment is due, or the date upon which a relevant calculation is made, whichever is

	applicable (the Date), by the aggregate percentage change in the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) for the previous four (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date (or if in the relevant clause a date is provided from which the adjustment is to be made then prior to that date);
<b>Information Memorandum</b>	the document (together with the Application and Documents Package) making an excluded offer, under section 708 of the Corporations Act, for interests in the Project to potential Growers;
<b>JV Almondlots:</b>	the number of Almondlots allotted to the Joint Venture as set out in Schedule 1;
<b>Joint Venture:</b>	the joint venture between the Land Owner and the Grower constituted by this Agreement in respect of the Joint Venture Operations;
<b>Joint Venturers:</b>	the Land Owner and the Grower;
<b>Joint Venture Assets:</b>	the Participating Interest of the Joint Venturers in the Project Assets under the Project and Management Agreement;
<b>Joint Venture Operations:</b>	the growing and cultivation of Almond Trees on, and management of, the JV Almondlots for the production of Almonds for commercial gain;
<b>Land:</b>	the land on which the Project will be conducted as described in the Information Memorandum or such other land that is used for the Project;
<b>Orchard:</b>	means the almond orchard 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.
<b>Participating Interest:</b>	the entitlement of the Grower to the Project Assets, the Almonds and the Proceeds, as defined in the Project and Management Agreement;
<b>Prescribed Proportion:</b>	the proportionate interest of the Grower and the Land Owner respectively in the Joint Venture Assets as set out in clause 11.4;
<b>Proceeds:</b>	<ul style="list-style-type: none"> <li>(a) any moneys payable to the Joint Venture under any policy of insurance in relation to the JV Almondlots, the Almonds or the Project;</li> <li>(b) proceeds from the sale of a Joint Venturer's entitlement to the Almonds produced by the Project; and</li> <li>(c) any other moneys payable to the Joint Venture from the Project;</li> </ul>
<b>Project:</b>	the 2002 Timbercorp Almond Project (Private Offer No. 1) promoted by the Project Manager and relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain;
<b>Project and Management Agreement:</b>	an agreement for the establishment of the Project and the management of the business of the Joint Venturers conducted on the JV Almondlots between the Project Manager and the Joint Venturers;

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<b>Project Manager</b>	means Almond Management Pty Ltd (ACN 094 468 845) or such other person who holds the office from time to time
<b>Term:</b>	the term set out in <b>clause 4.1</b> ;
<b>Water Licences:</b>	the water licences owned or acquired by the Land Owner and attributed to the Project;

## 1.2 Interpretation

In this Agreement, 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 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 Agreement;
- (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally;
- (j) if any of the persons comprising the Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
- (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 Agreement.

## 1.4 Delegation

The Land Owner is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
  - (b) exercise any of its rights under this Agreement, through
- its employees, agents and contractors but any delegation by the Land Owner does not release the Land Owner from liability under this Agreement.

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## 2. ESTABLISHED ORCHARD

### 2.1 Warranty

The Land Owner warrants that it has, at its own cost, established, or procured the



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establishment of, the Almondlots on the Land in accordance with good horticultural and environmental practices and constructed necessary infrastructure and carried out capital works. Without limiting the generality of this clause, it has:

- (a) identified the relevant parts of the Land which are suitable for growing almonds based on soil types, soil depths and contours;
- (b) organised various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
- (c) organised block layout in relation to the Almondlots and pegged those blocks;
- (d) caused the preparation of an irrigation and drainage plan and has constructed and installed the internal irrigation equipment, the internal irrigation system and the irrigation infrastructure;
- (e) carried out drainage work and work to help prevent soil erosion on all Land;
- (f) cleared any vegetation or trees from the Orchard, performed broadacre weed spraying, disc ploughing and ripping and mounding of tree rows, applied preplant fertiliser spreading and discing, x-planning tree rows and marking out tree location;
- (g) planted almond trees on the Orchard during June 2001; and
- (h) provided such other capital works, services or things which, in the reasonable opinion of the Land Owner, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs (a)-(g) above.

## **2.2 Capital Works and Water Licences**

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

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## **3. GRANT**

### **3.1 Grant of Licence**

The Land Owner grants to the Grower and the Grower takes from the Land Owner a licence, effective from the Commencement Date, to use and occupy the JV Almondlots in joint venture with the Land Owner for the purpose only of conducting the Joint Venture Operations.

### **3.2 No right of exclusive occupation**

The right granted to the Grower under clause 3.1 confers no right of exclusive occupation of the JV Almondlots.

### **3.3 Water Licences**

The Land Owner must:

- (a) 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;
- (b) 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 this Agreement; and
- (c) purchase and maintain the Water Licences during the Project and purchase any additional water rights on a temporary or permanent basis that may be

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required from time to time in order to irrigate the Almondlots.

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## **4 TERM**

### **4.1 Term of Agreement**

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 10.1 to 10.3 and clause 12, this Agreement will continue until the earlier of:
  - (i) termination of the Joint Venturers' Participating Interest in the Project;
  - (ii) 30 June 2022; and
  - (iii) termination of the Project.

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

- (a) At the end of this Agreement, 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.
- (b) 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 this Agreement. If the parties do not comply with this requirement then, as between the Land Owner and the Grower, all structures and plant and equipment remaining on the JV Almondlots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Grower any compensation.

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## **5. GOVERNMENT APPROVALS**

The Project Manager must maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Almondlots.

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## **6. CONDITION PRECEDENT**

This Agreement is subject to and conditional on the Joint Venturers entering into the Project and Management Agreement with the Project Manager prior to or on the Commencement Date.

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## **7. LICENCE FEE**

### **7.1 Fee**

- (a) The Grower must pay to the Land Owner a licence fee of \$774.55 per JV Almondlot for the period from the Commencement Date until 30 June 2002. In respect of each of the Financial Years ended 30 June 2003 and 30 June 2004, the licence fee will be \$774.55 per JV Almondlot and will be payable on 31 October 2002 and 31 October 2003 respectively. Thereafter, on 31 October of each subsequent year during the life of the project, the Grower must pay an

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annual licence fee in accordance with clause 7.2.

- (b) All licence fees under this agreement are payable solely by the Grower and the Land Owner will not be required to pay or contribute to any licence fees at any time during the term of this Agreement.

## **7.2 Adjustments to licence fee**

The licence fee will be Indexed on 31 October 2004 and each anniversary thereafter during the Term.

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

If the Consumer Price Index (All Groups) Weighted average of eight capital cities is discontinued or suspended, the method of review set out in clause 7.2 will cease to apply and will be replaced with such alternative method as is adopted for the purposes of the Project and Management Agreement in accordance with the definition of "Indexed" in that agreement.

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# **8. GROWER'S OBLIGATIONS**

## **8.1 Grower's duties**

The Grower must, at its expense:-

- (a) use the JV Almondlots solely for the purpose of 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 and 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 it to perform its duties and obligations under this Agreement;
- (f) permit the Project Manager and its employees, agents and contractors to enter upon the JV Almondlots from time to time with or without equipment for the purpose of performing its obligations under the Project and Management Agreement;
- (g) comply or procure compliance with the provisions of the Project and Management Agreement; and
- (h) give such rights of way and free access to the occupiers of any other Almondlots adjoining the JV Almondlots 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 JV Almondlots.

## **8.2 Delegation by Grower**

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

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

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

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## **9. 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.
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## **10. TERMINATION OF AGREEMENT**

### **10.1 Termination of Agreement by Grower**

The Grower may terminate this Agreement by notice in writing to the Land Owner immediately, if either the Land Owner or the Project Manager:

- (i) goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or the Project Manager or any part of its undertaking;
- (ii) ceases to carry on business; or
- (iii) fails or neglects to pay any monies due to any Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by the Land Owner or the Project Manager, as appropriate, of written notice from the Growers or a Grower specifying the default and requesting that the default be remedied, except where the Land Owner or the Project Manager, as appropriate, has advised the Growers or the Grower, whichever is the case, of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

### **10.2 Termination of Agreement by Land Owner**

- (a) Subject to paragraph 10.2(b) and without prejudice to the Land Owner's rights under clause 12, the Land Owner may terminate this Agreement, with immediate effect, if the Grower fails to make a payment within the time required under this Agreement or commits a material breach of this Agreement, and fails to remedy the breach or make reasonable compensation in money within 30 days after the Land Owner has served a written notice on the Grower requiring the Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach.
- (c) The Agreement will terminate if the Land Owner exercises its rights under clause 12.

### **10.3 Damage to Almondlots**

If, in respect of the JV Almondlots:

- (i) the whole or a substantial part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (ii) an independent horticultural consultant commissioned by the Grower reasonably

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determines that the whole or a substantial part of the JV Almondlots is no longer commercially viable,

the Grower may terminate this Agreement in respect of all the JV Almondlots by giving not less than 4 months' prior written notice of such termination to the Land Owner. 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 JV Almondlots**

If in respect of the JV Almondlots:

- (i) part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (ii) an independent horticultural consultant commissioned by the Grower reasonably determines that part of the JV Almondlots is no longer commercially viable,

the Grower may terminate this Agreement in respect of the JV Almondlots on which the affected part of the Almond Trees is or was growing, by giving not less than 4 months' prior written notice of such termination to the Land Owner. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

#### **10.5 Termination of Project and Management Agreement**

This Agreement terminates in respect of the Grower immediately if the Project and Management Agreement in respect of the Grower is terminated by the Grower for any reason.

#### **10.6 Effect of Termination**

- (a) Termination of this Agreement under clauses 10.1, 10.2 or 10.3 or reduction of the JV 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 Agreement in respect of any number of all of the JV Almondlots or part of a JV Almondlot under this clause 10 does not affect the rights or obligations of the parties in respect of any other JV Almondlots or other part of the reduced JV Almondlots.
- (c) If this Agreement is terminated under clause 10.2, the Grower loses all rights and interest as a participant in the Project and the procedures for the consequences of termination as set out in the Project and Management Agreement and this Agreement may be followed.
- (d) The termination of this Agreement will terminate the rights and obligations of the Parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.

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### **11 JOINT VENTURE**

#### **11.1 Acknowledgement**

The Land Owner and the Grower acknowledge that they have entered into the Project and Management Agreement as joint venturers on the terms and conditions which follow for the purpose of engaging in a primary production business of developing and cultivating an almond orchard and producing and processing Almonds for commercial gain.

#### **11.2 Constitution of Joint Venture**

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The Land Owner and the Grower constitute a joint venture for the purposes of carrying on the Joint Venture Operations in accordance with this Agreement.

**11.3 Name**

The joint venture will be known as the 2002 Timbercorp Almond Project (Private Offer No. 1) Joint Venture.

**11.4 Joint Venturer's Prescribed Proportion**

The Grower is entitled to a Prescribed Proportion of the Joint Venture Assets of 90% and the Land Owner is entitled to a Prescribed Proportion of the Joint Venture Assets of 10%.

**11.5 Entitlements and Obligations**

Subject to the terms and conditions of the Project and 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 Project Manager in proportion to its Prescribed Proportion of the management expenses and tree supply and planting 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.

**11.6 Commencement and Term of this Joint Venture**

The Joint Venture commences on the date of this Agreement and unless terminated under clause 10, terminates on the termination of this Agreement.

**11.7 Disposition of Joint Venture Assets on Termination**

- (a) On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Growers in their Prescribed Proportions, or be sold.
- (b) If the Joint Venture Assets are sold under paragraph 11.7(a), the net proceeds of sale must be divided amongst the Growers on a pro rata basis in accordance with their Prescribed Proportions.

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**12 LICENCE FEES AND EXPENSES**

**12.1 Failure to Pay**

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 Project and Management Agreement by the due date, the Land Owner may, after giving the Grower 30 days' prior written notice, terminate this Agreement 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 the Land Owner).

**12.2 Land Owner may pay on Behalf of Defaulting Grower**

If the Grower fails or neglects to make payment of any amount under clause 12.1, the Land Owner may 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's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full.

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### **12.3 Land Owner may Sell Defaulting Grower's Interest**

If a Grower falls or neglects to make payment of any amount under **clause 12.1** then the Project Manager, on behalf of the Land Owner, may deal with the interest of the Grower by exercising any of its powers under **clause 16** of the Project and Management Agreement.

## **13. ASSIGNMENT**

### **13.1 Assignment by Land Owner**

Subject to **clause 13.2**, the Land Owner may freely assign any of its rights and interests under this Agreement so long as the Land Owner does not assign its interest in this Agreement in any way without first entering a deed with the person with whom the Land Owner is dealing ("the Grantee"). The deed must contain a covenant by the Grantee in favour of the Grower to observe and perform all or any of the covenants:-

- (a) contained or implied in this Agreement; and
- (b) required to be observed or performed by the Land Owner.

**Paragraph 13.1(a)** 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 may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which it has delegated some or all of its obligations under this Agreement, and for this purpose, the Land Owner has obtained the written consent to the assignment from the contractor.

### **13.3 Land Owner or Grantee to pay for deed**

The Land Owner or the Grantee, but not the Grower, must pay the cost of any deed required under **clause 13.1**.

### **13.4 Assignment by Grower**

Subject to the requirements of the Project and Management Agreement, the Grower may not assign its rights under this Agreement unless the Grower first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner stating that the assignee will at all times during the Term observe and perform all and any of the terms and conditions of this Agreement and the Project and Management Agreement applying to the Grower.

### **13.5 Release of liability of Grower**

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

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

- (a) If any supply made by a party ("Supplier") to the other ("Recipient") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "GST Exclusive Amount") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this

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Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.

- (c) GST payable under paragraph (b) must be paid by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph (b).
- (d) If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST, except any GST for which that Party is entitled to an input tax credit.
- (e) If a Party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

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

Subject to clause 12.2, in no circumstances will the Grower be obliged to incur any liability under this Agreement in excess of the annual licence fee, its Participating Interest of the fees and expenses payable under the Project and Management Agreement and the Proceeds.

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## **16. NOTICE**

### **16.1 Form of Notice**

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

- (a) hand delivery;
- (b) post or registered or certified mail, or
- (c) fax

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

### **16.2 Receipt of Notice**

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

- (a) if hand delivered, then upon delivery;
- (b) if posted, then 48 hours after the notice has been properly posted if that falls on a business day, and if not, on the first business day afterwards; and



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

## **17. PROPER LAW**

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

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## **18. AMENDMENTS**

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
- (b) Subject to paragraph (c), the Land Owner, with the written consent of the Project Manager, may amend the provisions of this Agreement to such extent as may be required to:
- (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
  - (ii) comply with the effect of any judicial decision; or
  - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Prior to making any amendment under paragraph (b), the Land Owner must be reasonably satisfied that the amendment does not adversely affect the rights of Growers.
- (d) The Land Owner may make the amendments on behalf of itself, and then on behalf of the Grower. To give effect to this clause, each Grower appoints the Land Owner as its attorney to make amendments to this Agreement.
- (e) If the Land Owner cannot be satisfied that the amendments can be made in accordance with the paragraph (c), then amendments may only be made in accordance with paragraph (a) of this clause.
- 


## **19. DISPUTES**

If a dispute arises under this Agreement between the parties it must be referred for resolution in accordance with the dispute resolution provisions of the Project and Management Agreement.

## Executed as an Agreement

EXECUTED by ALMOND LAND  
PTY LTD

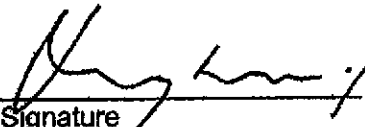
by authority of its directors:

  
\_\_\_\_\_  
Signature

**Darren Lipton**

Full Name

Director  
Position Held

  
\_\_\_\_\_  
Signature

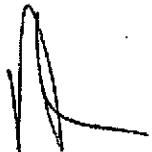
**John Vaughan**

Full Name

Director  
Position Held


EXECUTED by ALMOND  
MANAGEMENT PTY LTD

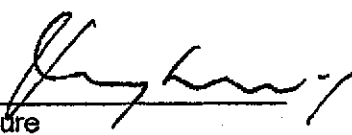
as agent and attorney for and on  
behalf of each several Grower by  
authority of its directors:

  
\_\_\_\_\_  
Director

Darren Lipton  
Director/Secretary

EXECUTED by ALMOND  
MANAGEMENT PTY LTD  
by authority of its directors:

  
\_\_\_\_\_  
Signature  
**Darren Lipton**  
\_\_\_\_\_  
Full Name  
*Darren*  
\_\_\_\_\_  
Position Held

  
\_\_\_\_\_  
Signature  
**John Vaughan**  
\_\_\_\_\_  
Full Name  
*DIRECTOR*  
\_\_\_\_\_  
Position Held

---

**SCHEDULE 1**

**Grower and JV Almondlot Details**

2002 007A  
private

**ALMOND LAND PTY LTD**  
**EACH GROWER**  
**ALMOND MANAGEMENT PTY LTD**

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**DEED OF VARIATION**  
**(Licence and Joint Venture Agreement)**  
**2002 Timbercorp Almond Project (Private Offer)**

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**CORRS CHAMBERS WESTGARTH**  
Lawyers  
Bourke Place  
600 Bourke Street  
Melbourne VIC 3000  
**AUSTRALIA**  
Tel: (03) 9672 3000  
Fax: (03) 9602 5544  
DX: 336 MELBOURNE

Ref: TB/UG  
TIMB1480/6551865  
M/928093/2

THIS DEED is made on

16 July

2002

BETWEEN ALMOND LAND PTY LTD ACN 091 460 392 ("Land Owner")

AND EACH GROWER

AND ALMOND MANAGEMENT PTY LTD ACN 094 468 845 ("Project Manager")

### BACKGROUND TO THE DEED

- A Pursuant to a Licence and Joint Venture Agreement in respect of the 2002 Timbercorp Almond Project (Private Offer) between the Land Owner, the Project Manager and each Grower (each, a "Licence & Joint Venture Agreement"), the Land Owner has granted a licence to each Grower to use and occupy the JV Almondlots (in association with the Land Owner), for the cultivation of Almond Trees and the harvesting of Almonds .
- B The Land Owner, the Project Manager and Almond Management Pty Ltd (as attorney for each of the Growers), wish to amend the Licence and Joint Venture Agreements for the purpose of facilitating the management and operation of each Project and have satisfied themselves that the amendments effected by this Deed will not adversely affect the rights or interests of the Growers.
- C The Project Manager consents to the amendments made in this Deed.

### IT IS AGREED

#### 1 INTERPRETATION

##### 1.1 Definitions

In this Deed:

"Grower" means a person who is a party to a Licence and Joint Venture Agreement with the Land Owner in respect of the 2002 Timbercorp Almond Project (Private Offer) which has not terminated before the date of this Deed.

##### 1.2 Incorporation of terms

Terms defined in the Licence and Joint Venture Agreements have the same meaning in this Deed unless the context requires otherwise.

#### 2 CONSIDERATION

Each party acknowledges that it has received valuable consideration for entering into this Deed.

#### 3 AMENDMENT

- (a) This document is supplemental to and constitutes an amendment of each of the Licence and Joint Venture Agreements, and the Licence and Joint Venture Agreements shall be construed and take effect as amended in this Deed.

- (b) With effect on and from the date of this Deed, each Licence and Joint Venture Agreement is amended as follows:

- (i) Clause 1.1 is amended by inserting the following definition:

**““Project Documents”** means this Agreement, the Project and Management Agreement, the “Call Option Agreement”, the “Almond Orchard Management Agreement” and each lease and sub-lease in relation to the Project, and each other document contemplated by, or required in connection with, the Project and each document entered into for the purpose of amending, novating, restating or replacing any such document.”

- (ii) A new clause 3.4 is inserted as follows:

**“3.4 Replacement of Almond lots**

The Land Owner may, at any time, allocate or allot a Grovelot or Grovelots to a Grower from the Land (of such location or locations within the Land as the Land Owner in its absolute discretion thinks fit) in substitution for a Grovelot or Grovelots allocated or allotted to a Grower pursuant to this Agreement. The Land Owner or its nominee (each as attorney for and on behalf of the Grower) may enter into such documents, and the Land Owner may do such other things, as the Land Owner in its absolute discretion considers necessary or desirable in order to give effect to this clause, including but not limited to making amendments to any document, or to any lease or sub-lease in respect of all or any part of the Land.”

- (iii) A new clause 10.7 is inserted as follows:

**“10.7 Ownership of Almond Trees and Almonds during and following termination of Project**

Notwithstanding anything to the contrary in a Project Document:

- (i) at all times during the term of the Project, the Almond Trees are, and will remain, the property of the Land Owner and the Almonds and any resulting product will be the Property of the Grower to the extent of its joint venture interest; and
- (ii) on termination of the Project for whatever reason before its expiry, the Almond Trees, the Almonds and any resulting product will be the property of the Land Owner, provided that the last crop of Almonds harvested before that termination and any resulting product will remain the property of the Grower; and

(iii) on expiry of the Project, the Almond Trees, the Almonds and any resulting product will be the property of the Land Owner."

(iv) A new paragraph is inserted at the end of clause 13.1 as follows:

"Notwithstanding anything to the contrary in this Agreement, the Land Owner may grant security over its rights and interests under this Agreement in favour of any financier (or the financier's representative) and by any means, provided that the Land Owner procures the agreement of the financier (or its representative) to enter into a deed of covenant where the relevant financier (or its representative) takes its security subject to the rights of the Growers on terms acceptable to the Land Owner."

#### **4 RATIFICATION**

In all other respects, the parties hereby ratify the terms and conditions of the Licence and Joint Venture Agreement.

#### **5 PROJECT MANAGER'S CONSENT**

The Project Manager hereby ratifies and consents to the amendments to the Licence and Joint Venture Agreement in the manner set out in this Deed.

#### **6 GOVERNING LAW**

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



**EXECUTED** as a deed.

**EXECUTED** by **ALMOND LAND PTY LTD** by the party's attorney pursuant to a power of attorney dated *15 July 2002* who states that no notice of revocation of the power of attorney has been received in the presence of:

*G. Meltzer*  
.....  
Witness

*Gideon Meltzer*  
.....  
Name of Witness (print)

*[Signature]*  
.....  
Attorney

*Sol Rabinowicz*

.....  
Name of Attorney (print)

**EXECUTED** by **EACH GROWER IDENTIFIED IN THE LICENCE AND JOINT VENTURE AGREEMENT** by its attorney **ALMOND MANAGEMENT PTY LTD** who states that no notice of revocation of the power of attorney has been received

Executed by **ALMOND MANAGEMENT PTY LTD** by its attorney under power of attorney dated 15 July 2002 who states that no notice of revocation of the power of attorney has been received in the presence of

*[Signature]*  
.....  
Attorney

*Sol Rabinowicz*

.....  
Name of Attorney

*G. Meltzer*  
.....  
Witness

*Gideon Meltzer*  
.....  
Name of Witness

EXECUTED by ALMOND  
 MANAGEMENT PTY LTD by the  
 party's attorney pursuant to a power of  
 attorney dated 15 July 2002 who  
 states that no notice of revocation of the  
 power of attorney has been received in the  
 presence of:

Witness

Name of Witness (print)

Attorney

Name of Attorney (print)