

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:  
**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
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Lucy Kirwan [lkirwan@abl.com.au](mailto:lkirwan@abl.com.au))

This is the exhibit marked 'MAK-8' 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 Profession Act 2004

**Exhibit 'MAK-8'**

**Copy of Affidavit of Mark Anthony Korda  
sworn in respect of 2002 Almond Project  
(with Supplementary and Reply Affidavit)**

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(ADMINISTRATORS APPOINTED)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(ADMINISTRATORS APPOINTED) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE  
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE CHESSER  
Second and Third Plaintiffs**

**AFFIDAVIT OF MARK ANTHONY KORDA -**

**2002 TIMBERCORP ALMOND PROJECT (ARSN 099 611 935)**

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Date of document: June 2009

Filed on behalf of: the Plaintiffs

Prepared by:

**Arnold Bloch Leibler**

Lawyers and Advisers

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(Leon Zwier)

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I, **MARK ANTHONY KORDA**, of Level 24, 333 Collins Street, Melbourne, in the state of Victoria, Chartered Accountant, SAY ON OATH that:

- 1 I am the voluntary administrator of the first plaintiff Timbercorp Securities Limited (Administrators Appointed) (ACN 092 311 469) (TSL) with Leanne Kylie Chesser. Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this affidavit on her behalf. References in this affidavit to "we", "us", "our" or "ourselves" are references to Ms Chesser and me.

- 2 On 23 April 2009, we were appointed as voluntary administrators of TSL pursuant to section 436A of the *Corporations Act 2001 (Cth)* (Act). Other partners of KordaMetha Pty Ltd (ACN 100 169 391) (**KordaMentha**) and I were appointed as voluntary administrators of Timbercorp Limited (Administrators Appointed) (ACN 099 611 935) (**Timbercorp**) and 39 of its wholly owned subsidiaries (**Timbercorp Group**).
- 3 In this affidavit I refer to two other affidavits:
- (a) an affidavit sworn on 4 June 2009 and filed in this proceeding for the purpose of obtaining a direction under s 447D (**Directions Affidavit**);
  - (b) an affidavit that I am yet to swear but intend to file shortly after filing this affidavit giving general information about the Olive and Almond Schemes (**Olive and Almond Affidavit**).
- 4 TSL is the responsible entity for a number of forestry and horticultural schemes which are registered managed investment schemes, including 2002 Timbercorp Almond Project which has the Australian Registered Scheme Number 095 649 746 (**2002 Almond Scheme**).
- 5 **2002 Almond Scheme Documents**
- 5.1 The documents constituting the 2002 Almond Scheme are voluminous. Shown to me marked **MAK-1** is a computer disc of all the documents I refer to in this affidavit along with an index to the documents on that computer disc. Where I refer to specific pages in these documents I exhibit them separately in hard copy to this affidavit. I am told by Antony Munro that the documents contained in the computer disc marked **MAK-1**, were posted on the Arnold Bloch Leibler website on 23 June 2009 and on the KordaMentha website on 24 June 2009.
- 5.2 The key documents of those constituting the 2002 Almond Scheme (exhibited at **MAK-1**) are:
- (a) the constitution dated 11 February 2002 (A 2002 002) and supplemental deeds dated 16 July 2002 (A 2002 002A), 24 November 2004 (A 2002 002B), 5 May 2005 (A 2002 002C), which binds TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);
  - (b) a prospectus dated 7 March 2002 (A 2002 000), the first supplementary prospectus dated 13 March 2002 (A 2002 000A), the second supplementary

prospectus dated 13 May 2002 (A 2002 000B) and the third supplementary prospectus dated 14 June 2002 (A 2002 000C) describing the 2002 Almond Scheme including a summary of the key documents and application and power of attorney forms (**Prospectus**) (more recently replaced by a product disclosure statement or PDS as a result of legislative amendment);

- (c) a supplementary prospectus dated 13 March 2002;
- (d) a second supplementary prospectus dated 13 May 2002;
- (e) a third supplementary prospectus dated 14 June 2002;
- (f) the custody agreement (undated) (A 2002 001) by which TSL appoints the Permanent Trustee Company Limited (ACN 000 000 993) custodian to hold the 2002 Almond Scheme assets (**Custody Agreement**);
- (g) leases and subleases (listed in the index to MAK-1) for the land on which the crop is to be grown (**Land**). The Land located at Liparoo, Victoria (**Liparoo**) is owned by OIM#2 Pty Ltd (**OIM#2**), a trustee of the Timbercorp Orchard Trust #3 (**TOT**). TOT is a wholly owned sub-trust of Timbercorp Primary Infrastructure Fund, a registered managed investment scheme ARSN 116 024 830. OIM#2 leases Liparoo to Timbercorp as tenant under a head lease (TAT 05D 009; the **Liparoo Head Lease**) and Timbercorp subleases the Land to Almond Land Pty Ltd (Administrators Appointed) (ACN 091 460 392) (**Landowner**) (TAT 05D 010; the **Liparoo Head Sub-lease**). In turn, Landowner leases Liparoo to TSL as responsible entity, who sub-leases it back to Landowner (**Liparoo Sub-lease**). Landowner also owns the Land located at Carina (Blk 13), Victoria and Carina West, Victoria (collectively, **Carina**). Landowner leases Carina to TSL as responsible entity pursuant to two lease agreements (A2002 015 and A2002 013; collectively, the **Carina Head Lease**). TSL, in turn, sub-leases Carina back to Landowner under two sub-lease agreements (A2002 014 and A2002 016; collectively, the **Carina Sub-lease**; together with the Liparoo Head Sub-lease, the Liparoo Sub-lease, the Carina Head Lease and the Carina Sub-lease, **Project Leases**). Title searches have been conducted in respect of each certificate of title that comprises the Land. Copies of the title searches have been copied onto the computer disc marked MAK-1. Now produced and shown to me marked **MAK-2** is a table prepared by my solicitors setting out the title particulars for

the Land. Where the volume and folio number or certificate of title for the relevant section of Land has changed since the lease and subleases set out above were entered into, the new volume and folio numbers are set out in MAK-2;

- (h) a licence and joint venture agreement (undated) (A 2002 010) in which the Grower and Landowner associate themselves as joint venturers for the purpose of planting, cultivation and processing of the crop and the Landowner grants the Grower a licence to use and occupy the Land (in joint venture with the Landowner) for the purposes of growing and cultivating the crop (**Joint Venture Agreement**);
- (i) a grower agreement (undated) (A 2002 009) and varied on 13 June 2002 (A 2002 009A) (referred to as the Almondlot Management Agreement), between each Grower with the Tenant as joint venturers by which the Growers appointed TSL (in its personal capacity) as attorney for and on behalf of the Growers, to cultivate and maintain the crop grown on the Land, procure the processing of the crop and sell it on behalf of the grower (**Grower Agreement**);
- (j) a management agreement dated 7 March 2002 (A 2002 007) and deed of variation dated 14 June 2002 (A 2002 022), by which TSL (in its personal capacity) engaged Almond Management Pty Ltd (voluntary administrators appointed) (ACN 094 468 845) (**AMPL**) to harvest and procure the processing of the crop grown on the Land (**Management Agreement**).
- (k) an orchard management agreement dated 3 January 2002 (A 2002 006) and supplemental deed dated 1 October 2008 (A 2002 006A) by which AMPL contracts with Select Harvests Limited (ACN 000 721 380) (**Select**) to provide cultivation, processing and marketing services (**Orchard Management Agreement**); and
- (l) a tree supply and capital works agreement dated 11 April 2002 (A 2002 19) between the Tenant and Select in which Select agrees to sell almond trees to the Tenant and the Tenant engages Select to plant the trees (**Tree Supply and Capital Works Agreement**);

(Key Scheme Documents).

5.3 Now produced and shown to me marked **MAK-3** is a structure diagram for the 2002 Almond Scheme.

5.4 There are 602 Growers in the 2002 Almond Scheme and a total of 3,008 Almondlots. There are two projects within the 2002 Almond Scheme. There are 2,297 Almondlots in the first project (**2002 Almond Early**) and 711 Almondlots in the second project (**2002 Almond Standard**). Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2002 Almond Scheme.

## **6 Growers' Contributions to the 2002 Almond Scheme**

6.1 The Growers' obligations to contribute to the 2002 Almond Scheme are set out in the Scheme Documents. Now produced and shown to me marked **MAK-5** are the clauses which concern the Grower's obligations that I refer to below.

6.2 In order for an applicant to become a Grower the applicant was required to provide to TSL (in its capacity as responsible entity) a completed application and power of attorney form (the power of attorney being in favour of TSL), together with a specified amount being the annual licence fee and management fee, per Almondlot, in relation to the first year of operation of the Scheme (**Application Moneys**). When TSL accepted the Grower's application, the applicant was deemed to have contemporaneously become a party to the Constitution (clause 8.6, Constitution) and a Grower.

6.3 Under the power of attorney provided by the Grower to TSL, TSL completed on behalf of the Grower the following agreements as required by the Constitution (clause 9.1):

(a) Joint Venture Agreement; and

(b) Grower Agreement.

### **(Agreements)**

6.4 Upon completion of the Agreements, TSL was required to release the Application Moneys and apply them to pay the fees owing under the Agreements (clause 9.3(a), Constitution). TSL was granted power by Growers, under the Constitution to keep, as a fee, the interest earned on the Application Moneys (clauses 4.4 and 9.3(d), Constitution).

6.5 Annually, Growers were required to pay the following fees per Almondlot:

- (a) a licence fee to the Landowner (clause 7.1, Joint Venture Agreement);
- (b) a management fee to TSL (clause 11.1, Grower Agreement);
- (c) commencing on and from 31 October 2004, TSL's reasonable operating costs (clause 11.2(a), Grower Agreement);
- (d) a percentage of the proceeds of the sale of the almonds to TSL (clause 11.2(b), Grower Agreement);
- (e) an incentive fee to TSL if the annual net proceeds payable to the Grower in the financial year exceeded the forecasted net proceeds as set out in the Prospectus (clause 11.2(c), Grower Agreement).

**(Deductions)**

6.6 TSL was required to pay into a separate account the proceeds from the sale of the Product together with miscellaneous other amounts (the **Agency Account**) (clause 13.6, Constitution).

6.7 From the Agency Account, a Grower was entitled to an amount representing the Grower's share in the gross income from the sale of almonds for that period less Deductions (clause 13.7, Constitution).

6.8 TSL (in its capacity as responsible entity) generally had a right of indemnity out of the Agency Accounts.

**7 Solvency of the 2002 Almond Scheme**

7.1 The solvency of the 2002 Almond Scheme depends on its ability to pay its debts as and when they fall due from its own cashflows or from other sources of funding available to it. Unlike a company with its own assets and liabilities, the 2002 Almond Scheme is represented by a collection of contracts which create rights and impose obligations.

7.2 To analyse whether the 2002 Almond Scheme is solvent I have instructed my staff to prepare a forecast cashflow statement for the 2010 harvest, excluding recovery of costs from, and distribution of proceeds to Growers, to show the forecast cashflow for the 2002 Almond Scheme. Now produced and shown to me marked **MAK-6** is the

**Solvency Analysis (Solvency Analysis).** Information about both the 2002 Almond Early and 2002 Almond Standard appears in the Solvency Analysis.

## **8 Cashflow - Historic**

- 8.1 The final section of the Solvency Analysis shows the net operating cashflow to date for the years since the 2002 Almond Scheme began on a financial year basis (July 1 to June 30). For the financial years 2002-2005, 2002 Almond Early had a negative net operating cashflow. In 2006 to 2008, 2002 Almond Early has had a positive operating cashflow. For the financial years 2002-2007, 2002 Almond Standard had a negative net operating cashflow. Since 2008, 2002 Almond Standard had a positive net operating cashflow for both projects. The 2009 net operating cashflow is an estimate and will change as the proceeds from the sale of the 2008 and 2009 crops are received.

## **9 Projected Cashflow 2010**

- 9.1 The 2010 crop commences after the 2009 harvest and will conclude with the receipt of sale proceeds from the 2010 crop (**2010 Harvest Result**). The Solvency Analysis shows the projected net operating cashflow for the 2010 Harvest Result.
- 9.2 The Solvency Analysis spreadsheet shows the expected net cashflow from the 2010 harvest by taking the Growers' gross proceeds (from the net sales of almonds less the Joint Venture Partner's share) and subtracting the scheme costs that the Growers are liable to pay. There are a number of assumptions underlying these figures. Information about 2002 Almonds Early (shown as 2002E) and 2002 Almond Standard (shown as 2002) projects (**Projects**) appears in the Solvency Analysis. There is analysis of both Projects as a scheme.

### *Scheme Income and Costs - Explanation, Variables and Assumptions*

- 9.3 The net sales figure in the Solvency Analysis is the estimated proceeds from sale of the 2010 crop. The assumptions underlying the sales figures are listed under the heading "2010 Crop Variables" in the Solvency Analysis:
- (a) Kilograms per hectare - this is the estimated yield per hectare of the crop and is a Timbercorp management projection based on its experience.
  - (b) The yield depends on a number of factors including rainfall, storms, water supply, variations in soil type, pestilence, vermin, disease, frost and wind, as



well as horticultural practices. While all efforts are made to minimise annual variations in yields and production, yields may vary from tree to tree and harvest to harvest. The actual yield in kilograms per year for the 2002 Almond Scheme from the first crop in 2004 up to the estimate for 2010 is summarised below:

Crop Year	2004	2005	2006	2007	2008	2009F	2010F*
Yield 2002E (kg)	187,039	936,535	1,063,353	1,609,384	1,664,981	1,867,581	1,986,331
Yield 2002 (kg)		73,235	230,972	463,210	432,652	576,633	586,576

\*F- Forecast

- (c) The estimated yield for the 2010 crop is a function of the estimated yield per hectare and the "sold area". The sold area is the number of hectares planted with "sold lots" (lots sold to the Growers for planting). There are four lots to a hectare.
- (d) Net sale price per kilo of almonds - the analysis assumes an average sale price of \$5.09/kg for the 2010 crop. The size of the Californian crop, which accounts for 80% of global production, is a significant cause of seasonal fluctuations in the price of almonds as well as changes in the USD-AUD exchange rate as a commodity price is denominated in USD. The projected \$5.09/kg Farmgate price compares to an average price of \$5.22/kg achieved for the 2008 crop sold over the last 12 months, and is based on the current market price (rather than a Timbercorp Management forecast) Farmgate prices achieved in recent years are:

Crop Year	2004	2005	2006	2007	2008	2009F*	2010F*
Price per kg (\$)	6.58	9.19	8.00	6.14	5.22	5.09	5.09

\*F - Forecast

- 9.4 The "Grower's Gross Proceeds" on the Solvency Analysis records the estimated net sales less the joint venture partner's share. This is a 10% deduction from net sales in accordance with the Joint Venture Agreement.
- 9.5 The joint venture partner (AMPL) has no capacity to meet its share of the operating costs, and because TSL has no capacity to absorb any funding shortfall arising from any defaults on grower project invoices, the scheme is insolvent.

### *Scheme Costs - Explanation, Variables and Assumptions*

9.6 The Growers are responsible for the payment of operating expenditure. Even though the Timbercorp Group can no longer provide services for the 2002 Almond Scheme, I have assumed an alternate provider will charge a like fee. The key variables and assumptions underpinning the expenses analysis are:

- (a) **TIM Variable Management Fee** - this is the fee that TSL charges the Growers to manage the lot on the Growers' behalf. It is charged at 3% of Growers' net sales proceeds and is deducted prior to the distribution of proceeds;
- (b) **Base Admin Fee per Lot** - this fee is billed by TSL (together with the Operating Costs) to administer the 2002 Almond Scheme. It is calculated as a fixed charge per lot of \$50 (base) and adjusted annually for the Consumer Price Index;
- (c) **Operating Costs** - these costs include expenses such as harvest, fertiliser, pest control, pruning, as well as costs associated with the processing and marketing of the almonds. Spring and autumn are key periods for expenditure of orchard operating costs; spring being when the bulk of fertiliser is applied and when pollination services are required and autumn due to harvest operations. The actual orchard costs are reconciled at the end of the year and any adjustment (over or under budget) is included in the following seasons billings.
- (d) **Temporary Water and Permanent Water allocation** - there are permanent water rights in place to meet the Project's water requirements (12.5 ml per ha for mature orchards). However, during drought years, the relevant water authorities apply a set allocation to the permanent water rights that limits the amount of water available to be used during the year. The allocation determined by the water authority is based on available water in the system. Management's FY2010 forecast assumes an allocation of 40% which is consistent with current allocations. As a result of the 40% allocation of permanent water rights, there will be a requirement to purchase temporary water to meet the shortfall. Temporary water is estimated to cost \$350 per mega litre which is based on the current cost. The percentage allocations for water historically are:

Crop Year	2003	2004	2005	2006	2007	2008	2009	2010F*
Total	100%	100%	100%	100%	95%	43%	35%	40%

\*Forecast

- (e) Licence fee per lot - the licence fee is referred to in the Prospectus. It is payable for the use of and occupancy of the Almondlot under the Joint Venture Agreement. The Growers pay the licence fee on the basis that the Landowner provides the entire necessary Infrastructure and other capital works to operate a commercial almond orchard; and
- (f) CPI Assumption - the cashflow has been prepared on the basis of a 2.5% increase in the Consumer Price Index.

9.7 The joint venture partner's share of the costs of the 2010 Harvest Result have been excluded from the Scheme expenses. That is, the analysis is net of both the joint venture partner's share of revenues and expenses.

9.8 The operational costs are charged in accordance with the 2002 Almond Scheme agreements. The assumption in the Solvency Analysis is that the Growers are billed for 100% of the expected operational costs and all costs are due and payable annually in one lump sum (with the exception of the Timbercorp management fee which is recovered from crop sale distributions). Historically, some of the operational costs were absorbed by the Timbercorp Group. However, neither TSL nor any of the other companies in the Timbercorp Group have the financial capacity to meet any financial costs. (There is no provision in any of the Key Scheme Documents to empower TSL to invoice growers for additional amounts required to cover default of Growers or shortfalls generally).

*Net Operating Cashflow (excluding capital expenditure)*

9.9 The conclusion from this analysis is that for the 2010 Harvest Result for 2002 Almond Early, the Growers will have to meet a shortfall of \$915,456 (approximately), and for 2002 Almond Standard, the Growers will have to meet a shortfall of \$363,180 (approximately), as project costs are greater than gross proceeds.

9.10 Timbercorp Group needs to pay for scheme costs (spread over the course of the year) but the timing of these expenses is not matched to when Timbercorp Group can recover those costs from Growers. Growers are invoiced annually for those costs.

TSL has no capacity to fund the schemes until those costs are recovered. Furthermore, the Act provides that for a managed investment scheme to borrow funds, the constitution must set out that power and the Constitution does not contain that power. This is a fundamental issue for the solvency of TSL. I have asked my staff to prepare a spreadsheet showing cashflow on a month-by-month basis for the 2010 Harvest Result. This is a complex exercise and I am advised it will take another week to complete this information for all Almond and Olive Schemes.

9.11 TSL has not invoiced Growers for the 2010 crop. Historically, the Timbercorp Group have not asked for payment until 31 October 2009 and invoices would not ordinarily have been raised at this point in the year. For the avoidance of any misunderstanding, I do not consider that it is in the best interests of the Growers to raise invoices for the estimated scheme costs for the 2010 financial year, on an accelerated basis, or at all, because:

- (a) as I have deposed in my Directions and Olives and Almonds Affidavits, TSL is insolvent;
- (b) it is likely that some of the Growers in the 2002 Almond Scheme will default on their participation (as detailed below); and
- (c) as TSL has no capacity to absorb any funding shortfall arising from any defaults on grower project invoices, the scheme is insolvent.

#### *Capital Expenditure*

9.12 In addition to the operating expenditure there is also capital expenditure that the 2002 Almond Scheme must meet to achieve projected crop harvests. This capital expenditure requirement is largely to acquire additional permanent water rights and/or to provide irrigation infrastructure.

9.13 There is no capital expenditure expected for water for the 2010 Harvest Result.

9.14 There is expected expenditure for water related infrastructure, referred to in the Solvency Analysis as "Non Water Capital Expenditure" of \$196,284 (combined for both Projects). It is not necessary to install 100% of the water supply infrastructure for the orchard when the trees are planted as the water use requirements increase over time as the almond trees mature. Pumping infrastructure and rising mains are installed as determined by the water requirements of the trees on an annual basis. TSL and the Timbercorp Group have no capacity to procure the necessary capital

expenditure. TSL has no right to compel Growers to make additional contributions to meet required capital expenditure commitments.

## **10 Arrears and Defaults**

### **10.1 The 2010 Harvest Result forecast assumes that:**

- (a) no Growers in the 2002 Almond Scheme terminate their participation in the 2002 Almond Scheme or default in payment of amounts owing by them; and**
- (b) no Growers in any of the other Almond Schemes terminate their participation in the relevant Almond Scheme or default in payment of amounts owing by them.**

**10.2 Timbercorp, Timbercorp Finance Pty Limited (Administrators Appointed) (Timbercorp Finance) and Timbercorp Lot Investments Pty Ltd (Administrators appointed), each of which are Timbercorp Group companies, hold in aggregate approximately 18.8% of the total number of "Almondlots" in the 2002 Almond Early and 0.3% of the total number of Almondlots in 2002 Almond Standard. None of these companies has sufficient resources to meet the fees which would be payable in respect of their ongoing participation in the 2002 Almond Scheme, and have indicated they intend to terminate their participation on 30 June 2009, unless the 2002 Almond Scheme is terminated by special resolution or Court order.**

**10.3 We consider it likely that some Growers in the 2002 Almond Scheme and the other Almond Schemes will terminate their participation or default in payment. Now produced and shown to me marked MAK-7 is a summary of the Grower's defaults on loans and payment of obligations that has been prepared using figures provided by Timbercorp Group Management. It shows:**

- (a) level of unpaid scheme invoices - growers were invoiced a total of \$9.3m for 2002 Almond Early and \$3.0m for 2002 Almond Standard in October 2008 of which \$0.9m or 9% and \$0.4m or 14% respectively of the total remains unpaid for the 2002 Almond Scheme costs;**
- (b) loans in arrears - 3.5% of Growers in 2002 Almond Early and 4.6% of Growers in Almond Standard have taken out loans with Timbercorp Finance and \$1.3m (58%) and \$0.9m (73%) respectively of these loans are in arrears;**

- (c) direct debit rejections - monthly loan payments to Timbercorp Finance are typically processed by direct debit. The number of direct debit rejections instigated by growers increased from 3 in March 2009 to 8 in May 2009 for 2002 Almond Early and from 2 in March 2009 to 9 in May 2009 for 2002 Almond Standard.

10.4 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2002 Almond Scheme.

10.5 For these reasons we consider that not all Growers will continue to participate or meet their obligations as they fall due.

10.6 TSL is insolvent and unable to absorb these costs.

#### *Defaults in other Almond Schemes*

10.7 The costs included in the Solvency Analysis include a portion of fixed costs across this or other Almond Schemes, which will remain constant despite a reduction in the number of participating Almondlots or an increase in the number of defaulting Growers. In the event these additional costs could not be passed on to Growers (due to constraints of the Key Scheme Documents or other reasons) the liability could fall to TSL, and it is unable to absorb any costs.

### **11 Long term viability**

11.1 I have asked my staff to prepare a long term viability analysis for the schemes across their lives (**Viability Analysis**). Now produced and shown to me marked **MAK-8** is the viability analysis for the 2002 Almond Scheme. This is a theoretical analysis that ignores the cashflow problem discussed above. As an insolvency practitioner I often see businesses that are insolvent but appear to be viable over the long term. For the benefit of the Court I provide this analysis to give a picture of the 2002 Almond Scheme over its life.

11.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2002 Almond Scheme. We provide this information to demonstrate a range of possible outcomes for Growers but do not hold out any one outcome as being more likely to be achieved than any other. It shows the net present value (**NPV**) of estimated future cashflows on a per lot basis at three different discount rates (10%, 15% and 20%). The expected level of future cashflows are particularly influenced by the price achieved for the crop each year, crop yield (kilograms of almonds per

hectare) and the allocation of permanent water rights. To demonstrate the potential impact of these variables on the NPV the Viability Analysis includes a sensitivity analysis.

11.3 The base case included in the sensitivity analysis was provided by Timbercorp management. We note that this base case forecasts that the average price of \$5.22 per kilogram (achieved for the 2008 crop sold over the last 12 months) will increase to \$6.09 for the 2010 crop and \$6.70 for the 2011 crop. In addition, the permanent water rights allocation is expected to return to 100% by 2013 from its 2008 level of 43%.

11.4 Looking at the three sections of the Viability Analysis:

- (a) the first shows the impact of price on project NPV;
- (b) the second the impact of variations in crop yields (+/-15%) on project NPV; and
- (c) the third shows the impact of varying permanent water right allocations on NPV.

11.5 The Viability Analysis suggests that if the base case assumptions concerning yield and water allocations are realised an average almond price of approximately \$6/kg is required to achieve a positive NPV.

11.6 The NPV calculations assume that the permanent water rights and irrigation infrastructure necessary to operate the schemes has been provided. However, capital expenditure of \$0.13m is still required for 2002 Almond Early and \$0.07m is still required for 2002 Almond Standard in addition to the cash flows identified above. As such, the actual NPV for the scheme, from a grower perspective, will be lower than the amounts included in the sensitivity analysis to the extent growers need to make additional contributions to meet the capital expenditure requirements.

11.7 As already discussed above, we note the potential for difficulties in binding Growers to additional cost commitments.

## **12 Termination of Agreements on Winding Up pursuant to Constitution**

12.1 Based on legal advice, I believe that if the Court orders that the 2002 Almond Scheme is to be wound up in accordance with the Constitution, most of the Key

Scheme Documents also end. Upon termination of the Project, the following agreements will automatically end:

- (a) Custody Agreement (cl 10.1);
- (b) Leases (02002 011, A 2002 015) (cl 12(a));
- (c) Subleases (A2002 012, A2002 014, A2002 016) (cl 8.1(a));  
Subleases A 2002 013 (cl 12(a))
- (d) Joint Venture Agreement (cl 4.1);
- (e) Grower Agreement (cl 2.1); and
- (f) Management Agreement (cl 2.2).

12.2 Now produced and shown to me marked **MAK-9** is a bundle of the clauses I have referred to above.

### 13 Impediments to Restructure

13.1 Based on legal advice I believe that the structure of the 2002 Almond Scheme means that there are a number of impediments to restructuring it. I discuss these below.

#### *Encumbrances on land title*

13.2 MAK-2 sets out the details of the registered instruments by which the Land is encumbered.

13.3 By syndicated loan agreement dated 15 December 2006, as amended and restated on 30 December 2008, BOS International (Australia) Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited agreed to advance Timbercorp Ltd the sum of \$200,000,000 (**BOS Syndicated Facility**).

13.4 The appointment of administrators to Timbercorp Ltd constitutes an event of default under relevant provisions of the BOS Syndicated Facility and the associated security agreements.

13.5 As part of the security for the BOS Syndicated Facility, the Land subject to the Carina Head Lease and the Carina Sub-lease is encumbered under a mortgage dated 30 December 2008 between BOSI Security Services Limited (ABN 63 009 413 852) and the Landowner.

#### *Encumbrances on water rights*



- 13.6 Now produced and shown to me marked **MAK-10** is a table prepared by my solicitors (based on information provided by Timbercorp Group management) setting out the details of the water rights (**Water Rights**) owned by the Landowner and utilised by the 2002 Almond Scheme, along with details of the registered instruments by which the Water Rights are encumbered.
- 13.7 The Water Rights are leased, along with the Land, pursuant to the Carina Head Lease and Carina Sub-Lease. The Water Rights have also been mortgaged as security for the BOS Syndicated Facility.

*Encumbrances on rent receipts*

- 13.8 The Liparoo Head Lease is subject to a Mortgage of Contractual Rights - Liparoo Head Lease, dated 28 September 2005 between OIM#2 as trustee for TOT and Timbercorp Ltd. The mortgage is secured by all present and future interests of Timbercorp Ltd in the Liparoo Head Sub-lease and any security agreements in relation to the Liparoo Head Sub-lease between Timbercorp Ltd and Landowner (the **Head Lease Mortgaged Contracts**) and all amounts payable thereunder (the **Head Lease Secured Property**). Upon an event of default, OIM#2 may give Timbercorp Ltd notice of acceleration of the payment of any moneys owing to it by Timbercorp Ltd. Following this, OIM#2 may exercise all rights capable of being conferred by applicable law and take any other steps necessary to enforce its rights under the mortgage. Subject to the Growers' rights of occupation and use, OIM#2 may take possession and assume control of the Head Lease Secured Property; take any action to enforce the Head Lease Mortgaged Contracts; compound for, release and grant time for the performance of Landowner's obligations under the Head Lease Mortgaged Contracts; and give receipts for and discharges of any debt owing under the Head Lease Mortgaged Contracts. OIM#2 may also appoint a receiver.
- 13.9 The Liparoo Head Sub-lease is encumbered by a Mortgage of Contractual Rights - Liparoo Head Lease, dated 28 September 2005 between Timbercorp Ltd and Landowner. The mortgage is secured by all present and future interests of Landowner in the Joint Venture Agreements with respect to Liparoo (the **Sub-lease Mortgaged Contracts**) and any rights to payment thereunder (the **Sub-lease Secured Property**). Upon an event of default, Timbercorp Ltd may give Landowner notice of acceleration of the payment of any moneys owing to it by Landowner. Following this, Timbercorp Ltd may exercise all rights capable of being conferred by applicable law and take any other steps necessary to enforce its rights under the

mortgage. Subject to the Growers' rights of occupation and use, Timbercorp Ltd may take possession and assume control of the Sub Lease Secured Property; take any action to enforce the Sub-lease Mortgaged Contracts; compound for, release and grant time for the performance of Growers' obligations under the Sub-lease Mortgaged Contracts; and give receipts for and discharges of any debt owing under the Sub-lease Mortgaged Contracts. Timbercorp Ltd may also appoint a receiver.

#### **14 Grower obligations in the event TSL defaults**

14.1 Insolvency of or default by TSL under any of the Project Leases does not seem to have a direct impact on the obligations of the Growers under the 2002 Almond Scheme as the Growers owe obligations directly to the Landowner under the Joint Venture Agreement.

14.2 Under clauses 3.1 and 7.1 of the Joint Venture Agreement, the Landowner grants to the Grower a license to use and occupy the land and the Grower is obligated to pay a license fee directly to the Landowner. Presumably, this would remain unchanged by TSL's insolvency.

14.3 However, under clause 10.1 the Grower has the right to terminate the Joint Venture Agreement for TSL's default, liquidation or failure to carry on its business. If the Grower terminates the Joint Venture Agreement then it must return the land it occupied to the Landowner in "good condition" and must remove all structures and equipment from the land (clause 4.2), which may result in costs to the Grower.

14.4 Further, as TSL is insolvent and can no longer carry on its business, the Growers will be adversely affected. The Growers have entered into a Grower Agreement with TSL under which TSL agrees to cultivate and manage the growth of the almonds and eventually produce almonds for commercial sale. The Growers are entitled to the proceeds of such sale. As TSL is insolvent and can no longer perform its duties under the Grower Agreement, the Growers will have to seek a new manager for the almonds groves and will likely incur costs and suffer damages.

14.5 Now produced and shown to me marked **MAK-11** is a bundle of the clauses I have referred to above.

**SWORN** by the abovenamed deponent at     )  
Melbourne in the State of Victoria     )  
this        day of     )

\_\_\_\_\_

Before me: \_\_\_\_\_

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSE**  
Second and Third Plaintiffs

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-1**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-1"**  
**CD of Key Scheme Documents**

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
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IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSEY  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
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Ref: 011499489  
(Leon Zwier)

---

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

Before me: .....

**Exhibit "MAK-2"**  
**Table setting out the title particulars  
for Land**

# 2002 ALMOND PROJECT

Land Owner		Land Identity	Title Particulars (derived from Scheme lease documents)	Title Particulars (derived from Titles Office searches)	Mortgagee	Mortgage ID
Timbercorp	Non-Timbercorp					
	OIM#2 Pty Ltd	Liparoo - Vic	Vol 9881 Fol 747 (part only) Vol 10554 Fol 880 (part only) (cancelled title)	Vol 9881 Fol 747 Vol 10789 Fol 309	N/A	N/A
Almond Land Pty Ltd		Carina (Blk 13) - Vic	Vol 10630 Fol 483 (part only) (cancelled title)	Vol 10710 Fol 237	BOSI Security Services Ltd	AG380873L
Almond Land Pty Ltd		Carina West - Vic	Vol 9881 Fol 784 (cancelled title)	Vol 10874 Fol 093	BOSI Security Services Ltd	AG380873L

"MAR-2"

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

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No 7114 of 2009

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(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

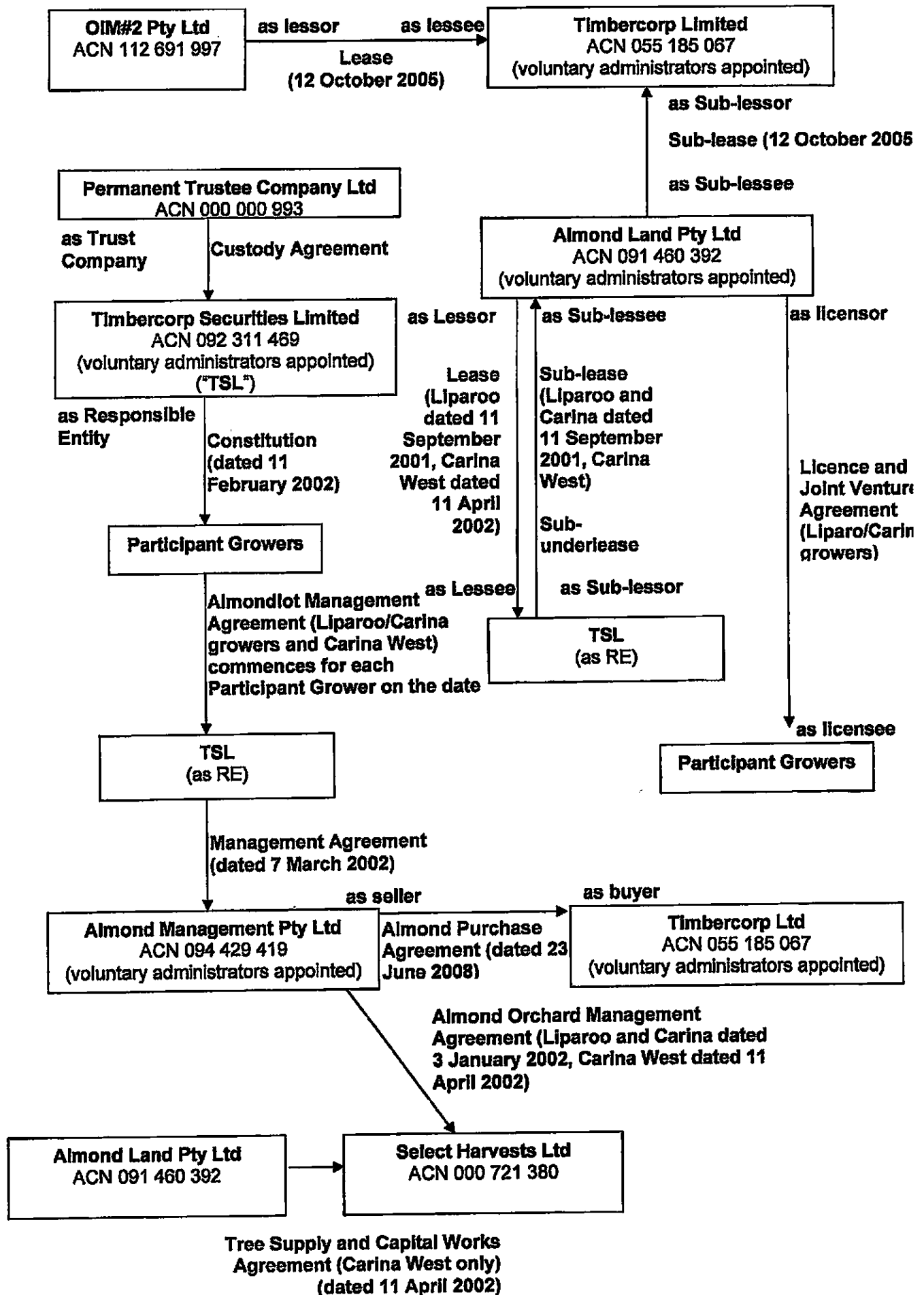
This is the exhibit marked "MAK-3" now produced and shown to MARK ANTHONY KORDA at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-3"**  
**Structure diagram for the 2002 Almond Scheme**

"MAX-3"  
STRUCTURE DIAGRAM

**2002 TIMBERCORP ALMOND PROJECT - PUBLIC OFFER**





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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "**MAK-4**" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-4"**  
**Confidential exhibit - CD of Register of Growers  
for the 2002 Almond Scheme**

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "MAK-5" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-5"**  
**Clauses concerning Grower's obligations**

"MAK-5"

2002 002  
*Public*  
**CONSTITUTION**

**2002 TIMBERCORP ALMOND  
PROJECT**

Timbercorp Securities Limited  
(ACN 092 311 469) &  
Each Grower

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## **4.2 Special Trust Account**

Any amounts paid by any Applicant in accordance with clauses 6.3 and 6.4 must be accounted for by the Responsible Entity in a special trust account and such amounts must be placed in one or more bank accounts kept solely for the purpose of depositing Application Money in relation to the Prospectus.

## **4.3 Pooling of Amounts**

Any amounts paid by any Applicant may be pooled with any amounts paid by any other Applicant.

## **4.4 Interest**

Subject to clauses 7.3 and 8.2, interest (if any) earned from Application Money of any special trust account provided for in clause 4.2 will, upon the Applicant becoming a Grower, be paid to the Responsible Entity as fees.

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# **5. PROJECT PROPERTY**

## **5.1 Responsible Entity to hold property for the Growers**

Subject to clause 5.2, all Project Property will be held by the Responsible Entity for the Growers for the term of the Project. The Growers' interest in the Project Property will be in the proportions of their Participating Interests.

## **5.2 Dealing with and holding property**

The Responsible Entity may appoint an agent to hold Project Property separately from any other property. The terms of the appointment will be determined by the Responsible Entity and the agent. However the terms must be consistent with the provisions of this Deed.

## **5.3 Giving directions to an agent**

If the Responsible Entity has engaged an agent to hold Project Property then the Responsible Entity must direct the agent to invest and deal with Project Property in accordance with this Deed.

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# **6. APPLICATION PROCEDURE**

## **6.1 Oversubscriptions**

The Responsible Entity reserves the right to accept Applications for Almondlots in excess of that number of Almondlots for which subscription or purchase or invitations to subscribe or apply for are sought under the Prospectus.

## **6.2 Receipt of Application**

The Responsible Entity may itself or by its duly authorised agents or by any dealers licensed for the purpose receive Applications under the Prospectus.

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Applicant (or Grower, whichever is the case) of the default and giving the Applicant (or Grower, whichever is the case) a period of TEN (10) days from the date of posting of the notice to remedy the breach.

- (c) If the Responsible Entity exercises its right under paragraph 6.4.2(ii), then within fourteen (14) days of exercising that right, the Responsible Entity must make an appropriate notation in the Register.

## **6.5 Condition as to Finance**

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

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## **7. REFUSAL OF APPLICATIONS**

### **7.1 Refusal of Application**

The Responsible Entity may in its absolute discretion, but only within fifteen (15) Business Days after receipt of an Application, give notice in writing to any Applicant to the effect that its Application has been refused.

### **7.2 Notice of Refusal**

The notice provided for in clause 7.1 may specify that the Application has been refused:

- (a) wholly in relation to the Application; or
- (b) partly, that is, with respect to a proportion of the Application Money contributed with the Application;

without giving any reasons for the refusal.

### **7.3 Repayment to Applicant**

Upon the Responsible Entity having given notice to an Applicant that its Application has been refused, the Applicant will be entitled to be repaid the amount paid by the Applicant with respect to the Application so refused with interest (if any) earned in relation to that amount (each Applicant so refused receiving its share of the aggregate interest earned in relation to all relevant Applicants in the proportion that the money of the Applicant bears to the money held on behalf of all relevant Applicants calculated from day to day) and without any deduction except for bank fees and government charges.

### **7.4 Applicant ceases to be an Applicant**

If any Application is wholly refused then upon repayment of any money payable to the Applicant under clause 7.3, the Applicant will also cease to be an Applicant under this Deed and have no rights or obligations in relation to this Deed in any respect.

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## **8. ACCEPTANCE OF APPLICATIONS**

### **8.1 Applicant to Become Grower on Acceptance**

Upon an Application being accepted by the Responsible Entity in whole or part, and the Minimum Subscription, if any, being reached, the Applicant will become a Grower.

### **8.2 Minimum Subscription Not Reached**

If Minimum Subscription is not reached within the time specified in the Prospectus, the Responsible Entity must within seven (7) days of the end of such period repay to each Applicant so much of the Application Money as has been paid by those Applicants with any interest earned in relation to that Application Money (each Applicant receiving its share of the aggregate interest earned in relation to all Applicants in the proportion that the money of the Applicant bears to the money held on behalf of all Applicants calculated from day to day) and without any deduction except for bank fees and government charges.

### **8.3 No Communication Necessary**

Subject to clause 10.1, in no case will it be necessary to communicate the acceptance of an Application under this Deed to any Applicant who becomes a Grower and becomes bound to this Deed on the acceptance by the Responsible Entity of the Application.

### **8.4 Deemed Acceptance**

An Application received pursuant to the Prospectus, and not refused under clause 7.1, will be deemed to have been accepted immediately upon receipt, subject to the Application Money in respect of that Application being paid and the Minimum Subscription, if any, being reached.

### **8.5 Joint Applicants**

In the absence of any express instructions to the contrary in or accompanying any Application or in any of the Agreement, any persons who jointly constitute the Grower hold their Almondlots and enter into the Agreements jointly and severally and as tenants in common.

### **8.6 Applicant Deemed to Enter this Deed**

Upon an Application being accepted by the Responsible Entity in whole or in part, the Applicant is deemed to have contemporaneously become a party to this Deed as a Grower and thereby bound to the covenants and obligations on the part of each individual Grower provided for in this Deed.

### **8.7 Allocation and Allotment of Almondlots and Entry into Agreements**

At the time or times specified in the Prospectus, the Responsible Entity, following the acceptance of an Application:

- (a) must immediately allocate and allot an Almondlot or Almondlots to the Grower from the Land (of such location or locations within the Land as the Responsible Entity in its absolute discretion thinks fit) and the Responsible Entity must within 21 days thereafter register the name, number or other description of the Almondlot or Almondlots in the appropriate place in the Register in relation to the entry of that Grower; and

- 
- (b) will either itself, or procure that the Custodian (which is so appointed), as attorney for and on behalf of the Grower, enter into the Agreements in relation to the Almondlots allocated to the Grower, and any other documents which are ancillary or related to the Agreements, or contemplated by the provisions of the Agreements.
- 

## **9. RESPONSIBLE ENTITY TO ENTER INTO AGREEMENTS**

### **9.1 Preparation of Agreements**

Upon acceptance of an Application, the Responsible Entity will prepare the Agreements. The Agreements:

- (a) must be completed in accordance with the details specified in the Application; and
- (b) will commence from such date as is determined by the Responsible Entity.

### **9.2 Responsible Entity to be reasonably satisfied**

Before release of moneys referred to in clause 9.3, the Responsible Entity must be reasonably satisfied that:

- (a) the Agreements are in the form required by this Deed and have been duly entered into by all parties;
- (b) the Land Owner has the capacity to grant the Licence;
- (c) all necessary consents to the grant of the Licence and entry into the Agreements have been obtained or will be obtained;
- (d) the Land the subject of the Licence and Joint Venture Agreement is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant and which is not disclosed in the Prospectus;
- (e) any other matter required to be attended to, which is necessary for the creation of the Licence and the effective vesting in the Grower of his Agreements, whether by reason of this Deed or otherwise, has been attended to; and
- (f) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Growers whose Application Money is to be allocated pursuant to clause 9.3.

### **9.3 Release of Application Money**

#### **(a) Release of Application Money**

In relation to each Application which is either expressed to be not subject to finance or (if subject to finance) is unconditional because finance has been approved, the Responsible Entity must within two (2) Business Days of the Responsible Entity being satisfied of the matters specified in clause 9.2, release the Application Money and apply it in payment of the fees payable under the Agreements provided that where a deposit has been paid as provided for in clause 6.4, the balance of the Application Money must be paid to the Responsible Entity in accordance with the requirements of clause 6.4.

#### **(b) Refund if no release within 13 months**

If the Grower's Application Money to be released pursuant to sub-clause 9.3(a) is not released within a period of 13 months after the issue of the

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Prospectus to which it relates (other than by reason of the Applicant's default), then the Responsible Entity must, within 28 days, refund to the Grower the whole of the Application Money paid with any interest earned in relation to that Application Money (each Grower receiving its share of the aggregate interest earned in relation to all Growers in the proportion that the money of the Growers bears to the money held on behalf of all Growers calculated from day to day) and without any deduction except for bank fees and government charges.

**(c) Extinguishment of Agreements**

Upon the refund of the moneys referred to in sub-clause 9.3(b), the Grower's Agreements will be extinguished and the Responsible Entity will make an entry in the Register noting the extinguishment.

**(d) Transfer Interest to Responsible Entity**

In accordance with clause 4.4, the Responsible Entity may transfer to itself the interest component (if any) from the Application Money at any time, but not before the first transfer of Application Money is made pursuant to clause 9.3(a).

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## **10. ALMONDLOT STATEMENTS AND REGISTER**

### **10.1 Issue of Almondlot Statements**

Within two (2) months after the allotment of Almondlots to a Grower, and thereafter, when next accounting to a Grower after any change in the holding of the Grower in the Register, the Responsible Entity must issue to the Grower an Almondlot Statement which must be substantially in the form set out in the Fourth Schedule or such other form as the Responsible Entity determines.

### **10.2 Almondlot Statements**

- (a)** Each Almondlot Statement must specify such information regarding the Almondlots held by the Grower as set out in the Fourth Schedule.
- (b)** The Almondlot Statements may be prepared and printed as the Responsible Entity may from time to time determine and may be issued by computer or other mechanical means and must be signed on behalf of the Responsible Entity.
- (c)** An Almondlot Statement is not a certificate of title to any Almondlot, but is merely a statement from the Responsible Entity as to the state of affairs of the Register (or part of it) as it affects the Grower at a particular time.

### **10.3 Register of Growers**

The Responsible Entity must set up and maintain a Register of Growers in accordance with Chapter 2C of the Corporations Act.

### **10.4 Chargee**

Any person may be registered as the Chargee of any relevant Almondlots if that person is named as such in the Application in relation to those Almondlots, or a direction to that effect is received from the person registered as the Grower (in the form set out in Item 1 of the Fifth Schedule as varied from time to time by the Responsible Entity), or the Responsible Entity is otherwise satisfied that the relevant Almondlots are subject to



- 
- (b) Prior to the sale of the Product or Crop, the Responsible Entity may gather in all of the Growers' Product or Crop and the Responsible Entity may store, market and sell the Product or Crop gathered in without having regard to the quantity or quality of the particular Product or Crop from the particular Almondlots.

### **13.5 Records**

The Responsible Entity must keep full and complete records of the sale of the Grower's Participating Interest in the Product or Crop and separately account to the Grower for the sale of the Grower's Participating Interest in the Product or Crop.

### **13.6 Payment into Agency Account**

The Responsible Entity must pay into the Agency Account:

- (a) proceeds from the sale of Product produced from Crop, or of Crop, attributable to the Growers' Almondlots;
- (b) proceeds of any insurance policy to which the Growers are entitled to benefit; and
- (c) any other amount properly related to the proceeds from the Growers' Almondlots.

### **13.7 Grower's Entitlement**

- (a) A Grower is entitled to the money in the Agency Account which represents his Participating Interest in the gross income from the sale of the Product or Crop for a particular Production Period less:
  - (i) any fees payable under the Grower's Licence and Joint Venture Agreement;
  - (ii) any fees payable under the Grower's Almondlot Management Agreement; and
  - (iii) any other amounts payable by the Grower under this Deed and the Agreements.
- (b) The Grower authorises the Responsible Entity to make the deductions listed in paragraph 13.7(a) and pay the deducted amounts to the persons entitled to them. The Responsible Entity may make these payments within 14 days of receiving the money into the Agency Account in respect of the relevant Grower.
- (c) If, in any Financial Year in which there is a Production Period, there is insufficient money to make all the required payments then the deductions to be made under paragraph 13.7 (a) must be made in the priority in which they are listed.
- (d) The surplus available to each Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Grower. The payment must be made within five months after 30 June each year in which there is a Production Period.
- (f) If there are any accruals of amounts to be paid in any of the categories listed in the definitions of "Proceeds" then the accrual must be paid in the same order of preference as the items listed in paragraph 13.7(a).

2002 021

**Licence and Joint  
Venture Agreement**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

**Each several Grower**

**2002 Timbercorp Almond Project  
(Carina West Growers)**

**(Public Offer)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

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## **5. GOVERNMENT APPROVALS**

The Responsible Entity 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 Almondlot Management Agreement with the Responsible Entity on or before 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 each of the following periods:
- (i) from the Commencement Date until 30 June 2002 payable on or before the Commencement Date; and
  - (ii) In respect of each of the Financial Years ending 30 June 2003 and 30 June 2004, such licence fee being payable on 31 October 2002 and 31 October 2003 respectively.

Thereafter, on 31 October of each subsequent year during the Term, the Grower must pay an 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 payable by the Grower on 31 October 2004 in respect of the Financial Year ending 30 June 2005 and each 31 October thereafter during the Term will be the licence fee payable on the immediately preceding 31 October, Indexed.

### **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 indexation set out in clause 7.2 will cease to apply and will be replaced with such alternative method as is mutually agreed between the Land Owner and the Grower or, if they fail to agree, such alternative method as is 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. The cost of any expert determination carried out under this clause must be borne equally between the Land Owner and the Grower.

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2002 OIO  
*Public*  
**Licence and Joint  
Venture Agreement**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

**Each several Grower**

**2002 Timbercorp Almond Project  
(Liparoo/Carina Growers)  
(Public Offer)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525

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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 each of the following periods:
  - (i) from the Commencement Date until 30 June 2002 payable on or before the Commencement Date; and
  - (ii) In respect of each of the Financial Years ending 30 June 2003 and 30 June 2004, such licence fee being payable on 31 October 2002 and 31 October 2003 respectively.

Thereafter, on 31 October of each subsequent year during the Term, the Grower must pay an 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 payable by the Grower on 31 October 2004 in respect of the Financial Year ending 30 June 2005 and each 31 October thereafter during the Term will be the licence fee payable on the immediately preceding 31 October, Indexed.

### **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 indexation set out in clause 7.2 will cease to apply and will be replaced with such alternative method as is mutually agreed between the Land Owner and the Grower or, if they fail to agree, such alternative method as is 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. The cost of any expert determination carried out under this clause must be borne equally between the Land Owner and the Grower.

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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;

2002 009  
*Public*  
**Almondlot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Grower**

**2002 Timbercorp Almond Project  
(Liparoo/Carina Growers)**

**(Public Offer)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

---

## **10. NO LEASE OR LICENCE**

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of the Responsible Entity concerning the Growers' Almondlots.

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## **11. RESPONSIBLE ENTITY'S FEES**

### **11.1 Annual Fee and Charges**

The Responsible Entity will be paid the following management fees and charges in respect of the Orchard Services and all other services to be provided under this agreement as follows:

- (a) In respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2002 an amount of \$5,250.50 per Almondlot payable in advance on or before the Commencement Date; and
- (b) In respect of services to be provided in the period 1 July 2002 to 30 June 2003 - \$1,866.67 per Almondlot payable on 31 October 2002; and
- (c) In respect of services to be provided in the period 1 July 2003 to 30 June 2004 - \$1,866.67 per Almondlot payable on 31 October 2003; and
- (d) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, an amount per Almondlot calculated by the Responsible Entity as the reasonable costs of managing the Almondlot payable on 31 October during that Financial Year.

### **11.2 Additional Management Fee**

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

- (a) on and from 31 October 2004 and each subsequent 31 October in a Financial Year, the estimated costs of operating the Almondlots (which will include an allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$50 per Almondlot indexed (adopting 30 June 2002 as the base date);
- (b) 3% of the proceeds of the sale of Crop and Product in that Financial Year; and
- (c) 25% of so much of the annual Net Proceeds in a Financial Year as exceeds the Incentive Fee Threshold. But, if in the immediately preceding Financial Year, the Net Proceeds were less than the Incentive Fee Threshold the sum of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Responsible Entity under this paragraph in respect of the Financial Year to which reference is first made.

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

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2002 020

**Almondlot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Grower**

**2002 Timbercorp Almond Project  
(Carina West Growers)**

**(Public Offer)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527



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## **9.4 Grower's Access**

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

## **9.5 Warranty as to Access**

The Grower warrants that it has the right to grant access to the Grower's Almondlots for the performance by the Responsible Entity of its obligations, and the exercise by the Responsible Entity of its rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the owner of the Land, any of the Growers or any person who derives title through or under the owner.

## **9.6 Failure to Perform if Access Denied**

The Responsible Entity will not be liable for any failure to perform its obligations under this Agreement, which arises because it is denied access to, or possession or occupation of, the Orchard or any part of it.

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# **10. NO LEASE OR LICENCE**

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of the Responsible Entity concerning the Growers' Almondlots.

---

# **11. RESPONSIBLE ENTITY'S FEES**

## **11.1 Annual Fee and Charges**

The Responsible Entity will be paid the following management fees and charges in respect of the Orchard Services and all other services to be provided under this agreement as follows:

- (a) in respect of services to be provided in the period commencing on the Commencement Date and ending on 30 June 2002 an amount of \$5,250.50 per Almondlot payable in advance on or before the Commencement Date; and
- (b) in respect of services to be provided in the period 1 July 2002 to 30 June 2003 - \$1,866.67 per Almondlot payable on 31 October 2002; and
- (c) in respect of services to be provided in the period 1 July 2003 to 30 June 2004 - \$1,866.67 per Almondlot payable on 31 October 2003; and
- (d) thereafter, in respect of services to be provided in each subsequent Financial Year during the Term, an amount per Almondlot calculated by the Responsible Entity as the reasonable costs of managing the Almondlot payable on 31 October during that Financial Year.

## **11.2 Additional Management Fee**

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

- (a) on and from 31 October 2004 and each subsequent 31 October in a Financial Year, the estimated costs of operating the Almondlots (which will include an

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allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$50 per Almondlot Indexed (adopting 30 June 2002 as the base date);

- (b) 3% of the proceeds of the sale of Crop and Product in that Financial Year; and
- (c) 25% of so much of the annual Net Proceeds in a Financial Year as exceeds the Incentive Fee Threshold. But, if in the immediately preceding Financial Year, the Net Proceeds were less than the Incentive Fee Threshold the sum of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Responsible Entity under this paragraph in respect of the Financial Year to which reference is first made.

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

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## **12. INSURANCE**

### **12.1 The Responsible Entity to Keep Insurance**

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

### **12.2 Names of Policies**

All such policies of insurance must be in the names of or note the interests of the Responsible Entity, the Land Owner and the Grower.

### **12.3 No Party may Prejudice Insurance Policies**

No Party will at any time during the Term permit or suffer to be done (and nothing in this Agreement will require the Responsible Entity to permit or suffer to be done) any act, matter or thing upon the Orchards whereby any insurances in respect of the Orchard or any Grower's Almondlots (or any part thereof) may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

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## **13. MANAGEMENT PLAN AND REPORTS**

### **13.1 Management Plan**

- (a) In performing its obligations under this Agreement, the Responsible Entity must observe and act in accordance with, the Management Plan.
- (b) Despite the preceding paragraph, the Responsible Entity is not required to follow or comply with the Management Plan to the extent that a written

r43.06

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

**LIST E**

**No 7114 of 2009**

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "MAK-6" now produced and shown to MARK ANTHONY KORDA at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-6"  
Solvency Analysis**

" MAX - 6 "

## 2002 Almond Scheme - Forecast 2010 Harvest Result

### 2002 Timbercorp Almond Project (ARSN 099 611 935)

Net Sales	10,110,424	2,985,657	13,096,090
Less: JV Partners Share	(1,011,042)	(298,567)	(1,309,609)
Grower's Gross Proceeds	9,099,381	2,687,100	11,786,481
TIM Mgmt Fee	(272,981)	(80,513)	(353,594)
Admin Fee	(144,634)	(44,769)	(189,403)
Operating Costs	(6,568,451)	(1,987,382)	(8,555,834)
Temp Water	(904,444)	(279,956)	(1,184,400)
Licence Fee	(2,124,327)	(657,559)	(2,781,886)
Total Operating Expenditure	(10,014,837)	(3,050,280)	(13,065,117)
Net Operating Cashflow (excl capex)	(915,456)	(363,180)	(1,278,636)
Water Capital Expenditure	0	0	0
Non Water Capital Expenditure	(129,177)	(67,107)	(196,284)
Total Capital Expenditure	(129,177)	(67,107)	(196,284)
Net Operating Cashflow (incl capex)	(1,044,633)	(430,287)	(1,474,920)

### 2010 Crop Variables

a	Kilograms per Hectare (4 lots per hectare)	3,459	3,300
b	Net Sales Price (Kg) \$	5.09	5.09
c	Permanent Water Right Allocation	40%	40%
c	Temporary Water Price \$ per ML	350	350
d	Sold Lots	2,297	711
d	Sold Area (Ha)	574.25	177.75
e	TIM Variable Mgmt Fee (PDS)	3.0%	3.0%
f	JV Share	10.0%	10.0%
g	Base Admin Fee per Lot (adjusted annually for CPI from Project c'ment)	50	50
h	Licence Fee per Lot (FY10 Rate - FY09 + CPI assumption) (per PDS)	925	925
i	CPI Assumption	2.5%	2.5%

### Net Operating Cashflow Incurred to Date

Operating Cashflow before Tax			
2002	(12,633,500)	(3,910,500)	(16,544,000)
2003	(5,638,101)	(1,745,185)	(7,383,286)
2004	(5,638,101)	(1,745,185)	(7,383,286)
2005	(4,850,691)	(1,554,580)	(6,405,271)
2006	381,241	(1,349,287)	(962,046)
2007	352,077	(408,366)	(56,289)
2008	13,447	72,402	85,849
2009	(2,447,444)	(1,497,547)	(3,944,991)
Total	(30,461,072)	(12,132,268)	(42,593,320)
Almondlots	2,297	711	3,008
By Almondlot			
2002	(5,500)	(5,500)	(5,500)
2003	(2,455)	(2,455)	(2,455)
2004	(2,455)	(2,455)	(2,455)
2005	(2,112)	(2,186)	(2,129)
2006	166	(1,989)	(320)
2007	153	(574)	(19)
2008	6	102	29
2009	(1,065)	(2,106)	(1,311)
Total	(13,261)	(17,064)	(14,160)

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked **"MAK-7"** now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-7"**  
**Summary of Grower's defaults on loans and  
payment obligations**

# 2002 Timbercorp Almond Project (ARSN 099 611 935)

## Project: 2002 Almond Early – 2,297 lots

Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding
	\$902,941	\$9,276,198	\$875,319	9%

### Timbercorp Finance Funding

Amount Borrowed	Value of loans in arrears	% of loans in arrears
\$2,213,941	\$1,282,713	57.9%

Percentage of growers with loans<sup>1</sup>

3.5%

Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value
	3	\$5,509	8	\$22,935

1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.

### Lots held by Timbercorp Group

Timbercorp Ltd	▪ 421
Timbercorp Finance Ltd	▪ 0
Timbercorp Lot Investments	▪ 10

## Project: 2002 Almond Standard – 711 lots

Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding
	\$444,116	\$2,965,942	\$422,366	14%

### Timbercorp Finance Funding

Amount Borrowed	Value of loans in arrears	% of loans in arrears
\$1,278,430	\$927,619	72.6%

Percentage of growers with loans<sup>1</sup>

4.6%

Failed Direct Debits	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value
	2	\$1,382	9	\$3,235

1. This is funding provided by Timbercorp Finance. Status of loans provided by other lenders is unknown.

### Lots held by Timbercorp Group

Timbercorp Ltd	▪ 0
Timbercorp Finance Ltd	▪ 0
Timbercorp Lot Investments	▪ 2

"MAX-7"

r43.06

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
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**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
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Arnold Bloch Leibler  
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MELBOURNE 3000

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DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "MAK-8" now produced and shown to MARK ANTHONY KORDA at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-8"  
Viability Analysis**

2002 Timbercorp Almond Project (ARSN 099 611 933) - 2002 Almonds Early																		
Annual Inflationary Price Adjustment - 2.5%																		
2010 Price	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Base	\$6,368.85	\$4,243.44	\$2,941.94	(483)	836	537	884	903	930	959	987	1,017	1,047	1,078	1,110	1,143	5,457	680
\$ per kg				6.09	6.70	7.04	7.21	7.39	7.58	7.77	7.96	8.16	8.36	8.57	8.79	9.01	9.01	9.01
4.00	-\$7,995.48	-\$6,938.86	-\$5,140.44	(841)	(1,129)	(1,405)	(1,252)	(1,289)	(1,317)	(1,345)	(1,373)	(1,403)	(1,433)	(1,464)	(1,496)	(1,528)	3,000	406
5.00	-\$2,493.76	-\$2,253.34	-\$1,993.28	(566)	(442)	(631)	(469)	(476)	(483)	(490)	(498)	(505)	(513)	(521)	(529)	(538)	2,911	508
6.00	\$3,007.97	\$1,827.68	\$1,143.88	(490)	240	143	324	337	350	364	378	392	407	422	437	453	4,822	609
7.00	\$8,509.70	\$5,910.70	\$4,286.04	(415)	821	916	1,117	1,150	1,184	1,218	1,253	1,290	1,327	1,365	1,404	1,444	5,794	711
8.00	\$14,011.43	\$9,993.72	\$7,428.20	(339)	1,602	1,690	1,910	1,963	2,017	2,072	2,129	2,187	2,246	2,307	2,370	2,434	6,645	812
9.00	\$19,513.16	\$14,076.74	\$10,570.86	(264)	2,284	2,464	2,704	2,776	2,850	2,926	3,004	3,084	3,166	3,250	3,336	3,425	7,556	914

2002 Timbercorp Almond Project (ARSN 099 611 933) - 2002 Almonds Early																		
Mature Yield	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
-15%	\$2,027.88	\$1,033.00	\$510.24	(478)	(144)	(67)	224	245	256	268	279	291	303	316	328	341	4,638	578
Base	\$6,368.85	\$4,243.44	\$2,941.94	(483)	836	537	884	903	930	959	987	1,017	1,047	1,078	1,110	1,143	5,457	680
15%	\$10,708.82	\$7,439.89	\$5,973.63	(488)	816	1,141	1,504	1,561	1,605	1,650	1,696	1,743	1,791	1,841	1,892	1,944	6,275	782

2002 Timbercorp Almond Project (ARSN 099 611 933) - 2002 Almonds Early																		
Temporary Water for 40%, 60% and 80% scenarios @ \$350 per ML																		
Water Allocation	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Base	\$6,368.85	\$4,243.44	\$2,941.94	(483)	836	537	884	903	930	959	987	1,017	1,047	1,078	1,110	1,143	5,457	680
40%	\$4,283.93	\$2,706.84	\$1,774.58	(483)	218	812	470	509	537	563	594	623	654	685	716	749	5,457	680
60%	\$3,125.01	\$3,366.35	\$2,809.80	(865)	336	430	583	627	655	683	712	741	772	803	835	867	5,457	680
80%	\$3,692.40	\$3,806.02	\$2,666.75	(286)	415	509	667	706	734	762	791	820	850	881	913	946	5,457	680

#### Notes

1. NPV assessments are based on Timbercorp managements cashflow model for each project.
2. Per Timbercorp management, the average forecast price for the 2009 almond crop is \$5.09 per kilogram.
3. The base case yield assumes trees mature in 2010 and produce 864.75 kilograms per lot.
4. Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
5. NPV's are from the growers perspective, based on current agreements and assume that all CAPEX is in place. However, other CAPEX of \$0.13m is still required for this scheme in addition to the cash flows identified above. Growers may expect a reduction in future licence fees to the extent it relates to permanent water or other infrastructure requirements.

"MAK-8"



**2002 Timbercorp Almond Project (ARSN 099 611 935) - 2002 Almonds Standard**  
Annual Inflationary Price Adjustment - 2.5%

2010 Price	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Base	\$6,355.42	\$4,208.42	\$2,894.52	(501)	209	537	885	925	953	982	1,011	1,041	1,072	1,104	1,136	1,170	5,457	680
\$ per kg				6.09	6.70	7.04	7.21	7.39	7.58	7.77	7.96	8.16	8.36	8.57	8.79	9.01	9.01	9.01
4.00	-\$7,948.38	-\$6,318.40	-\$5,137.28	(652)	(1,192)	(1,398)	(1,241)	(1,287)	(1,294)	(1,321)	(1,350)	(1,378)	(1,408)	(1,438)	(1,469)	(1,501)	3,000	406
5.00	-\$2,475.35	-\$2,261.63	-\$2,019.31	(580)	(339)	(628)	(448)	(454)	(461)	(467)	(474)	(481)	(488)	(495)	(503)	(511)	3,911	908
6.00	\$2,987.67	\$1,783.05	\$1,058.67	(508)	115	143	345	339	373	387	402	416	432	447	463	480	4,822	609
7.00	\$8,470.69	\$5,851.78	\$4,216.65	(436)	768	913	1,139	1,172	1,208	1,241	1,277	1,314	1,352	1,390	1,430	1,470	5,734	711
8.00	\$13,943.71	\$9,903.31	\$7,394.63	(364)	1,422	1,683	1,932	1,983	2,040	2,083	2,153	2,211	2,271	2,333	2,396	2,461	6,645	812
9.00	\$19,416.74	\$13,963.24	\$10,452.61	(232)	2,075	2,454	2,725	2,786	2,875	2,950	3,028	3,109	3,191	3,276	3,363	3,452	7,536	914

**2002 Timbercorp Almond Project (ARSN 099 611 935) - 2002 Almonds Standard**

Mature Yield	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
-15%	-\$3,150.19	-\$2,741.21	-\$2,372.34	(580)	(497)	(774)	(561)	(562)	(571)	(580)	(590)	(600)	(610)	(620)	(631)	(642)	3,709	474
Base	\$6,355.42	\$4,208.42	\$2,894.52	(501)	209	537	885	925	953	982	1,011	1,041	1,072	1,104	1,136	1,170	5,457	680
15%	\$10,251.90	\$6,994.68	\$4,957.10	(501)	209	1,072	1,525	1,583	1,627	1,673	1,719	1,767	1,816	1,867	1,918	1,971	6,275	782

**2002 Timbercorp Almond Project (ARSN 099 611 935) - 2002 Almonds Standard**  
Temporary Water for 40%, 60% and 80% scenarios @ \$350 per ML

Water Allocation	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Base	\$6,355.42	\$4,208.42	\$2,894.52	(501)	209	537	885	925	953	982	1,011	1,041	1,072	1,104	1,136	1,170	5,457	680
40%	\$4,271.01	\$2,671.81	\$1,726.97	(501)	91	312	492	531	559	588	617	648	678	710	743	776	5,457	680
60%	\$5,110.09	\$3,331.32	\$2,262.39	(383)	209	430	610	649	677	706	736	766	797	828	861	894	5,457	680
80%	\$5,669.48	\$3,770.99	\$2,619.34	(304)	287	509	689	728	756	785	814	844	875	907	939	973	5,457	680

**Notes**

1. NPV assessments are based on Timbercorp managements cashflow model for each project.
2. Per Timbercorp management, the average forecast price for the 2009 almond crop is \$5.09 per kilogram.
3. The base case yield assumes trees mature in 2011 and produce 864.75 kilograms per lot.
4. Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
5. NPV's are from the growers perspective, based on current agreements and assume that all CAPEX is in place. However, other CAPEX of \$0.07m is still required for this scheme in addition to the cash flows identified above. Growers may expect a reduction in future licence fees to the extent it relates to permanent water or other infrastructure requirements.

r43.06

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "MAK-9" now produced and shown to **MARK ANTHONY KORDA** at  
the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-9"  
Termination clauses**

"MAK-9"

2002 001

**Custody Agreement**

**2002 Timbercorp Almond Project**

**Timbercorp Securities Limited**

**Permanent Trustee Company  
Limited**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000  
Telephone: 9600 3525  
Facsimile: 9600 3527

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terms and conditions of the Scheme and it is not in default under the terms of the Constitution or the Law in relation to the Scheme; and

- (c) it has a right to be fully indemnified out of the Scheme Assets in respect of all obligations and liabilities which it incurs under this agreement.

#### **9.6 TSL to Notify Permanent of Changes to the Scheme**

TSL agrees to inform Permanent promptly if:

- (a) the terms of the Scheme are varied;
- (b) there is any change of responsible entity of the Scheme;
- (c) there is any change of status for taxation purposes of the Scheme; or
- (d) the Scheme is terminated.

---

### **10. WARRANTIES AND UNDERTAKINGS BY TIMBERCORP**

#### **10.1 Minimum Term of Agreement**

Subject to clauses 10.2 and 10.3, this agreement continues for the minimum term specified in Schedule 5 and after the expiry of the minimum term continues on the same terms and conditions unless terminated by either party upon giving to the other party notice for no less than the notice period specified in Schedule 5. Such notice period may expire at any time after the end of the minimum term.

#### **10.2 Termination of Agreement by the Parties**

A party may terminate this agreement by notice to the other party:-

- (a) if a receiver or a receiver and manager of the undertaking (or any part thereof) of the other party is appointed either in relation to the capacity in which it acts pursuant to this agreement or where such receiver or receiver and manager is reasonably likely to affect materially such other party's performance pursuant to this agreement; or
- (b) if the other party:
  - (i) goes into liquidation (other than for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the other party) either in relation to the capacity in which it acts pursuant to this agreement or where such liquidation is reasonably likely to affect such other party's performance pursuant to this agreement;
  - (ii) is subject to a scheme of compromise or arrangement with its creditors or has an administrator appointed to its affairs either in relation to the capacity in which it acts pursuant to this agreement or where such scheme or administration is reasonably likely to affect such other party's performance pursuant to this agreement;
  - (iii) ceases to carry on business in relation to its activities as responsible entity in relation to the Scheme in the case of TSL (in which case Permanent may terminate this agreement in relation to the Scheme) or as a provider of custodial services in the case of Permanent;
  - (iv) breaches any provision of this agreement in a material respect or fails to observe or perform any representation, warranty, indemnity or undertaking pursuant to this agreement in a material respect PROVIDED THAT if the breach or failure is capable of remedy in the

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reasonable opinion of the party not in default, this agreement may not be terminated unless the party in default is given a period of no less than 14 days within which to remedy the breach or failure and if not remedied within such period the party not in default may terminate this agreement;

- (v) sells or transfers or makes any agreement for the sale or transfer of its principal business and undertaking, or of a beneficial interest therein, other than to a related body corporate for the purposes of a corporate reconstruction upon at least 7 days' notice to the other party; or
- (c) by Permanent if ASIC or a Court having jurisdiction makes a written order vesting any property of TSL in relation to the Scheme in ASIC or some other body other than TSL.

### **10.3 Termination Does Not Affect Claims**

The termination of this agreement does not affect any claim which either party may have against the other.

- (a) Subject to this agreement, on termination of this agreement Permanent must, at the expense of TSL, promptly transfer the Scheme Assets to or according to the instructions of TSL (subject to any contrary direction given to Permanent which has the lawful effect of overriding this provision) and TSL agrees promptly to accept the transfer or give the necessary instructions for the transfer of those assets. Permanent must also, at the expense of TSL, promptly deliver any documents evidencing title to those assets which it is holding, to or according to the instructions of TSL. Despite the provisions of this clause, Permanent may retain any assets which it is lawfully permitted to retain in the exercise of its rights under this agreement.
- (b) Upon termination of this agreement pursuant to clause 10.2(c), Permanent will act upon the instructions of ASIC or an entity properly appointed in relation to the Scheme to the exclusion of the rights of TSL and will deal with the Scheme Assets and all books, records, or other material held by it in relation thereto in accordance with the instructions of ASIC or such other entity to the exclusion of any orders, requests or directions from TSL.

### **10.4 Vesting Orders**

Despite any other provision of this agreement, if ASIC or a Court having jurisdiction has made a written order vesting the property of TSL in relation to the Scheme in another person, Permanent may upon the receipt of notice of such vesting order, disregard any future instructions of TSL in relation to the Scheme and any existing instructions of TSL in relation to the Scheme which have not been fully performed and take instructions in relation to any matter affecting the Scheme from ASIC or such other person.

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## **11. COST AND STAMP COSTS AND STAMP DUTY**

- (a) Each party agrees to bear its own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and of other related documentation, except for stamp duty.
- (b) TSL agrees to bear any stamp duty payable or assessed in connection with this agreement and the transfer of any property to Permanent to form part of the Scheme Assets.

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## **SCHEDULE 5**

### **Minimum Term and Notice Period (Clause 10.1)**

The minimum term is the period commencing on the Commencement Date and ending on the termination of the 2002 Timbercorp Almond Project pursuant to clause 26 of the Constitution.

For the purposes of clause 10.1, the notice period is 90 days, or such shorter period as agreed between the parties.

*2002 007*  
*Public*  
**Management Agreement**

**Timbercorp Securities Limited**

**Almond Management Pty Ltd**

**2002 Timbercorp Almond Project**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (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 "\$" or "dollars" is a reference to Australian dollars;
  - (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement; and
  - (i) If a party comprises two or more persons, this Agreement binds them jointly and each of them severally and it also binds the executors, administrators and permitted assigns of them and of each of them and of any two or more of them jointly and each of them severally.

### **1.3 Headings**

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

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## **2. TERM**

### **2.1 Commencement Date**

This Agreement will commence on the Commencement Date.

### **2.2 Termination Date**

Subject to clause 12, this Agreement will terminate on the earlier of:

- (a) termination of the Project; and
- (b) 30 June 2022.

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## **3. APPOINTMENT OF ALMOND MANAGEMENT**

### **3.1 Engagement of Almond Management**

SRE engages Almond Management on the terms and conditions set out in this Agreement generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Grower and perform the Orchard Services.

### **3.2 Almond Management to Carry Out Orchard Services as Independent Contractor**

The Parties agree that Almond Management will carry out the Orchard Services as an independent contractor and not as agent of the Grower.



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licence in favour of Almond Management concerning the Orchard.

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## **11. RECORDS**

Almond Management will, during the currency of this Agreement, maintain records of the works carried out by the Almond Management on the Orchard in respect of all matters considered by Almond Management from time to time to be desirable in the interests of SRE.

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## **12. REPORTING**

### **12.1 Annual Report**

Within 90 days from the end of each Financial Year during this Agreement Almond Management will prepare and send a report (**Annual Report**) to SRE that addresses and contains information concerning the following matters:

- (a) the results of the harvest of Almonds;
- (b) the condition of the Orchard, the Grower's Almondlots and Almond Trees;
- (c) any other matters which Almond Management considers material concerning the Orchard, the Grower's Almondlots or the Project and which ought reasonably to be made known to SRE; and
- (d) any other matter reasonably requested by SRE.

### **12.2 Certification**

In the Annual Report Almond Management will certify whether it has performed and observed its obligations under this Agreement.

### **12.3 Statement of Income and Expenses**

Within 90 days after the end of each Financial Year, commencing at the end of the Financial Year in which the Almond Trees start to produce Crop, Almond Management will prepare and provide to SRE an annual statement of income and expenses relating to the management of the Orchard and the sale of each Grower's Product or Crop during the relevant Financial Year.

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## **13. COMPLIANCE WITH MANAGEMENT PLAN**

### **13.1 Management Plan**

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

### **13.2 No Obligation to Comply with Management Plan**

Despite the preceding clause, Almond Management is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from SRE under clause 13.3 requires Almond Management to do something which is not in accordance with the Management Plan.

2002 009  
*Public*  
**Almondlot Management  
Agreement**

**Timbercorp Securities Limited**

**Each Several Grower**

**2002 Timbercorp Almond Project  
(Liparoo/Carina Growers)**

**(Public Offer)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

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Agreement;

- (k) If any of the persons comprising the Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
- (l) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be read as if the expression "(but not limited to)" immediately followed such word.

### **1.3 Headings**

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

### **1.4 Grower and Agreement**

- (a) The term "Grower" in this Agreement is a reference to the particular Grower named in the Schedule to this Agreement and, unless the context otherwise requires, includes the Land Owner pursuant to the Joint Venture, in respect of the Almondlots that have been allotted to them.
- (b) The term "Growers" in this Agreement is a reference to all Growers that hold Almondlots in the Project in joint venture with the Land Owner and according to the context, the term "Growers" may also include the Grower.
- (c) This Agreement is entered into in respect of the Grower's Almondlots referred to in Schedule 1 and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of each Almondlot held by the Grower.

### **1.5 Delegation**

The Responsible Entity will be 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 Responsible Entity does not release the Responsible Entity from liability under this Agreement.

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## **2. COMMENCEMENT AND TERM OF THIS AGREEMENT**

### **2.1 Term**

- (a) This Agreement will commence on the Commencement Date.
  - (b) Subject to clauses 15.1 to 15.3, this Agreement will continue until the earlier of:
    - (i) termination of the Grower's Participating Interest in the Project;
    - (ii) 30 June 2022; and
    - (iii) termination of the Project.
-

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### **13.5 Reports**

Within 4 months after the end of each Financial Year during this Agreement the Responsible Entity will send a report to the Grower that addresses and contains information concerning the following matters:

- (a) the results of the harvest of Almonds;
- (b) the condition of the Orchard, the Grower's Almondlots and Almond Trees;
- (c) any other matters which the Responsible Entity considers material concerning the Orchard, the Grower's Almondlots or the Project and which ought reasonably to be made known to the Grower; and
- (d) any other matter reasonably requested by the Grower.

### **13.6 Statements of Income and Expenses**

Within 4 months after the end of each Financial Year, commencing at the end of the Financial Year in which the Almond Trees start to produce Crop, the Responsible Entity will send to each Grower an annual statement of income and expenses relating to the management of the Almondlots and the sale of each Grower's Product or Crop during the relevant Financial Year.

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## **14. DISTRIBUTIONS**

### **14.1 Distribution of Proceeds to Growers**

Subject to this Agreement, the Responsible Entity must pay to each Grower the amount of Proceeds standing to the credit of the Grower in the Agency Account in accordance with the Constitution.

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## **15. TERMINATION AND DEFAULT**

### **15.1 Termination by Grower**

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

- (a) Immediately, if the Responsible Entity:
  - (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 Responsible Entity 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 Responsible Entity of written notice from the Growers or a Grower specifying the default and requesting that the default be remedied (except where the Responsible Entity 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); or
- (b) 6 months (or such shorter period as the Responsible Entity and the Growers

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agree) after the Growers by Special Resolution at a meeting of Growers resolve to terminate the engagement of the Responsible Entity under the Agreement.

## **15.2 Termination by Responsible Entity**

- (a) The Responsible Entity may terminate this Agreement, with immediate effect, if the Grower fails to make a payment within the required time 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 Responsible Entity has served a written notice on the Grower specifying the breach and requiring the Grower to remedy the breach.
- (b) If this Agreement is terminated under paragraph 15.2(a) then:
  - (i) the Grower loses all rights as a participant in the Project;
  - (ii) the Grower remains liable for payment of all fees in respect of work done by the Responsible Entity, and
  - (iii) the procedure for the consequences of termination as set out in clause 18 of the Constitution must be followed.

## **15.3 Termination of Licence and Joint Venture Agreement**

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

## **15.4 Responsible Entity to Relinquish Property and Books and Records**

Provided that the Growers have paid all of the fees and other moneys due to the Responsible Entity and it is not otherwise in breach of any of its obligations under this Agreement, the Responsible Entity must relinquish custody and control to the Growers or as the Growers direct, of all property of the Growers held by the Responsible Entity under this Agreement and all books and records and documents kept under this Agreement upon cancellation of the engagement of the Responsible Entity or termination of this Agreement, other than those which the Responsible Entity is required by law to keep.

## **15.5 Effect of Termination**

The termination of this Agreement (whether under this clause or under any other clause) 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. The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.

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# **16. EXCUSES FOR NON PERFORMANCE**

## **16.1 Force Majeure**

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

2002 010  
*Public*  
**Licence and Joint  
Venture Agreement**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

**Each several Grower**

**2002 Timbercorp Almond Project  
(Liparoo/Carina Growers)**

**(Public Offer)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525

- 
- fully exploited to maximize 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 required from time to time in order to irrigate the Almondlots.
- 

## **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 clauses 10.5 and 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.
- 

## **5. GOVERNMENT APPROVALS**

The Responsible Entity 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 Almondlot Management Agreement with the Responsible Entity on or before the Commencement Date.

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- 
- (f) permit the Responsible Entity 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 Almondlot Management Agreement;
  - (g) comply or procure compliance with the provisions of the Almondlot 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 obligations imposed on the Grower under this Agreement may be enjoyed by the Grower's agent.

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

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.

---

# **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 and the Responsible Entity immediately, if either the Land Owner or the Responsible Entity:

- (a) 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 Responsible Entity or any part of its undertaking;
- (b) ceases to carry on business; or
- (c) 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 Responsible Entity, 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 Responsible Entity, 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).



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## **10.2 Termination of Agreement by Land Owner or Responsible Entity**

- (a) Subject to clause 10.2(b) and without prejudice to the Land Owner's rights under clause 12, the Land Owner or the Responsible Entity 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 or the Responsible Entity 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:

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

- (a) part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) 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 Almondlot Management Agreement**

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

## **10.6 Effect of Termination**

- (a) Termination of this Agreement under clauses 10.1, 10.2, 10.3 or 10.5 or reduction of the JV Almondlots under clause 10.4 is without prejudice to any rights and obligations which 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

- 
- (b) If the Joint Venture Assets are sold under clause 11.7(a), the net proceeds of sale must be divided amongst the Joint Venturers on a pro rata basis in accordance with their Prescribed Proportions.
- 

## **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 and payable by the Joint Venturers under the Almondlot Management Agreement by the due date, the Land Owner may, after giving the Grower 30 days' prior written notice, terminate 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 of Australia's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full.

### **12.3 Responsible Entity may Sell Defaulting Grower's Interest**

If a Grower fails or neglects to make payment of any amount under clause 12.1 then the Responsible Entity, on behalf of the Land Owner, may deal with the interest of the Grower by exercising any of its powers under clause 18 of the Constitution.

---

## **13. ASSIGNMENT**

### **13.1 Assignment by Land Owner or Responsible Entity**

Subject to clause 13.2, the Land Owner and the Responsible Entity may freely assign any of their rights and interests under this Agreement so long as the Land Owner or Responsible Entity (as the case requires) does not assign its interest in this Agreement in any way without first entering a deed with the person with whom the Land Owner or Responsible Entity 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 the Almondlot Management Agreement; and
- (b) required to be observed or performed by the Land Owner or the Responsible Entity (as the case requires).

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 or the Responsible Entity may only assign their 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 or the

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**LEASE - Liparoo**

**2002 Almond Projects**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9800 3525  
Facsimile: 9800 3527

---

covenant or for damages as a result of any breach of the terms of this Lease by the Lessee.

#### **11.4 Lessor discharged from obligations**

Where the Lessor exercises its rights under clause 11.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Lease.

---

### **12. TERMINATION**

If a Project ends then:

- (a) this Lease is automatically terminated in respect of that Project; and
- (b) both the Lessor and the Lessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

---

### **13. LESSOR'S RISK**

The Lessor is to assume all risk of loss, damage or injury by fire or otherwise to person or the Lessor's property by reason of the condition of the Land or any plant, equipment, fixtures or fittings on the Land.

---

### **14. LEGAL COSTS**

The Lessor must pay the reasonable costs of the Lessee's solicitors of and incidental to the preparation, execution, stamping and registration of this Lease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

---

### **15. NOTICES**

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

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

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

**15.2** 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

*2002 7/12*  
**SUBLEASE - Liparoo**

*Public*  
**2002 Almond Projects**

**Timbercorp Securities Limited**

**Almond Land Pty Ltd**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

---

the matters referred to in paragraph (c) above.

**7.2 Remedies not waived**

Should the Sublessor exercise its right under clause 7.1, it will do so without prejudice to any action or other remedy which the Sublessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Sublease by the Sublessee.

**7.3 Discharge of Sublessor**

Where the Sublessor exercises its rights under clause 7.1, and upon re-entry by the Sublessor, the Sublessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Sublessee under or by virtue of this Sublease.

**7.4 Sublessee not to remove fixtures**

As long as any rental or other money is due by the Sublessee to the Sublessor, or the Sublessee has committed any breach of the terms of this Sublease which has not been made good or remedied and whether the Sublessee is still in possession or not, the Sublessee must not remove any of its fixtures, fittings or plant from the Land and is not entitled to enter upon the Land for the purpose of removing any of its fixtures, fittings or plant.

**7.5 Waiver by Sublessor**

No waiver by the Sublessor of a breach of any covenant, obligation or provision contained or implied in this Sublease will operate as a waiver of another breach of the same or of any other covenant, obligation or provision contained or implied in this Sublease. The only waiver by the Sublessor having any effect will be a waiver in writing by the Sublessor.

---

**8. TERMINATION**

**8.1 Termination of the Project**

If the Project ends then:

- (a) this Sublease is automatically terminated; and
- (b) both the Sublessor and the Sublessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

**8.2 Termination of Head Lease**

If the Head Lease comes to an end for whatever reason then this Sublease is automatically terminated.

---

**9. SUBLESSEE WILL ASSUME ALL RISK**

The Sublessee will, to the entire exclusion of the Sublessor, assume all risk of loss, damage or injury by fire or otherwise to person or property by reason of the condition of the Land or any plant, equipment, fixtures or fittings at the Land, or by reason of the use, management, control or operation of any plant, equipment, fixtures or fittings and

**Lease**  
**(Carina West – 2002 Project)**

**Almond Land Pty Ltd**  
**Timbercorp Securities Limited**

**NM TAYLOR**  
**L A W Y E R S**

**Level 7**  
**350 Collins Street**  
**MELBOURNE VIC 3000**

**Telephone: 9600 3625**  
**Facsimile: 9600 3627**

- 
- (b) the Lessee commits, permits or suffers to occur any material breach or default in the due and punctual performance of any of its obligations under this Lease.

**11.2 Re-entry by Lessor**

The Lessor will have the right to re-enter the Land if an act of default in clause 11.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within three months of the Lessee receiving written notice from the Lessor requesting such rectification.

**11.3 Re-entry does not prejudice Lessor's rights**

Should the Lessor exercise its rights under clause 11.2, it will do so without prejudice to any action or other remedy, which the Lessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Lease by the Lessee.

**11.4 Lessor discharged from obligations**

Where the Lessor exercises its rights under clause 11.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Lease.

---

**12. TERMINATION IN WHOLE OR IN PART**

If the Project ends then:

- (a) this Lease is automatically terminated; and
- (b) both the Lessor and the Lessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

Notwithstanding any other provision of this Lease, in the event that a Grower's rights have terminated under the Project ("Past Grower") then the Lessor may in its absolute discretion terminate this Lease as it relates to that part of the Land that was occupied or otherwise used by the Past Grower, with the intent that the Lessee will no longer be able to have the benefit of this Lease in respect of that portion of the Land.

---

**13. LESSOR'S RISK**

The Lessor is to assume all risk of loss, damage or injury by fire or otherwise to person or the Lessor's property by reason of the condition of the Land or any plant, equipment, fixtures or fittings on the Land.

---

**14. LEGAL COSTS**

The Lessor must pay the reasonable costs of the Lessee's solicitors of and incidental to the preparation, execution, stamping and registration of this Lease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

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2002 016

**SUBLEASE**

**(2002 Project - Carina West)**

**Timbercorp Securities Limited**

**Almond Land Pty Ltd**

**NM TAYLOR**  
LAWYERS

Level 7  
360 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (b) the Sublessee commits, permits or suffers to occur any breach or default in the due and punctual observance and performance of any of its obligations of this Sublease or the Constitution; or
  - (c) a receiver or receiver and manager has been appointed in respect of the Sublessee or the Sublessee's property or the Sublessee is liquidated, wound up, dissolved, is under administration, executes a deed of company arrangement, enters into a compromise or arrangement with another person or is otherwise unable to pay its debts in the ordinary course; or
  - (d) an order is passed or a resolution is effectively passed to the effect of any of the matters referred to in paragraph (c) above.

## **7.2 Remedies not waived**

Should the Sublessor exercise its right under clause 7.1, it will do so without prejudice to any action or other remedy, which the Sublessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Sublease by the Sublessee.

## **7.3 Discharge of Sublessor**

Where the Sublessor exercises its rights under clause 7.1, and upon re-entry by the Sublessor, the Sublessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Sublessee under or by virtue of this Sublease.

## **7.4 Sublessee not to remove fixtures**

As long as any rental or other money is due by the Sublessee to the Sublessor, or the Sublessee has committed any breach of the terms of this Sublease which has not been made good or remedied and whether the Sublessee is still in possession or not, the Sublessee must not remove any of its fixtures, fittings or plant from the Land and is not entitled to enter upon the Land for the purpose of removing any of its fixtures, fittings or plant.

## **7.5 Waiver by Sublessor**

No waiver by the Sublessor of a breach of any covenant, obligation or provision contained or implied in this Sublease will operate as a waiver of another breach of the same or of any other covenant, obligation or provision contained or implied in this Sublease. The only waiver by the Sublessor having any effect will be a waiver in writing by the Sublessor.

# **8. TERMINATION**

## **8.1 Termination of the Project**

If the Project ends then:

- (a) this Sublease is automatically terminated; and
- (b) both the Sublessor and the Sublessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

## **8.2 Termination of Head Lease**

If the Head Lease comes to an end for whatever reason then this Sublease is automatically terminated.

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(public & private)  
**Sublease - Carina**

**2002 Almond Projects**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527

- 
- (a) the rent remains unpaid for a period of six months after demanded under clause 4; or
  - (b) the Sublessee commits, permits or suffers to occur any material breach or default in the due and punctual performance of any of its obligations under this Sublease.

#### **11.2 Re-entry by Sublessor**

The Sublessor will have the right to re-enter the Land if an act of default in clause 11.1 has not been rectified by the Sublessee to the Sublessor's reasonable satisfaction within three months of the Sublessee receiving written notice from the Sublessor requesting such rectification.

#### **11.3 Re-entry does not prejudice Sublessor's rights**

Should the Sublessor exercise its rights under clause 11.2, it will do so without prejudice to any action or other remedy, which the Sublessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Sublease by the Sublessee.

#### **11.4 Sublessor discharged from obligations**

Where the Sublessor exercises its rights under clause 11.2, and upon re-entry by the Sublessor, the Sublessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Sublessee under or by virtue of this Sublease.

---

### **12. TERMINATION**

If a Project ends then:

- (a) this Sublease is automatically terminated in respect of that Project; and
- (b) both the Sublessor and the Sublessee give to the other of them a power of attorney to do all things and sign all documents necessary to give effect to a termination under this clause only.

---

### **13. SUBLESSOR'S RISK**

The Sublessor is to assume all risk of loss, damage or injury by fire or otherwise to person or the Sublessor's property by reason of the condition of the Land or any plant, equipment, fixtures or fittings on the Land.

---

### **14. LEGAL COSTS**

The Sublessor must pay the reasonable costs of the Sublessee's solicitors of and incidental to the preparation, execution, stamping and registration of this Sublease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

---

### **15. NOTICES**

- 15.1 Any notice to be given under or in connection with this Sublease must be in writing and

**ALMOND ORCHARD MANAGEMENT  
AGREEMENT**

**2002 TIMBERCORP ALMOND PROJECT  
(CARINA WEST)**

**SELECT HARVESTS LIMITED  
ACN 000 721 380**

**ALMOND MANAGEMENT PTY LTD  
ACN 094 468 845**

**TIMBERCORP SECURITIES LIMITED  
ACN 092 311 469**

**TIMBERCORP LIMITED  
ACN 005 185 067**

**ALMOND INVESTMENTS AUSTRALIA PTY LTD  
ACN 094 135 501**

**ALMOND LAND PTY LTD  
ACN 091 460 392**

**GADENS LAWYERS  
Level 10, 333 Collins Street  
MELBOURNE 3000**

**T 03 9252 2555  
F 03 9252 2500  
Ref BXP:MDC:MJN:2212496**

## **OPERATIVE PROVISIONS**

### **1. DEFINED MEANINGS**

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Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

### **2. COMMENCEMENT AND TERM**

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This agreement commences on the date of execution of this Agreement and, unless terminated earlier under clauses 17 or 19 or otherwise, terminates on the Termination Date.

### **2A. SECURITIES' RIGHTS OF STEP-IN**

---

- (a) Securities may, for any reason whatsoever and at any time during the Term, elect to step-in and assume the rights, duties, obligations and liabilities of AMPL under this Agreement, by giving written notice to Select notifying it of that election (Step-in Notice) without in any way releasing AMPL from those duties, obligations and liabilities which arose prior to or on the Step-in Date (as defined in clause 2A(b)) and without in any way affecting, altering, derogating, diminishing, prejudicing or waiving any remedies or rights Select has against AMPL.
- (b) Subject to clause 2A(c), immediately upon, and with effect from, Securities giving Select a Step-in Notice (Step-in Date):
  - (i) this Agreement will automatically be amended as set out in Schedule 2;
  - (ii) Securities will be bound by and must comply with, perform and otherwise observe all duties, obligations and liabilities of AMPL under this Agreement, including duties, obligations and liabilities which have arisen prior to the Step-in Date and which have not been fully performed or discharged on or before the Step-in Date;
  - (iii) Securities will enjoy all the rights and benefits of AMPL under this Agreement; and
  - (iv) each party to this Agreement (other than AMPL in relation to duties, obligations and liabilities arising after the Step-in Date) acknowledges that it will continue to be bound by, and will continue to perform and observe, all of its duties, obligations and liabilities under this Agreement after the Step-in Date, having regard to the amendment of this Agreement in accordance with this clause 2A(b).
- (c) If, at the time Securities gives Select a Step-in Notice, Select has previously given notice under clauses 17.2(a) or 17.2(b) (Termination

## **17. TERMINATION AND DEFAULT**

---

### **17.1 Termination by AMPL**

AMPL may at any time, by notice in writing to Select, immediately terminate this Agreement upon the occurrence of any of the following:

- (a) Select becomes an externally administered body corporate (as defined in section 9 of the *Corporations Act 2001*);
- (b) Select defaults in the performance of any material obligation it owes to AMPL under this Agreement and, where the default is capable of remedy, Select does not remedy the default within 30 days after it is given written notice of the default by AMPL;
- (c) the Land Owner lawfully terminates the Tree Supply and Capital Works Agreement for whatever reason;
- (d) Select defaults in the performance of any material obligation it owes to AMPL under this Agreement which is not capable of remedy; and
- (e) any breach of or default under any of the provisions contained in clause 17.5 occurs.

### **17.2 Termination of Agreement by Select**

Select may at any time, by notice in writing to AMPL and Securities, immediately terminate this Agreement upon the occurrence of any of the following:

- (a) any fee or other amount properly payable to Select by AMPL under or in connection with this Agreement is not paid in full within 30 days after receipt by AMPL of a notice in writing specifying the amount payable and when it fell due;
- (b) AMPL or the Land Owner defaults in the performance of any other material obligation it owes to Select under this Agreement or the Tree Supply and Capital Works Agreement and, where the default is capable of remedy, AMPL or the Land Owner (as the case may require) does not remedy the default within 30 days after it is given written notice of the default;
- (c) Select lawfully terminates the Tree Supply and Capital Works Agreement for whatever reason; or
- (d) AMPL or the Land Owner is in breach of, or default under, any of the provisions contained in clause 17.4.

### **17.3 Effect of Termination**

The termination of this Agreement (whether under this clause 0 or under any other clause or otherwise) 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, such as clause 17A for example, provided however that the termination of this Agreement will not prejudice any right, power or remedy of any party to the extent that it accrued prior to or on termination.

#### 17.4 Warranties

Each of AMPL and the Land Owner represents and warrants to Select that as at the date of this Agreement:

- (a) it is incorporated or registered and validly existing under the laws of its place of incorporation or registration and has the power to carry on its business;
- (b) it has full power and legal capacity to enter into, exercise its rights and perform its own obligations under this Agreement;
- (c) the execution and performance of all of its obligations under this Agreement have been properly authorised;
- (d) neither its execution of, nor its exercise of its rights or performance of its obligations under this Agreement will:
  - (i) contravene or conflict with any applicable law to which it or any of its property is subject or any order of any government agency binding on it or any of the property;
  - (ii) contravene any undertaking or instrument;
  - (iii) contravene or conflict with its constituent documents;
- (e) no litigation, arbitration or administrative proceedings are taking place, pending or to the knowledge of any of its officers, threatened against it or any of its property which is adversely determined, or could have, either separately or in aggregate, an adverse effect on its business operations, assets, financial conditions or prospects which does or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (f) no meeting has been convened or resolution proposed, or application presented, and no order has been made for its winding up;
- (g) no distress execution or other similar order or process has been levied on any of its property or assets;
- (h) no receiver or manager, provisional liquidator, officer of the court, controller or other external administrator has been appointed in relation to it; and
- (i) no voluntary arrangement has been proposed or reached with any of its creditors.



### 17.5 Select Warranties

Select represents and warrants that, as at the date of this Agreement:

- (a) it is incorporated or registered and validly existing under the laws of its place of incorporation or registration and has the power to carry on its business;
- (b) it has full power and legal capacity to enter into, exercise its rights and perform its own obligations under this Agreement;
- (c) the execution and performance of all of its obligations under this Agreement have been properly authorised;
- (d) neither its execution of, nor its exercise of its rights or performance of its obligations under this Agreement will:
  - (i) contravene or conflict with any applicable law to which it or any of its property is subject or any order of any government agency binding on it or any of the property;
  - (ii) contravene any undertaking or instrument;
  - (iii) contravene or conflict with its constituent documents;
- (e) no litigation, arbitration or administrative proceedings are taking place, pending or to the knowledge of any of its officers, threatened against it or any of its property which is adversely determined, or could have, either separately or in aggregate, an adverse effect on its business operations, assets, financial conditions or prospects which does or is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (f) no meeting has been convened or resolution proposed, or application presented, and no order has been made for its winding up;
- (g) no distress execution or other similar order or process has been levied on any of its property or assets;
- (h) no receiver or manager, provisional liquidator, office of the court, controller or other external administrator has been appointed in relation to it;
- (i) no voluntary arrangement has been proposed or reached with any of its creditors.

### 17A. CONTINUING SERVICES UPON TERMINATION

Notwithstanding anything contained in this Agreement, upon termination of this Agreement (other than under clause 17 or 19), clauses 1, 3, 4.2(c)-4.2(d), 4.3, 4.4, 5, 6, 9.1, 11, 12, 13, 14, 17, 18, and 19-28 (inclusive) of this Agreement will continue to have full force and effect but only to the extent necessary to facilitate the ongoing provision by Select of the Services in respect of any Almonds that

have been harvested by Select under this Agreement on or before the date of termination.

## **18. OBLIGATIONS UPON TERMINATION**

---

Upon termination of this Agreement by Select or expiration of the Term, the Land Owner must permit Select, within 30 days after termination, at its own expense, to enter upon the Land and to remove all of its employees, contractors and agents from the Land, together with all their equipment, tools, plant, vehicles and machinery.

## **19. EXCUSES FOR NON PERFORMANCE**

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### **19.1 Observation or compliance with terms of Agreement**

No party will have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

### **19.2 Liability**

A party's failure to observe or comply with the terms of this Agreement will not give rise to any liability to that 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.

### **19.3 Claiming protection or benefit of Force Majeure**

A party claiming the benefit or protection of clause 19.1 or 19.2 must at its own cost:

- (a) promptly give notice to the other party, as soon as it becomes aware of the Force Majeure, of the occurrence and circumstances in respect of which the claim arises;
- (b) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay and give the other parties on request details of the steps that have been taken or are to be taken; and
- (c) resume performance in full of its obligations under this Agreement as soon as reasonably practicable and give the other parties notice as soon as it is able to resume performance of its obligations.

### **19.4 Force Majeure**

- (a) For the purposes of this Agreement, Force Majeure means an act of God, lock out or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition, intervention, direction, embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining

governmental or quasi-governmental approvals, consents, permits, licenses, authorities or allocations, or any other cause whether of the kind specifically set out above or otherwise which is not reasonably within the control of the person relying on the force majeure.

- (b) Force Majeure does not include any events or circumstances referred to in clause 19.4(a) caused by a lack of or unavailability of funds or as a result of any event or chain of events brought about by the action or inaction of a party seeking to claim the benefit of clause 19. Each of the terms within clause 19.4(a) is to be construed separately and independently. None of them is to limit the generality of any other.

### **19.5 Termination**

If a party is unable to observe or comply with the terms of this Agreement due to Force Majeure and it does not resume performance of its obligations within 12 months after that Force Majeure arose, then, if Select is the party affected by the Force Majeure, AMPL may terminate this Agreement by notice in writing to Select, and if AMPL, or the Land Owner is the party affected by the Force Majeure, then Select may terminate this Agreement by notice in writing to AMPL and Securities.

## **20. ASSIGNMENT**

---

- 20.1 No party may assign or encumber, or attempt to assign or encumber, any obligation, right or interest under this Agreement without the prior written consent of the other parties, which consent may not be withheld where the first party wishes to make such assignment in relation to or as a consequence of a corporate restructure of the first party or of a related body corporate which, in another party's reasonable opinion, will not materially adversely affect or materially diminish that other party's interests or rights under this Agreement and under the Tree Supply and Capital Works Agreement.
- 20.2 Where a party is a company, other than a company listed on Australian Stock Exchange Limited, any change in the shareholding of that party or any change in the shareholding of any holding company of that party altering the effective control of the party, will (for the purposes of clause 20.1) be deemed to be an assignment of this Agreement and must require the written consent of the other parties, which consent will not be unreasonably withheld.

## **21. DISPUTE RESOLUTION BY EXPERT**

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### **21.1 Dispute notice**

If a dispute arises concerning this Agreement, a party may serve a dispute notice on the party with whom it is in dispute. The dispute notice must state that a dispute has arisen and identify what is disputed.

# **TREE SUPPLY AND CAPITAL WORKS AGREEMENT**

## **2002 TIMBERCORP ALMOND PROJECT (CARINA WEST)**

**ALMOND LAND PTY LTD  
ACN 091 460 392**

**SELECT HARVESTS LIMITED  
ACN 000 721 380**

**TIMBERCORP LIMITED  
ACN 005 185 067**

**ALMOND INVESTMENTS AUSTRALIA LIMITED  
ACN 094 135 501**

**GADENS LAWYERS  
Level 10, 333 Collins Street  
MELBOURNE 3000**

**T: 03 9252 2555  
F: 03 9252 2500  
Ref: BXP:MDC:JLG:2212496**

## **2. TERM**

---

The term of this agreement commences on the date of this agreement and, unless lawfully terminated earlier under clause 7 or otherwise, terminates on the earlier of:

- (a) the date on which both parties have fully performed and satisfied all of their obligations under and in accordance with this agreement; and
- (b) the date of lawful termination or expiry of the Almond Orchard Management Agreement, for whatever reason.

## **3. PURCHASE OF ALMOND TREES**

---

Select agrees to sell to the Land Owner, and the Land Owner agrees to buy from Select, 49,420 Almond Trees on the following terms and conditions:

- (a) The purchase price is \$6 per Almond Tree.
- (b) The purchase price must be paid as follows:
  - (i) \$138,376 on or before 31 December 2001;
  - (ii) \$29,652 on or before 31 March 2002;
  - (iii) \$128,492 on or before 30 June 2002,
- (c) From the date of this agreement until delivery of the Almond Trees to the Land in accordance with clause 5.2(a)(i), Select must:
  - (i) keep all Almond Trees in its possession, separate from all other almond trees and other property of Select and clearly mark such Almond Trees as being Almond Trees under this agreement;
  - (ii) use its reasonable endeavours to keep the Almond Trees in its possession free from insects and diseases which might damage or inhibit the growth of such Almond Trees;
  - (iii) upon reasonable notice being given by the Land Owner to Select, and until such time as the Almond Trees are removed from Select's nurseries for delivery to the Land in accordance with clause 5.2(a)(i), permit the Land Owner reasonable access to Select's nurseries from time to time for the purposes of inspecting the Almond Trees; and
  - (iv) use reasonable endeavours to ensure that all Almond Trees not sourced from Select nurseries, are kept, maintained and made accessible by the relevant contractor nurseries, in accordance with paragraphs (i), (ii) and (iii) of this clause 3(c), substituting where appropriate, the name of the relevant contractor for "Select" in those paragraphs.

## **6. RECORDS, REPORTING AND ACCESS**

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### **6.1 Maintain Records**

Select must maintain records of the works carried out by Select under clause 5. The expression "records of the works carried out by Select" includes all such records as would reasonably be expected to be kept by a land owner of an almond orchard, including details of:

- (a) expenditure on works performed;
- (b) works in progress; and
- (c) works completed.

### **6.2 Monthly Reports**

Select must provide monthly reports to the Land Owner within 7 days after the end of each calendar month containing such details as would reasonably be expected to be kept by a land owner of an almond orchard, including details of:

- (a) expenditure on works performed;
- (b) works in progress; and
- (c) works completed.

### **6.3 Access to Records**

Select must provide the Land Owner with access to the records required to be kept under clause 6.1 at all times during ordinary business hours and upon reasonable notice in writing to Select.

### **6.4 Access to Land**

The Land Owner must ensure that Select has sufficient rights of access to and use of the Land, the Almond Trees and the Capital Works throughout the term of this agreement in order to perform its duties and obligations under this agreement and under the Almond Orchard Management Agreement.

## **7. TERMINATION AND DEFAULT**

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### **7.1 Termination by Land Owner**

The Land Owner may at any time, by notice in writing to Select, immediately terminate this agreement upon the occurrence of any of the following:

- (a) Select becomes an externally administrated body corporate (as defined in section 9 of the Corporations Act 2001);
- (b) Select defaults in the performance of any material obligation it owes to the Land Owner under this agreement and, where the default is capable of

remedy, Select does not remedy the default within 30 days after receipt by Select of a notice in writing from the Land Owner specifying the default and requesting it to be remedied;

- (c) Select defaults in the performance of any material obligation it owes to the Land Owner under this agreement which is not capable of remedy.

## **7.2 Termination by Select**

Select may at any time, by notice in writing to the Land Owner terminate this agreement upon the occurrence of any of the following:

- (a) any fee or other amount properly payable to Select by the Land Owner under or in connection with this agreement is not paid in full within 30 days after receipt by the Land Owner of a notice in writing specifying the amount payable and when it fell due; or
- (b) the Land Owner defaults in the performance of any other material obligation it owes to Select under this agreement or the Almond Orchard Management Agreement and, where the default is capable of remedy, the Land Owner does not remedy the default within 30 days after it is given written notice of the default.

## **7.3 Effect of Termination**

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, provided however that the termination of this agreement will not prejudice any right, power or remedy of any party to the extent that it accrued prior to or on termination.

# **8. EXCUSES FOR NON PERFORMANCE**

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## **8.1 Observation or compliance with terms of agreement**

Neither party will have any obligation to observe or comply with the terms of this agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

## **8.2 Liability**

A party's failure to observe or comply with the terms of this agreement will not give rise to any liability to that 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.

## **8.3 Claiming protection or benefit of Force Majeure**

A party claiming the benefit or protection of clause 8.1 or 8.2 must at its own cost:

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED  
INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

---

Date of document: June 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "MAK-10" now produced and shown to **MARK ANTHONY KORDA**  
at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-10"**  
**Table concerning water rights**



**2002 ALMOND PROJECT  
WATER ENCUMBRANCES**

NOTE: Water for Liparoo Property leased from TPIF

Property	Company	Water Share ID	Volume	First Mortgagee	Mortgage ID
Carina Block 13	Almond Land Pty Ltd	WEE017757	1788.0	BOSI Security Services Ltd	MOR001572
Carina Block 13	Almond Land Pty Ltd	WEE036850	5.7	BOSI Security Services Ltd	MOR001572
Carina West	Almond Land Pty Ltd	WEE018180	3013.4	BOSI Security Services Ltd	MOR001572

"MAK-10"

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
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INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

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Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

---

This is the exhibit marked "MAK-11" now produced and shown to MARK ANTHONY KORDA  
at the time of swearing his affidavit on June 2009.

Before me: .....

**Exhibit "MAK-11"**  
**Clauses relevant to TSL Default**

"mAK-11"

2002 010  
*Public*  
**Licence and Joint  
Venture Agreement**

**Almond Land Pty Ltd**

**Timbercorp Securities Limited**

**Each several Grower**

**2002 Timbercorp Almond Project  
(Liparoo/Carina Growers)**

**(Public Offer)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525

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## **2. ESTABLISHMENT OF ORCHARD**

### **2.1 Warranty by Land Owner**

The Land Owner warrants and represents to the Grower that it has, at its own cost, established, or procured the establishment of, the Almondlots on the Land in accordance with good horticultural and environmental practices and constructed the necessary infrastructure and carried out the Capital Works, and 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 the pegging of those blocks;
- (d) acquired rights to, constructed and installed, as the case requires, the Internal Irrigation Equipment and 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 undertaken discing, x-planning of tree rows and marking out of tree location; and
- (g) planted almond trees on the Orchard during June and July 2001; and
- (h) provided or undertaken, as the case requires, 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 Acknowledgments**

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 sole purpose 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 maximize 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 required from time to time in order to irrigate the Almondlots.
- 

## **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 clauses 10.5 and 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.
- 

## **5. GOVERNMENT APPROVALS**

The Responsible Entity 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 Almondlot Management Agreement with the Responsible Entity on or before 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 each of the following periods:
- (i) from the Commencement Date until 30 June 2002 payable on or before the Commencement Date; and
  - (ii) in respect of each of the Financial Years ending 30 June 2003 and 30 June 2004, such licence fee being payable on 31 October 2002 and 31 October 2003 respectively.

Thereafter, on 31 October of each subsequent year during the Term, the Grower must pay an 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 payable by the Grower on 31 October 2004 in respect of the Financial Year ending 30 June 2005 and each 31 October thereafter during the Term will be the licence fee payable on the immediately preceding 31 October, indexed.

### **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 indexation set out in clause 7.2 will cease to apply and will be replaced with such alternative method as is mutually agreed between the Land Owner and the Grower or, if they fail to agree, such alternative method as is 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. The cost of any expert determination carried out under this clause must be borne equally between the Land Owner and the Grower.

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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 Responsible Entity 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 Almondlot Management Agreement;
  - (g) comply or procure compliance with the provisions of the Almondlot 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 obligations imposed on the Grower under this Agreement may be enjoyed by the Grower's agent.

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

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 and the Responsible Entity immediately, if either the Land Owner or the Responsible Entity:

- (a) 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 Responsible Entity or any part of its undertaking;
- (b) ceases to carry on business; or
- (c) falls 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 Responsible Entity, 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 Responsible Entity, 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).

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

**LIST E**

**No 7114 of 2009**

**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  
2002 TIMBERCORP ALMOND PROJECT (ARSN 099 611 935)  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE CHESSER  
Second and Third Plaintiffs**

**SUPPLEMENTARY AND REPLY AFFIDAVIT OF MARK ANTHONY KORDA  
2002 TIMBERCORP ALMOND PROJECT (ARSN 099 611 935)**

Date of document: 9 July 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

**I, MARK ANTHONY KORDA, of Level 24, 333 Collins Street, Melbourne, in the state of  
Victoria, Chartered Accountant, SAY ON OATH that:**

- 1 I am the liquidator of the first plaintiff Timbercorp Securities Limited (TSL) with Leanne Kylie Chesser. Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this affidavit on her behalf. References in this affidavit to "we", "us", "our" or "ourselves" are references to Ms Chesser and me.

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- 2 On 23 April 2009, we were appointed as voluntary administrators of TSL pursuant to section 436A of the *Corporations Act 2001 (Cth)* (Act). Other partners of KordaMentha Pty Ltd (ACN 100 169 391) (KordaMentha) and I were appointed as voluntary administrators of Timbercorp Limited (ACN 055 185 067) (Timbercorp) and 39 of its wholly owned subsidiaries (Timbercorp Group Companies).
- 3 On 29 June 2009 the voluntary administrators convened a meeting of the creditors of TSL and a separate meeting of the creditors of Timbercorp Group Companies. The creditors resolved to wind up TSL and the Timbercorp Group Companies respectively. I am therefore now a liquidator of TSL.
- 4 I make this affidavit to supplement my previous affidavit regarding the 2002 Timbercorp Almond Project (ARSN 099 611 935) (2002 Almond Scheme Affidavit). I also make this affidavit in reply to the affidavit of Stephen Lynch sworn 3 July 2009 (Lynch Affidavit).
- 5 In my 2002 Almond Scheme Affidavit I defined terms for certain entities and agreements and I adopt the same defined terms in this affidavit.
- 6 **Month by Month Cashflow Analysis**
- 6.1 In my 2002 Almond Scheme Affidavit I did not provide detailed analysis of the projected month-by-month cashflow of the 2002 Almond Scheme for the 2010 Harvest Result. My staff have now collated this information using Timbercorp management data. My staff have prepared a spreadsheet detailing the projected cashflow, including receipts, costs and distributions, for the 2010 Harvest Result (Cashflow Analysis). Now produced and shown to me marked MAK-12 is the Cashflow Analysis. The first Cashflow Analysis is for the 2002 Almond Early project and the second for the 2002 Almond Standard project (Projects).
- 6.2 Some obligations to provide scheme services, such as capital expenditure for water, lie contractually with a Timbercorp Group Company rather than TSL. Those Timbercorp Group Companies are unable to meet their obligations due to their insolvency. It is therefore assumed for the purpose of the analysis that TSL will step in to ensure the services are provided to facilitate the continuation of the scheme. It is necessary to look through to the obligations that the Timbercorp Group has with various external service providers. If these obligations are not met by TSL then the scheme cannot continue.

- 6.3 The Cashflow Analysis shows the timing of scheme receipts and expenses. It shows that the expenses the 2002 Almond Scheme incurs are not matched to when those costs can be recovered from the Growers. To demonstrate this, the Cashflow Analysis shows when receipt of proceeds from crop sales and Grower receipts are projected to occur. The projection is based on Timbercorp management's estimate of when crop sale proceeds are received and historical data of the timing and percentage of Grower receipts across the months of the 2010 Harvest Result. (This is explained in more detail at paragraph 7.6 below). These estimates are compared to estimates of when the operating costs of the scheme need to be met.

## **7 Monthly Scheme Receipts**

### *Crop Sale Proceeds*

- 7.1 The first line of the Cashflow Analysis shows the estimated "Total Net Sales Proceeds" for the 2010 Harvest Result. This assumes that 10% of the proceeds are received in the 2009-2010 financial year (FY10) of the 2010 Harvest Result, and 90% are received after the end of FY10. This is because the harvest does not end until April each year and historically only 10% of proceeds are received in the financial year of the harvest.
- 7.2 The total estimated net sale proceeds is the same as that shown in the Solvency Spreadsheet. As in the Solvency Spreadsheet, the Joint Venture partner's 10% share is deducted before arriving at the "Total Grower Proceeds".
- 7.3 The Cashflow Analysis does not incorporate any of the anticipated distributions to Growers from the 2008 and 2009 crops. I believe based on legal advice and the observations made by Finkelstein J in the Federal Court of Australia No. VID 332 of 2009 and No. VID 335 of 2009 on 6 and 7 May 2009 (transcript exhibited as MAK-12 to my 2001 Almond Scheme Affidavit) that these proceeds are an entitlement of the Growers unless stated in the Key Scheme Documents and not otherwise available to meet working capital requirements of the Scheme. Other than the fees that TSL is entitled to deduct pursuant to the Key Scheme Documents before distribution of the balance to the Growers, I believe there are no provisions to retain these funds to meet working capital requirements.
- 7.4 The Cashflow Analysis does not include prior years' crop sale proceeds of Growers who have defaulted on their obligation to pay. The Constitution (exhibited as MAK-1 to my 2002 Almond Scheme Affidavit) states that TSL is entitled to use the defaulting

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Grower's prior year proceeds to satisfy the Grower's obligations, as set out in clause 13.7 of the Constitution. Defaulting Grower's crop sale proceeds are receipted to reimburse TSL (and form an asset of TSL available for all of its creditors). The surplus (if any) is paid to the Grower. The defaulting Grower's crop proceeds are not therefore part of the Cashflow Analysis as they are not a 2002 Almond Scheme asset.

#### *Grower Scheme Costs*

- 7.5 The Cashflow Analysis shows another line of estimated scheme receipts from the Growers paying invoices for scheme costs. This is shown on the line "Grower Scheme Costs" and includes what Timbercorp management refer to as the "Admin Fee", the "Operating Costs" and the "Licence Fee" (see paragraphs 6 and 9 of the 2002 Almond Scheme Affidavit for an explanation of these costs). The Grower Scheme Costs are shown as received from October 2009 to March 2010. This is because in accordance with the Grower Agreement, Growers can only be invoiced once each year. For the 2002 Almond Scheme, in accordance with clause 11 of the Grower Agreement, Growers are required to pay by 31 October each year. Now produced and shown to me marked **MAK-13** is a copy of clause 11 of the Grower Agreement and sub-clause as amended by supplementary Grower Agreement dated 1 October 2008. (Only part of clause 11 of the Grower Agreement (without the supplementary clause) is exhibited at MAK-5 of my 2002 Almond Scheme Affidavit).
- 7.6 The analysis assumes that 33.9% of Growers will pay their invoices by 31 October 2009, 37.0% in November, 10.6% in December, 3.0% in January, 5.1% in February and 2.1% in March or April and that 8.3% will not pay their invoices at all. I am informed by Mark Pryn, General Manager, Accounting and Treasury of Timbercorp and believe that this reflects the actual timing of receipts by value issued to Growers in October 2008 for all TSL schemes (with the exception of the 1998 and 1999 Eucalypt Schemes which are invoiced in May of each year and the Table Grape Schemes which were not invoiced at all in October 2008). The Cashflow Analysis assumes that if invoices are raised in October 2009 that the same pattern of receipts would be observed.
- 7.7 The actual pattern is likely to be different given the liquidation of TSL and the Timbercorp Group Companies. As I discuss in paragraph 10 of my 2002 Almond Scheme Affidavit, we consider that some Growers would default on payment of the scheme costs if they were invoiced and that the proportion of defaulting Growers is

likely to increase (compared to the number of defaults on invoices raised in October 2008) given the liquidation of TSL and the Timbercorp Group Companies. I also note that for any Growers who do default on their obligations, TSL has to bear the burden of meeting their costs until such time as the crop sale proceeds are receipted (from June 2010). In the interim, TSL does not have the working capital to fund these Growers' obligations.

#### *Deductions from Crop Sale Proceeds*

7.8 The other source of estimated scheme receipts is the deductions that TSL is entitled to make before distributing the "Total Grower Proceeds". This is shown in the line "Deductions from Crop Proceeds". For the 2002 Almond Scheme, TSL is entitled to deduct from grower proceeds what Timbercorp management refer to as the "TIM Management Fee". The "TIM Management Fee" is calculated as a percentage of the gross proceeds from crop sales and is deducted pursuant to clause 11.2(c) of the Grower Agreement. The deductions from crop sale proceeds only occur from June 2010 when the first sale proceeds are projected to be receipted.

7.9 The Cashflow Analysis assumes that only Growers who pay their invoices will receive a distribution of crop sale proceeds. We have assumed (as discussed in paragraph 7.6 above) that 8.3% of Growers will default on their obligation to pay. Accordingly the Cashflow Analysis assumes that only 91.7% of "Total Grower Proceeds" will be distributed to Growers.

#### **8 Monthly Scheme Costs & Distributions**

8.1 Costs of an equivalent amount to the "TIM Management Fee" and the "Admin Fee" charged to Growers could have been shown as incurred across the 2010 Harvest Year as arguably, the Timbercorp Group are incurring these costs over the course of the year in the provision of the necessary corporate services (for example for finance, Grower management, information technology, communications, horticultural and legal services), not just when they are entitled to invoice Growers. For simplicity we have chosen not to allocate a share of these fees across the 2010 Harvest Year and have instead assumed that the cost is incurred when crop proceeds are received. We note that if this allocation method was applied to all TSL schemes the Timbercorp Group Companies would be required to fund any working capital requirements arising from the need to provide corporate services prior to the "Admin Fee" being recovered from Grower invoices or the "TIM Management Fee" being recovered from crop proceeds.

- 8.2 Operating Costs - Select invoices AMPL monthly in arrears for operating costs. Certain Timbercorp Group Companies own 11.5% of the shares in Select. However Select is not a Timbercorp Group Company. These costs must be paid as they fall due to continue the scheme. Under the Orchard Management Agreement between AMPL and Select, Select have a limited right of set off. While this allows Select to off set their costs against certain harvest proceeds, Select have told Andrew Malarkey of KordaMentha that beyond 30 June 2009 they may be unwilling to continue meeting their obligation under the Orchard Management Agreement unless their costs are met in full. AMPL is in liquidation and is unable to meet this cost. But for the insolvency of the Timbercorp Group Companies, AMPL would be able to recover these operating costs from TSL under the Management Agreement between AMPL and TSL. As such, the Cashflow Analysis shows the obligation falling to TSL. This gives rise to a working capital requirement to the extent the costs are incurred before they are recoverable from Growers.
- 8.3 Occupancy Cost - The Land for the 2002 Almond Scheme is the subject of a chain of occupancy agreements pursuant to which licence fees or rental is paid. This chain is described in paragraph 5.2(g) of my 2002 Almond Scheme Affidavit. The liquidator's solicitors have also prepared a summary of the chain of occupancy agreements and the amount payable under each (**Occupancy Summary**). Now produced and shown to me marked **MAK-14** is the Occupancy Summary. Under the Liparoo Head Lease, Timbercorp is obliged to pay rental to OIM#2 quarterly in advance. Timbercorp is in liquidation and is unable to meet this cost. For the scheme to continue however it is obviously essential that the Land is occupied for the purposes of the 2002 Almond Scheme. As such the Cashflow Analysis shows the obligation as falling to TSL and is included in the line "Occupancy Cost - External". This includes rent, rates, taxes and insurance. TSL is also the lessee under the Carina Head Lease where the lessor is a Timbercorp Group Company. The line "Occupancy Cost - Internal" is zero in the Cashflow Analysis as the obligation under the Carina Head Lease is \$1. The \$1 payment has been rounded down in the Cashflow Analysis and therefore is not included in the line "Occupancy Cost - Internal". The Cashflow Analysis does not represent the fact that the Land is encumbered by a mortgage (as discussed in paragraph 13 of my 2002 Almond Scheme Affidavit). As such the Cashflow Analysis understates the true cost of operating the 2002 Almond Scheme by the amount required to maintain the Timbercorp Group Companies' interest in the Land.

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- 8.4 Water and non-Water Capital Expenditure - Toby Smith, Operations Manager (Horticulture) of Timbercorp has informed me that permanent water and irrigation infrastructure is required to be readied for the high water use periods of spring and summer. This advice is the basis of the phasing of capital expenditure requirements for the 2003 Almond Scheme. As such the analysis spreads capital expenditure equally over August, September and October in preparation for the high water use periods. The analysis assumes that TSL will have to step in for the Landowner as it will be unable to meet this commitment.
- 8.5 Temporary water - Timbercorp management have estimated when temporary water for the 2010 crop will be required. If temporary water is not purchased the almond trees cannot be fully irrigated and there will be no, or reduced, crop yield and the almond trees will be damaged or die. The Landowner is in liquidation and unable to meet this cost. As such, the cashflow shows the obligation falling to TSL. This gives rise to a working capital requirement that is unfunded.
- 8.6 I note that in my 2002 Almond Scheme Affidavit, at paragraph 9.6 I state that Temporary Water is an operating expense that the Growers are responsible for paying. That is not correct. In the 2002 Almond Scheme the Landowner is responsible for payment of Temporary Water. It is an expense that TSL must meet and is unfunded as it cannot be recovered from the Growers.
- 8.7 George Kalil, a Grower in the 2000 Olive "scheme" (a private administered by the Timbercorp Group Companies but not required to be registered under the Corporations Act) and a member of a committee of creditors of TSL, has brought to my attention that the Growers of the 2002 Almond Scheme may have been invoiced in prior years for the cost of temporary water when the Landowner (who is also the joint venture partner) should have met this cost. I am still investigating this matter. If the Growers have been incorrectly invoiced for this expense then they may have an unsecured claim against the Landowner. However, this does not affect the Solvency or Cashflow Analysis.

*Net Operating Cashflow*

- 8.8 The analysis of the estimated 2010 Harvest Result on a month-by-month basis identifies a shortfall from July to September 2009. It shows that during this period there will be an estimated "Cumulative Scheme Cashflow - Before CAPEX" of \$1,823,000 for 2002 Almond Early and \$424,000 for 2002 Almond Standard (Shortfall). The Shortfall cannot be funded by the Growers as they are not required

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to pay before 31 October 2009 and TSL does not have the capacity to meet the Shortfall. The 2002 Almond Scheme is therefore insolvent.

8.9 Furthermore, to the extent that additional capital expenditure is required (that cannot be recovered from Growers under the Key Scheme Documents) TSL's "Cumulative Net Cashflow" deficit to the end of September 2009 is estimated at \$2,593,000 (\$2,073,000 for 2002 Almond Early and \$520,000 for 2002 Almond Standard) (Shortfall with CAPEX).

8.10 In summary, the analysis suggests that the 2002 Almond Scheme is insolvent because:

a) There is an estimated "Cumulative Scheme Cashflow - Before CAPEX" deficit of \$2,247,000 to the end of September 2009; and

b) TSL does not have the capacity to fund the capital expenditure and temporary water requirement of \$346,000 identified as necessary to the end of September 2009.

8.11 In other words the 2002 Almond Scheme cannot meet these expenses as they fall due for payment.

#### *Additional Analysis*

8.12 The analysis only includes the Grower's share of Grower Proceeds and Operating Expenditure as it is assessing the solvency of the Scheme and the Joint Venture Partner is not a participant in the Scheme. That is, the Joint Venture Partner's share of crop proceeds and costs is not included in the analysis. The Joint Venture Partner is a Timbercorp Group Company and is insolvent. If, as is projected, the costs of the scheme exceed the revenues, TSL will be exposed to an additional liability for the 10 percent of the scheme costs that the Joint Venture Partner, but for its insolvency, would have paid. The amount of this liability to TSL is detailed in the last line of the analysis "JV Partner: Unfunded share of operating deficit". The estimated additional exposure for TSL is \$250,000 (\$203,000 for 2002 Almond Early and \$47,000 for Almond Standard) for the 2010 Harvest Result to the end of September.

## 9 **Lynch Affidavit**

9.1 Exhibited as SL-1 is a report prepared by Mr Lynch reviewing the assumptions and variables in the Solvency Analysis and Viability Analysis in my 2002 Almond Scheme Affidavit (Report)

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- 9.2 A key assumption of the Report is that clause 13.7 of the Constitution allows TSL to withhold Grower's sale proceeds from the 2009 harvest result to fund costs for the 2010 harvest (paragraphs 4.1 and 4.9). Clause 13.7 of the Constitution is exhibited to my 2002 Almond Scheme Affidavit as MAK-5. As discussed in paragraph 7.3 above, I believe that the Constitution only allows deductions that are specified in the Key Scheme Documents. The Key Scheme Documents make no provisions for deductions to take place across harvest results. Each harvest year operates independently, with the exception of a "true up" clause appearing at paragraph 11.2 of Grower Agreement (exhibited as MAK-13) that requires TSL to notify the Grower of the actual costs for the preceding financial year and invoice the Grower for costs that exceeded the previous year's estimate or reduce the current year's invoice where it over-estimated the expenses in the previous financial year. It is therefore not possible to use the 2009 harvest proceeds in the way suggested.
- 9.3 Paragraph 4.1 the Report Mr Lynch also suggests that the Growers can be invoiced early. As I have discussed (paragraph 7.5 above) under the Key Scheme Agreements we cannot invoice the Grower's early as there is no right to do so.
- 9.4 Mr Lynch also suggests deferring or varying "TIM Management Fee" and the "Admin Fee" and the "Licence Fee" (paragraph 4.1). The "Licence Fee" (shown on the Cashflow Analysis as "Occupancy Cost - External") cannot be deferred but the Cashflow Analysis does defer the "TIM Management Fee" and the "Admin Fee" to the end of the financial year. This does not however alter the Shortfall for July to September.
- 9.5 The adjustments that Mr Lynch suggests to the almond price, temporary water price and estimated yield similarly do not address the fundamental problem of the Shortfall. Only altering the temporary water price would have any impact on the July to September Shortfall. Mr Lynch suggests the price should be \$300/ML. Toby Smith, Operations Manager (Horticulture) of Timbercorp has told me that the average price for water over the last 12 months was \$353/ML (ranging from \$270-\$580). Even if it was accepted that the price should be \$300/ML rather than \$350/ML that change would slightly reduce but would not eliminate the Shortfall. I agree with Mr Lynch's statement that:

A key assumption to achieving the results as per the projections for 2010 is early financing for working capital. Achieving the yields will require application

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of working capital for nutrition, orchard maintenance, pollination and water acquisition as soon as possible (paragraph 4.8).

9.6 It is the inability to finance that working capital that, along with the reasons referred to in my 2002 Almond Scheme Affidavit, leads us to the conclusion that the 2002 Almond Scheme is insolvent.

9.7 The 2002 Almond Scheme needs considerable working capital to meet its costs as these fall due. TSL is insolvent and cannot provide that working capital. Any replacement RE would need the financial strength to be able to meet the immediate working capital requirements. We have not been notified of the identity of a party willing to act as a replacement responsible entity and do not know whether it has the necessary financial strength to meet those requirements.

9.8 Even if a new responsible entity was appointed on the basis that it would:

- (a) seek an amendment to the Constitution to accelerate and increase Grower's payment obligations; and
- (b) seek contracts with other scheme service providers or renegotiate existing contracts;

it will take time for the necessary amendments to be made and payments to be received. Working capital will be required in the interim and therefore any replacement RE will need immediate access to cash.

9.9 While it is ultimately a decision for the Growers as to whether or not they would prefer to have a replacement RE, we are obliged to act in the Growers' best interests. We are concerned to ensure that the Growers understand the risk of a new responsible entity being appointed that renders invoices to Growers but then, because it lacks the requisite financial strength, is unable to meet the working capital requirements of the scheme.

clb

mk

SWORN by the abovenamed deponent at )

Melbourne in the State of Victoria )

this 9 day of July )

M. Kerde

Before me:

Chantal Encavey

CHANTAL ENCAVEY  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

r43.06

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

**LIST E**

No 7114 of 2009

**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  
2002 TIMBERCORP ALMOND PROJECT (ARSN 099 611 935)  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 9 July 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked "**MAK-12**" now produced and shown to **MARK ANTHONY KORDA**  
at the time of swearing his affidavit on 9 July 2009.

Before me: .....



**CHANTAL ENCAVEY**  
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Level 21, 333 Collins Street  
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meaning of the Legal Profession Act 2004

**Exhibit "MAK-12"  
Cashflow Analysis**

## 2002E Almond Project

	Jul-08 (\$'000)	Aug-09 (\$'000)	Sep-09 (\$'000)	Oct-09 (\$'000)	Nov-09 (\$'000)	Dec-09 (\$'000)	Jan-10 (\$'000)	Feb-10 (\$'000)	Mar-10 (\$'000)	Apr-10 (\$'000)	May-10 (\$'000)	Jun-10 (\$'000)	Post Jun-10 (\$'000)	Total (\$'000)
Total Net Sales Proceeds	0	0	0	0	0	0	0	0	0	0	0	1,011	9,099	10,110
less: JV Partners Share	0	0	0	0	0	0	0	0	0	0	0	(101)	(910)	(1,011)
Total Grower Proceeds	0	0	0	0	0	0	0	0	0	0	0	910	8,189	9,099
TIM Mgmt Fee	0	0	0	0	0	0	0	0	0	0	0	(27)	(246)	(273)
Admin Fee	0	0	0	0	0	0	0	0	0	0	0	(14)	(130)	(145)
Operating Costs	(290)	(410)	(518)	(483)	(582)	(278)	(189)	(232)	(558)	(1,105)	(851)	(489)	(783)	(6,568)
Occupancy Costs - Internal	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Occupancy Costs - External	(604)	0	0	(604)	0	0	(604)	0	0	(604)	0	0	0	(2,417)
Total Operating Expenditure	(894)	(410)	(518)	(1,088)	(582)	(278)	(793)	(232)	(558)	(1,709)	(851)	(531)	(1,159)	(9,403)
Net Operating Cashflow (excl. CAPEX)	(894)	(410)	(518)	(1,088)	(582)	(278)	(793)	(232)	(558)	(1,709)	(851)	979	7,030	(304)
Cumulative Operating Cashflow - Before CAPEX	(894)	(1,305)	(1,823)	(2,911)	(3,293)	(3,571)	(4,363)	(4,595)	(5,154)	(6,862)	(7,713)	(7,334)	(304)	(304)
Project Receipts & Distributions - TSL														
Grower Scheme Costs	0	0	0	2,996	3,270	937	265	451	186	0	0	0	0	8,104
Distributions to Growers	0	0	0	0	0	0	0	0	0	0	0	(834)	(7,510)	(8,344)
Deductions from Crop Proceeds	0	0	0	0	0	0	0	0	0	0	0	27	246	273
Net Project Receipts & Distributions - TSL	0	0	0	2,996	3,270	937	265	451	186	0	0	(807)	(7,264)	33
Net Scheme Cashflow - Before CAPEX	(894)	(410)	(518)	1,908	2,888	659	(528)	219	(373)	(1,709)	(851)	(428)	(234)	(271)
Cumulative Scheme Cashflow - Before CAPEX	(894)	(1,305)	(1,823)	85	2,973	3,632	3,104	9,323	2,950	1,242	391	(97)	(271)	(271)
Water - Capital Expenditure	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Temp Water	0	(23)	(141)	(85)	(200)	(214)	(142)	(42)	(58)	0	0	0	0	(504)
Non-Water - Capital Expenditure	0	(43)	(43)	(43)	0	0	0	0	0	0	0	0	0	(129)
2010 Capital Expenditure	0	(66)	(184)	(128)	(200)	(214)	(142)	(42)	(58)	0	0	0	0	(1,034)
Net Op Cashflow (after Receipts and CAPEX)	(894)	(476)	(702)	1,780	2,688	443	(670)	177	(430)	(1,709)	(851)	(428)	(234)	(1,305)
Cumulative Net Cashflow	(894)	(1,371)	(2,073)	(293)	2,996	2,840	2,170	2,347	1,917	208	(643)	(1,071)	(1,305)	(1,305)
Additional Information:														
Alternative: Replace PWR water with Temp Water	0	0	0	0	0	0	0	0	0	0	0	0	0	0
JV Partner: Unfunded share of operating deficit	(99)	(46)	(58)	(121)	(42)	(31)	(88)	(26)	(62)	(190)	(95)	42	781	(34)

"MAK-12"

2002 Almond Project

	Jul-09 (\$'000)	Aug-09 (\$'000)	Sep-09 (\$'000)	Oct-09 (\$'000)	Nov-09 (\$'000)	Dec-09 (\$'000)	Jan-10 (\$'000)	Feb-10 (\$'000)	Mar-10 (\$'000)	Apr-10 (\$'000)	May-10 (\$'000)	Jun-10 (\$'000)	Post Jun-10 (\$'000)	Total (\$'000)
Total Net Sales Proceeds	0	0	0	0	0	0	0	0	0	0	-	299	2,687	2,986
less: JV Partners Share	0	0	0	0	0	0	0	0	0	0	0	(30)	(269)	(299)
<b>Total Grower Proceeds</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>269</b>	<b>2,418</b>	<b>2,687</b>
TIM Mgmt Fee	0	0	0	0	0	0	0	0	0	0	0	(8)	(73)	(81)
Admin Fee	0	0	0	0	0	0	0	0	0	0	0	(4)	(40)	(45)
Operating Costs	(90)	(146)	(188)	(126)	(123)	(50)	(71)	(99)	(156)	(286)	(279)	(142)	(231)	(1,987)
Occupancy Costs - Internal	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Occupancy Costs - External	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Operating Expenditure</b>	<b>(90)</b>	<b>(146)</b>	<b>(188)</b>	<b>(126)</b>	<b>(123)</b>	<b>(50)</b>	<b>(71)</b>	<b>(99)</b>	<b>(156)</b>	<b>(286)</b>	<b>(279)</b>	<b>(155)</b>	<b>(344)</b>	<b>(2,113)</b>
<b>Net Operating Cashflow (excl. CAPEX)</b>	<b>(90)</b>	<b>(146)</b>	<b>(188)</b>	<b>(126)</b>	<b>(123)</b>	<b>(50)</b>	<b>(71)</b>	<b>(99)</b>	<b>(156)</b>	<b>(286)</b>	<b>(279)</b>	<b>114</b>	<b>2,075</b>	<b>574</b>
<b>Cumulative Operating Cashflow - Before CAPEX</b>	<b>(90)</b>	<b>(236)</b>	<b>(424)</b>	<b>(550)</b>	<b>(673)</b>	<b>(723)</b>	<b>(794)</b>	<b>(892)</b>	<b>(1,049)</b>	<b>(1,335)</b>	<b>(1,614)</b>	<b>(1,500)</b>	<b>524</b>	<b>574</b>
<b>Project Receipts &amp; Distributions - TSL</b>														
Grower Scheme Costs	0	0	0	912	995	285	81	137	56	0	0	0	0	2,466
Distributions to Growers	0	0	0	0	0	0	0	0	0	0	0	(246)	(2,218)	(2,464)
Deductions from Crop Proceeds	0	0	0	0	0	0	0	0	0	0	0	8	73	81
<b>Net Project Receipts &amp; Distributions - TSL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>912</b>	<b>995</b>	<b>285</b>	<b>81</b>	<b>137</b>	<b>56</b>	<b>0</b>	<b>0</b>	<b>(238)</b>	<b>(2,145)</b>	<b>83</b>
<b>Net Scheme Cashflow - Before CAPEX</b>	<b>(90)</b>	<b>(146)</b>	<b>(188)</b>	<b>786</b>	<b>873</b>	<b>235</b>	<b>10</b>	<b>58</b>	<b>(100)</b>	<b>(286)</b>	<b>(279)</b>	<b>(124)</b>	<b>(70)</b>	<b>657</b>
<b>Cumulative Scheme Cashflow - Before CAPEX</b>	<b>(90)</b>	<b>(236)</b>	<b>(424)</b>	<b>362</b>	<b>1,234</b>	<b>1,469</b>	<b>1,479</b>	<b>1,517</b>	<b>1,418</b>	<b>1,131</b>	<b>852</b>	<b>728</b>	<b>657</b>	<b>657</b>
<b>Water - Capital Expenditure</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Temp Water	0	(7)	(44)	(26)	(62)	(66)	(44)	(13)	(18)	0	0	0	0	(280)
Non-Water - Capital Expenditure	0	(22)	(22)	(22)	0	0	0	0	0	0	0	0	0	(67)
<b>2010 Capital Expenditure</b>	<b>0</b>	<b>(30)</b>	<b>(66)</b>	<b>(48)</b>	<b>(62)</b>	<b>(66)</b>	<b>(44)</b>	<b>(13)</b>	<b>(18)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(347)</b>
<b>Net Op Cashflow (after Receipts and CAPEX)</b>	<b>(90)</b>	<b>(176)</b>	<b>(254)</b>	<b>737</b>	<b>811</b>	<b>169</b>	<b>(34)</b>	<b>25</b>	<b>(116)</b>	<b>(286)</b>	<b>(279)</b>	<b>(124)</b>	<b>(70)</b>	<b>310</b>
<b>Cumulative Net Cashflow</b>	<b>(90)</b>	<b>(266)</b>	<b>(520)</b>	<b>218</b>	<b>1,028</b>	<b>1,197</b>	<b>1,163</b>	<b>1,188</b>	<b>1,070</b>	<b>784</b>	<b>505</b>	<b>381</b>	<b>310</b>	<b>310</b>
<b>Additional Information:</b>														
Alternative: Replace PWR water with Temp Water	0	0	0	0	0	0	0	0	0	0	0	0	0	0
JV Partner: Unfunded share of operating deficit	(10)	(16)	(21)	(14)	(14)	(8)	(8)	(11)	(17)	(92)	(91)	13	231	64

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

**LIST E**

No 7114 of 2009

**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  
2002 TIMBERCORP ALMOND PROJECT (ARSN 099 611 935)  
First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 9 July 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked "MAK-13" now produced and shown to **MARK ANTHONY KORDA**  
at the time of swearing his affidavit on 9 July 2009.

Before me: Chantal Encavey

**CHANTAL ENCAVEY**  
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-13"**  
**Grower obligations under Almondlot  
Management Agreement**

"MAK-13"

**Supplemental Almondlot  
Management Agreement**

for

**2002 Timbercorp Almond Project  
(ARSN 099 611 935)**

and

**Timbercorp Securities Limited  
(ACN 092 311 469)**

**NM TAYLOR**  
LAWYERS

Level 7  
350 Collins Street  
MELBOURNE VIC 3000

Telephone: 9600 3525  
Facsimile: 9600 3527  
Ref: NMT/01145

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## **SCHEDULE MANAGEMENT AGREEMENT AMENDMENTS**

The Management Agreements are amended as follows:

1. by inserting a definition of Effective Date as the date of the Supplemental Agreement amending the Almondlot Management Agreements made by Timbercorp Securities Limited and each of the several Growers and the landowner as Joint Venturers;
2. by the replacement of clause 10.2 in each of the Management Agreements with the following:

**"11.2 Additional Management Fee**

- (a) For each Financial Year after the Effective Date commencing on 1 October 2008 and each subsequent 1 October until final harvest of the Almonds under the Project, the Responsible Entity will estimate the costs of operating the relevant Almondlots, which will include an allocation of overhead costs incurred by the Responsible Entity or its contractors that will not exceed \$50 per relevant Almondlot indexed to CPI (adopting 30 June 2002 as the base date) as adjusted under paragraph 11.2(b) (iii);
- (b) The Responsible Entity will:
  - (i) notify the Participant Grower of the estimated costs of operating the relevant Almondlots under paragraph 11.2(a) and the amount required to be paid by the Grower on 31 October of the relevant year and the amount, if any, required to be paid by the Grower subsequently, as determined by the Responsible Entity in its absolute discretion and the Grower:
    - (A) must pay the amounts at the times and in such manner notified by the Responsible Entity ;and
    - (B) to the extent that the Responsible Entity determines that amounts are to be paid out of Proceeds, the Grower authorises and requests the Responsible Entity to deduct such amounts out of and at the time Proceeds are received by the Responsible Entity as the Responsible Entity in respect of the sale of Almonds.
  - (ii) notify the Grower of its Participating Interest of the actual cost of the Responsible Entity's operating the relevant Almondlots for the preceding Financial Year including overhead costs incurred by the Responsible Entity or its contractors, which the Grower must pay by 31 October of the year in which the Responsible Entity gives the notification unless a later date is stipulated; and
  - (iii) adjust that part of the estimated costs of operating the relevant Almondlots for the current Financial Year as determined by the Responsible Entity under sub-paragraph (ii) by the difference between the actual costs and the costs estimated by the Responsible Entity under paragraph 11.2(a) for the preceding Financial Year, unless the surplus per relevant Almondlot has been added to, or the excess per relevant Almondlot has been deducted from, the distribution of Proceeds made to the Grower following the end of the preceding Financial Year.



- 
- (c) The Responsible Entity will also be entitled to be paid the following additional management fees in a Financial Year out of, and immediately prior to, any distribution:
- (i) 3% of the proceeds of the sale of the Crop and the Product in that Financial Year; and
  - (ii) 25% of the Annual Net Proceeds in a Financial Year as exceeds the Incentive Fee Threshold. But, if in the immediately preceding Financial Year, the Net Proceeds were less than the Incentive Fee Threshold the sum of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Responsible Entity under this paragraph in respect of the Financial Year to which reference is first made."

r43.06

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

**LIST E**

No 7114 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
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First Plaintiffs**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSEER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 9 July 2009  
Filed on behalf of: the Plaintiffs  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
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MELBOURNE 3000

Solicitor's Code: 54  
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Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked "MAK-14" now produced and shown to MARK ANTHONY KORDA at the time of swearing his affidavit on 9 July 2009.

Before me: 

**CHANTAL ENCAVEY**  
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-14"  
Occupancy Summary**

**TIMBERCORP**

**2002 ALMOND SCHEME: SUMMARY OF RENTAL PAYMENT OBLIGATIONS**

<b>Lease Agreement</b>	<b>Doc ID</b>	<b>When is rent payable?</b>	<b>Amount payable</b>
Liparoo Head Lease between OIM#2 (Lessor) and Timbercorp Limited (Tenant)	TAT 05D 009	Rent is payable quarterly in advance on the last day of the preceding quarter. (clause 6.2)	The rent is notionally \$3,411,861 per annum (particulars). However, clause 6.1 states that the rent shall be calculated so that the Lessor receives a 9.5% of: <ul style="list-style-type: none"> <li>the cost inclusive price paid by Lessor for Liparoo and the water licences attached thereto;</li> <li>the \$260,000 budgeted for an almond orchard development (the <b>Almond Orchard Development Budget</b>); and</li> <li>any amounts in excess of the Almond Orchard Development Budget.</li> </ul>
Liparoo Head Sub-lease between Timbercorp (Sub-lessor) and Almond Land Pty Ltd (Administrators Appointed) (ACN 091 460 392) (Sub-lessee).	TAT 05D 010	Rent is payable no later than 60 days from receipt of licence fees from Growers under the Licence Agreements. (clause 6.1(b))	Rent to be paid is equal to that of the licence fees (on a GST exclusive basis) received from the Grower under the Licence Agreements.
Liparoo Project Lease between Almond Land Pty Ltd (Lessor) and TSL as responsible entity (Lessee)	A 2002 011	Rent is payable if demanded by the Lessor (clause 4)	\$1.00 per annum. (clause 4)
Liparoo Sub-lease between TSL (Sub-lessor) and Almond Land Pty Ltd (Sub-lessee)	A2002 012	Rent is payable if demanded by the Sub-lessor (clause 3)	\$1.00 per annum. (clause 3)
Carina Head Lease between Almond Land Pty Ltd (Lessor) and TSL as responsible entity (Lessee)	A2002 015 and A2002 013	Rent is payable if demanded by the Lessor (clause 4)	\$1.00 per annum. (clause 4)  However, under the Carina West Head Lease, the rent will be market rent if the vendor who sold it to Lessor exercises its mortgage over the land.

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			Lessee will not be obliged to pay market rent unless Almond Land Pty Ltd pays market rent to TSL under the Carina West Sub-lease. (clause 4.2)
Carina Sub-lease between TSL (Sub-lessor) and Almond Land Pty Ltd (Sub-lessee)	A2002 014 and A2002 016	Rent is payable if demanded by the Sub-lessor (clause 3)	\$1.00 per annum. (clause 3)  Under the Carina West Sub-lease, the rent will be market rent if TSL is required to pay market rent under the Carina West Head Lease
Joint Venture Agreement between TSL, Almond Land Pty Ltd and each Grower	A2002 021	Rent is \$774.55 per JV Almond Lot, indexed. (clause 7.2)	Rent is payable on each October 31 for the financial year ending on the next June 30.