

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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(Leon Zwier lwier@abl.com.au/
Lucy Kirwan lkirwan@abl.com.au)

This is the exhibit marked 'MAK-11' 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-11'

**Copy of Affidavit of Mark Anthony Korda
sworn in respect of 2007 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 -

2007 TIMBERCORP ALMOND PROJECT (ARSN 122 511 040)

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)

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 (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 (ACN 055 185 067) (**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 2007 Timbercorp Almond Project which has the Australian Registered Scheme Number 122 511 040 (**2007 Almond Scheme**).

5 **2007 Almond Scheme Documents**

5.1 The documents constituting the 2007 Almond Scheme are voluminous. Shown to me marked **MAK-1** is a computer disc of all the documents I refer to in this affidavit together with an index to the documents on that computer disc. Each of the documents has an identifying number. Where I refer to the documents I also give the reference number. Where I refer to specific clauses 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 2007 Almond Scheme (exhibited at **MAK-1**) are:

- (a) the constitution dated 2 November 2006 (A 2007 001) and supplemental deed dated 15 April 2008 (A 2007 001A), which binds TSL (in its capacity as responsible entity for each scheme) and each of the Growers (**Constitution**);

- (b) the custody agreement dated 27 November 2006 (A 2007 003) by which TSL appoints the Trust Company Australia Limited (ABN 59 004 027 749) custodian to hold the 2007 Almond Scheme assets (**Custody Agreement**);
- (c) a product disclosure statement dated 26 November 2006 (A 2007 000) and a first supplementary product disclosure statement dated 12 December 2007 (A 2007 000A) describing the 2007 Almond Scheme including a summary of the key documents and application and power of attorney forms (**PDS**);
- (d) leases and subleases relating to two properties (**Land**) on which the 2007 Almond Scheme operated:
 - (i) leases and subleases (A 2007 004A, A 2007 005A, A 2007 005B, A 2007 005C and A 2007 005D) for the Menegazzo property on which the crop was to be grown (**Menegazzo Land**). The Menegazzo Land is owned by Almond Land Pty Ltd (ACN 091 460 392) (**Landowner**). Landowner leases the Menegazzo Land to TSL (in its personal capacity) as tenant (**Menegazzo Head Lease**), and TSL then grants to the Grower the right to use and occupy the Land for the purpose of conducting Almondlot operations (**Menegazzo Sub-lease**);
 - (ii) leases and subleases (A 2007 004B, A 2007 005E and A 2007 005F) for the Annuello property on which the crop was to be grown (**Annuello Land**). The Annuello Land is owned by Landowner. Landowner leases the Annuello Land to TSL (in its personal capacity) as tenant (**Annuello Head Lease**; and together with the Menegazzo Head Lease, **Head Leases**), and TSL then grants to the Grower the right to use and occupy the Land for the purpose of conducting Almondlot operations (**Annuello Sub-lease**);
 - (iii) a sublease (A 2007 005G) for the Westmores property on which the crop was to be grown after 30 June (**Westmores Land**). The Westmores Land is owned by Landowner. Landowner leases the Westmores Land to TSL (in its personal capacity) as tenant, and TSL then grants to the post-30 June Growers the right to use and occupy the Land for the purpose of conducting Almondlot operations (**Westmores Sub-lease**; and together with the Menegazzo Sub-lease and the Annuello Sub-lease, **Sub-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 CD 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;

- (e) a grower agreement, undated (A 2007 006), amended by deed dated 15 April 2008 (A 2007 006A) (referred to as the Almondlot Management Agreement), 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**);
- (f) a management agreement dated 27 November 2006 (A 2007 007), by which TSL (in its capacity as responsible entity) engaged Almond Management Pty Ltd ACN 094 468 845 (voluntary administrators appointed) (**AMPL**) to cultivate and maintain almond trees on, and generally manage, the Almondlots, and to do other things (**Management Agreement**); and
- (g) an orchard management agreement dated 27 November 2006 (A 2007 008) by which AMPL contracts with Select Harvests Limited ACN 000 721 380 (**Select**) to provide cultivation, processing and marketing services (**Orchard Management Agreement**); and
- (h) a tree supply and capital works agreement dated 27 November 2006 (A 2007 009) between the Landowner and Select in which Select agreement to sell almond trees to the Landowner and the Landowner engages Select to plant the trees and to do other things (**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 2007 Olive Scheme.

5.4 There are 2,188 Growers in the 2007 Almond Scheme and a total of 16,301 almondlots. There are three projects within the 2007 Almond Scheme. There are

10,824 almondlots in the first project (**2007 Almond Early**), 981 almondlots in the second project (**2007 Almond Post June**) and 4,496 almondlots in the third project (**2008 FinYr Almond**). Now produced and shown to me marked **MAK-4** is a confidential exhibit (on computer disc) listing the Growers for the 2007 Almond Scheme.

6 Growers' contributions to the 2007 Almond Scheme

6.1 The Growers' obligations to contribute to the 2007 Almond Scheme are set out in the Scheme Documents. Now produced and shown to me marked **MAK-5** is a bundle of the clauses concerning 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 booklet together with the Application Fee per almondlot. The Application Fee included TSL's management fees in relation to the first year 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) the Westmores Sub-lease, Menegazzo Sub-lease and Annuello Sub-lease (together **Grower Sub-leases**); and

(b) Grower Agreement;

(**Agreements**).

6.4 Upon completion of the Agreements, TSL was required to release the Application Moneys and apply them to 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)).

7.5 Growers are required to pay the following annual fees per Almondlot:

(a) a management fee, which consists of a set fee plus a percentage of the Gross Proceeds of the sale of almonds until 30 June 2008, after which the fee is the

estimated cost of operating each Almondlot (clauses 11.1-1.11.3, Grower Agreement);

- (b) an incentive fee of 25% of so much of the annual net proceeds payable to the Grower in a financial year which exceeds the forecasted net proceeds set out in the PDS (clause 11.5, Grower Agreement); and
- (c) rent (clause 7, Grower Sub-leases).

(Deductions).

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

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

10 TSL (in its capacity as responsible entity) generally had a right of indemnity out of the Agency Accounts (clause 23.2, Constitution).

11 **Solvency of the 2007 Almond Scheme**

11.1 The solvency of the 2007 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 2007 Almond Scheme is represented by a collection of contracts which create rights and impose obligations.

11.2 To analyse whether the 2007 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 distributions of proceeds to Growers, to show the forecast cash flow for the 2007 Almond Scheme. Now produced and shown to me marked **MAK-6** is the Solvency Analysis (**Solvency Analysis**). Information about the 2007 Almond Early (shown as 2002E), 2007 Almond Post June (shown as 2002P) and 2008 FinYr Almond (shown as 2008) projects (**Projects**) appears in the Solvency Analysis. There is analysis for each Project and for the Scheme.

12 **Cashflow - Historic**

12.1 The final section of the Solvency Analysis shows the net operating cashflow of each of the 2007 Almond Scheme Projects to date for the years since the 2007 Almond Scheme began on a financial year basis (July 1 to June 30). Information about the 2007 Almond Early project, 2007 Almond Post June project and the 2008 FinYr Almond project for the 2007 Almond Scheme appear in the Solvency Analysis as "2007E", "2007P" and "2008" respectively. The final column shows a combined figure for the three projects.

12.2 The three projects under the 2007 Almond Scheme have each had a negative net operating cashflow for each year since planting. 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.

13 **Projected Cashflow 2010**

13.1 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.

13.2 The Solvency Analysis spreadsheet shows the expected net cashflow from the 2010 harvest by taking the Growers' gross proceeds and subtracting the scheme costs that the Growers are liable to pay. There are a number of assumptions underlying these figures.

Scheme Income and Costs - Explanation, Variables and Assumptions

13.3 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. There has not been an actual yield for the 2007 Almond Scheme. The estimate for 2010 is summarised below:

Crop Year	2004	2005	2006	2007	2008	2009F*	2010F
Yield 2007E (kg)							1,758,900
Yield 2007P (kg)							159,413
Yield 2008 (kg)							730,600

*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 farm-gate 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

Scheme Expenses - Explanation, Variables and Assumptions

- 13.4 The Growers are responsible for the payment of operating expenditure. Even though the Timbercorp Group can no longer provide services for the 2007 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 6.75% 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 2007 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	2009F*	2010F*
Total	100%	100%	100%	100%	95%	43%	35%	40%

*Forecast

- (e) **Rent per lot** (referred to in the Solvency Analysis as "Licence Fee per lot")- The licence fee is referred to in the PDS. It is payable for the use of and occupancy of the Almondlot under the Grower Sub-leases. The Growers pay Rent on the basis that the Landowner provides the entire necessary infrastructure and other capital works to operate a commercial almond orchard.

- (f) CPI Assumption - the cashflow has been prepared on the basis of a 2.5% increase in the Consumer Price Index.

13.5 The operational costs are charged in accordance with the 2007 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)

13.6 The conclusion from this analysis is that for the 2010 Harvest Result, as project costs are greater than gross proceeds, the Growers will have to meet a shortfall of \$36,260,795 (approximately) and set out below:

- (a) 2007 Almond Early project, \$24,077,471;
- (b) 2007 Almond Post June project, \$2,182,188; and
- (c) 2008 FinYr Almond project, \$10,001,137.

13.7 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. 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.

13.8 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 2007 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

13.9 In addition to the operating expenditure there is also capital expenditure that the 2007 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.

13.10 There is capital expenditure of \$30,846,085 expected (combined for the Projects) for water for the 2010 Harvest Result.

13.11 There is expected capital expenditure of \$12,338,515 (combined for the Projects) for water related infrastructure in the referred to in the Solvency Analysis as "Non Water Capital Expenditure". 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.

15 Arrears and Defaults

15.1 The 2010 Harvest Result forecast assumes that:

- 1(a) no Growers in the 2007 Almond Scheme terminate their participation in the 2007 Almond Scheme or default in payment of amounts owing by them; and

- 2(a) 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.

14.2 Timbercorp Limited, Timbercorp Finance Pty Ltd (Administrators Appointed) ACN 054 581 190 (Timbercorp Finance) and Timbercorp Lot Investments Pty Ltd (Administrators appointed) ACN 125 427 492, each of which are Timbercorp Group companies, hold in aggregate approximately 0.3% of the total number of Almondlots in the 2007 Almond Early project and 0.2% of the total number of Almondlots in the 2008 FinYr Almond project. None of these companies has sufficient resources to meet the fees which would be payable in respect of their ongoing participation in the those projects, and have indicated they intend to terminate their participation on 30 June 2009, unless the 2007 Almond Scheme is terminated by special resolution or Court order.

14.3 We consider it likely that some Growers in the 2007 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:

- 3(a) level of unpaid scheme invoices - In October 2008, Growers were invoiced a total of \$21.6m for the 2007 Almond Early Project, \$2.0m for the 2007 Almond Post June project and \$19.0m for the 2008 FinYr project, of which \$1.1m (5%), \$0.2m (10%) and \$0.3m (3%) respectively of the total remains unpaid.
- (b) loans in arrears - 49.8% of growers in the 2007 Almond Early project, 79.1% of growers in the 2007 Almond Post June project and 77.8% of growers in the 2008 FinYr Almond project have taken out loans with Timbercorp Finance. \$10.3m (35%), \$1.9m (41%) and \$1.9m (13%) 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 80 in March 2009 to 264 in May 2009 for the 2007 Almond Early project, from 3 in March 2009 to 9 in May 2009 for the 2007 Almond Post June project and from 8 in March 2009 to 24 in May 2009 for the 2008 FinYr Almond project; and

- 14.4 Furthermore, Timbercorp Finance is no longer in a position to provide finance to Growers to meet their obligations in the 2007 Almond Scheme.
- 14.5 For these reasons we consider that not all Growers will continue to participate or meet their obligations as they fall due.
- 14.6 TSL is insolvent and unable to absorb these costs.

Defaults in other Almond Schemes

- 14.7 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.

15 Long term viability

- 15.1 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 2007 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 viable over the long term. For the benefit of the Court I provide this analysis to give a picture of the 2007 Almond Scheme over its life.
- 15.2 The Viability Analysis is based on Timbercorp management's cashflow model for the 2007 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.
- 15.3 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 the 2011 crop. In addition, the permanent water rights allocation is expected to return to 100% by 2013 from its 2008 level of 43%.

15.4 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.

15.5 The Viability Analysis suggests that if the base case assumptions concerning yield and water allocations are realised an average almond price of between \$6/kg and \$7/kg is required to achieve a positive NPV.

15.6 The NPV calculations assume that the permanent water rights and irrigation infrastructure necessary to operate the schemes has been provided. However, expenditure is still required for this scheme in addition to the cash flows identified above in the amounts as follows:

- (a) 2007 Almond Early project, \$69.85m;
- (b) 2007 Almond Post June project, \$6.29m; and
- (c) 2008 FinYr Almond project, \$228.80m.

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.

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

16 Termination of Agreements on Winding Up pursuant to Constitution

16.1 Based on legal advice, I believe that if the Court orders that the 2007 Almond Scheme is to be wound up in accordance with the Constitution, most of the Key Scheme Documents also end. Upon termination of the Scheme, the following agreements will automatically end:

- (a) Custody Agreement (cl 10.1);
- (b) Head Leases (Menegazzo and Annuello) (cl 11.1);
- (c) Sub Leases (Menegazzo, Annuello, Westmores) (cl 4.1);
- (d) Grower Agreement (cl 2.1);
- (e) Management Agreement (cl 2.2);
- (f) Orchard Management Agreement (cl 2); and
- (g) Tree Supply and Capital Works Agreement (which terminates on the lawful termination of the Orchard Management Agreement (cl 2)).

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

17 Impediments to Restructure

17.1 Based on legal advice I believe that the structure of the 2007 Almond Scheme means that there are a number of impediments to restructuring it. I discuss these below.

Encumbrances on land title

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

17.3 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 (collectively, the **Syndicate**) agreed to advance Timbercorp Ltd the sum of \$200,000,000 (**BOS Syndicated Facility**).

17.4 The appointment of administrators to Timbercorp Ltd constitutes an event of default under relevant provisions of the BOS Syndicated Facility and the associated security arrangements (collectively the **BOS Securities**).

17.5 As part of the security granted for the BOS Syndicated Facility, the majority of the Menegazzo Land and the Annuello Land is encumbered by a first ranking mortgage between BOSI Security Services Limited ABN 63 009 413 852 and Landowner dated 30 December 2008.

Encumbrances on water rights

17.6 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 2007 Almond Scheme, along with details of the registered instruments by which the Water Rights are encumbered.

17.7 The Water Rights are leased along with the Land. The Water Rights have also been mortgaged as security for the BOS Syndicated Facility.

18 Grower obligations in the event TSL defaults

18.1 As I depose in my Directions Affidavit and Olives and will depose in my Almonds Affidavit, I consider that TSL is insolvent. If the Court does not wind up the 2007 Almond Scheme then TSL will default on its obligations under the 2007 Almond Scheme. Based on legal advice, I believe that if TSL does default then:

- (a) under clause 9.3 of each Head Lease, if the Head Lease terminates (due to TSL's default or otherwise) the Landowner agrees to step into the shoes of TSL under the Sublease and allow each Grower to continue to use the land as contemplated under the Sublease (a "**Step In Provision**");
- (b) under the Step In Provision, all obligations of the Growers under the Sublease will presumably be owed to and are enforceable by the Landowner (including payment of rent (clause 7.1) and performance of maintenance services by the Growers). Therefore, the Growers may be obliged to continue to pay fees under the Sublease;
- (c) the above is subject to the ability of the Grower to terminate the Sublease for TSL's liquidation, TSL ceasing to carry on its business or TSL's default as set out in clause 10.1 of the Sublease. If the Grower terminates the agreement it will be required to return the Almondlots it occupied to the Landowner in "good condition" and remove all plant and equipment (clause 4.2), which could result in the Grower incurring additional costs;
- (d) additionally, 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 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 and will likely suffer damages.

18.2 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 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-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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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
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Level 21
333 Collins Street
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-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**

2007 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					
Almond Land Pty Ltd		Annuello - Vic	Vol 8071 Fol 270 Vol 9150 Fol 580	Vol 8071 Fol 270 Vol 9150 Fol 580	BOSI Security Services Ltd BOSI Security Services Ltd	AG360673L AG360673L
Almond Land Pty Ltd		Menegazzo - Vic	Vol 7420 Fol 813 Vol 8454 Fol 087 Vol 8491 Fol 231 Vol 7678 Fol 088 Vol 8210 Fol 031 Vol 9183 Fol 267 Vol 9748 Fol 465 Vol 9421 Fol 203 Vol 10950 Fol 378	Vol 7420 Fol 813 Vol 8484 Fol 087 Vol 8491 Fol 231 Vol 7678 Fol 088 Vol 8210 Fol 031 Vol 9183 Fol 267 Vol 9748 Fol 465 Vol 8421 Fol 203 Vol 10950 Fol 378	BOSI Security Services Ltd BOSI Security Services Ltd BOSI Security Services Ltd BOSI Security Services Ltd BOSI Security Services Ltd BOSI Security Services Ltd BOSI Security Services Ltd BOSI Security Services Ltd BOSI Security Services Ltd	AG360673L AG360673L AG360673L AG360673L AG360673L AG360673L AG360673L AG360673L AG360673L

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

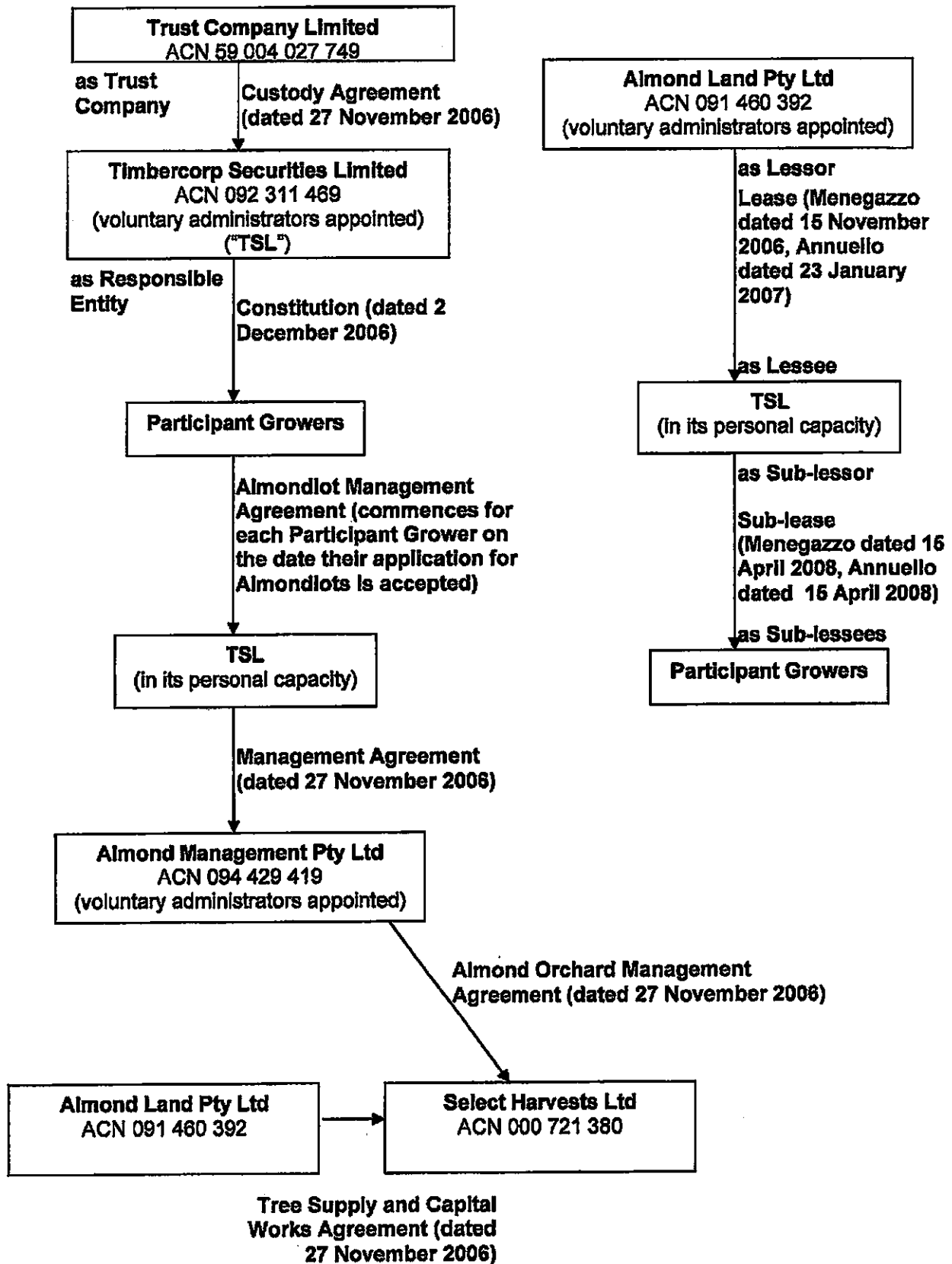
This is the exhibit marked "MAK-3" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on June 2009.

Before me:

Exhibit "MAK-3"
Structure diagram for the 2007 Almond Scheme

STRUCTURE DIAGRAM

2007 TIMBERCORP ALMOND PROJECT



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-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 2007 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"

CONSTITUTION

2007 TIMBERCORP ALMOND PROJECT

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

2007 Timbercorp Almond Project

[EXECUTION COPY]

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 Moneys in relation to the Project.

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 on the Application Moneys deposited in a special trust account provided for in clause 4.2 will, upon the Applicant becoming a Participant Grower, be retained by the Responsible Entity as fees (such fees being in addition to any other fees it is entitled to under this Deed).

5. PROJECT PROPERTY

5.1 Responsible Entity to hold property for the Participant Growers

- (a) Subject to clause 5.2, the Responsible Entity must hold all Project Property for the Participant Growers for the term of the Project.
- (b) The Participant Grower's interest in the Project Property is in the proportion that its Participating Interest bears to the aggregate Participating Interests of all Participant Growers in the Project.

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 and conditions of the appointment will be determined by the Responsible Entity and the agent. However the terms and conditions 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.

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 PDS.

6.2 Receipt of Application

The Responsible Entity may itself or by its duly authorised representatives receive Applications under the PDS.

Applicant (or Participant Grower, whichever is the case) a notice in writing informing the Applicant (or Participant Grower, whichever is the case) of the default and giving the Applicant (or Participant 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(b)(ii), then within 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 "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) has agreed 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.

7. REFUSAL OF APPLICATIONS

7.1 Refusal of Application

The Responsible Entity may in its absolute discretion 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 Moneys contributed with the Application;

without giving any reasons for the refusal.

7.3 Repayment to Applicant

Upon the Responsible Entity giving notice to an Applicant that their Application has been refused, the Applicant will be entitled to be repaid the Application Moneys in relation to that Application, or so much as has been paid by the Applicant, with interest (if any) earned thereon, after deduction of all bank fees and government taxes and charges in relation to the deposit and withdrawal of the money and any other expenses permitted by law. If interest is earned on the Application Moneys to be repaid to the Applicant under this clause, the amount of the interest will be calculated on a pro rata basis, i.e. in the proportion that the Application Moneys received by the Responsible Entity from the Applicant bears to the total of all Application Moneys received by the Responsible Entity, calculated from day to day.

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.

8. ACCEPTANCE OF APPLICATIONS

8.1 Applicant to Become Participant Grower on Acceptance

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

8.2 Minimum Subscription Not Reached

If Minimum Subscription is not reached, or waived by the Responsible Entity, within the time specified in the PDS, the Responsible Entity must within 7 days of the end of such period repay to each Applicant the Application Moneys, or so much of it as has been paid by the Applicant, with interest (if any) earned thereon, after deduction of all bank fees and government taxes and charges in relation to the deposit and withdrawal of the money and any other expenses permitted by law. If interest is earned on the Application Moneys to be repaid to an Applicant under this clause, the amount of the interest will be calculated on a pro rata basis, i.e. in the proportion that the amount of the Application Moneys received by the Responsible Entity from the Applicant bears to the total of all Application Moneys received by the Responsible Entity, calculated from day to day.

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 Participant 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 PDS, and not refused under clause 7.1, will be deemed to have been accepted immediately upon receipt, subject to the Application Moneys in respect of that Application being paid and the Minimum Subscription, if any, being reached or waived by the Responsible Entity.

8.5 Joint Applicants

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

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 Participant Grower and thereby bound by the terms and conditions and obligations on the part of each individual Participant Grower provided for in this Deed.

8.7 Allocation and Allotment of Almondlots and Entry into Agreements

- (a) At the time or times specified in the PDS, the Responsible Entity, following the acceptance of an Application:
 - (i) must immediately allocate and allot an Almondlot or Almondlots to the Participant 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 Participant Grower; and

(ii) will as attorney for and on behalf of the Participant Grower, enter into the Agreements in relation to the Almondlots allocated to the Participant Grower, and any other documents which are ancillary or related to the Agreements, or contemplated by the provisions of the Agreements.

(b) The Responsible Entity may at any time after the Agreements described in paragraph 8.7(a)(ii) are entered into, allocate an Almondlot or Almondlots to a Participant Grower, wherever situated on the Land as the Responsible Entity in its absolute discretion thinks fit, in substitution for an Almondlot or Almondlots allocated to a Participant Grower. The allocation of an Almondlot or Almondlots in substitution for another Almondlot or Almondlots under this paragraph 8.7(b) does not affect, or detract from, any rights, interests, powers, privileges, obligations and liabilities held by the Participant Grower under this Deed and under each of the Agreements, other than that the Participant Grower will cultivate and harvest Almonds on the replacement Almondlot or Almondlots on and from the date of substitution.

(c) The Responsible Entity may, and is authorised by the Participant Grower to, enter into as attorney for and on behalf of the Participant Grower such documents, and the Responsible Entity may do such other things, as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to this clause 8.7, including but not limited to making amendments to any Agreement or Project Document, or any lease or sub-lease in respect of all or any part of the Land.

9. RESPONSIBLE ENTITY TO ARRANGE ENTRY INTO SUB-LEASES AND ALMONDLOT MANAGEMENT AGREEMENT

9.1 Preparation of Sub-Leases and Almondlot Management Agreement

Following acceptance of an Application, the Responsible Entity will prepare the Sub-Leases and Almondlot Management Agreement. The Sub-Leases and Almondlot Management Agreement:

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

- (a) the Sub-Leases and Almondlot Management Agreement are in the form required by this Deed and have been duly entered into by all parties;
- (b) Timbercorp Securities has the capacity to grant the Sub-leases;

- (c) all necessary condition precedents to the grant of the Sub-leases and entry into the Almondlot Management Agreement have been satisfied;
- (d) all necessary consents to the grant of the Sub-leases and entry into the Almondlot Management Agreement have been, or will be, obtained;
- (e) the Land the subject of the Sub-leases is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant;
- (f) any other matter required to be attended to, which is necessary for the creation of the Sub-lease and the effective vesting in the Participant Grower of its Sub-leases and Almondlot Management Agreement, whether by reason of this Deed or otherwise, has been attended to; and
- (g) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Participant Growers whose Application Moneys is to be released pursuant to clause 9.3.

9.3 Release of Application Moneys

(a) Release of Application Moneys

In relation to each Application that is unconditional as to finance, or is subject to finance and for which finance is approved, the Responsible Entity must within 2 Business Days of the Responsible Entity being satisfied of the matters specified in clause 9.2, release the Application Moneys and apply it in payment of the fees payable under the Sub-leases and Almondlot Management Agreement provided that where a deposit has been paid as provided for in clause 6.4, the balance of the Application Moneys must be paid to the Responsible Entity in accordance with the requirements of clause 6.4.

(b) Refund of Application Moneys

Where the Responsible Entity does not issue an Almondlot to an Applicant within the time required by the Corporations Act, the Responsible Entity must refund to the Applicant the relevant Application Moneys paid with any interest earned in relation to that Application Moneys, the amount of such interest to be calculated in accordance with clause 7.3.

(c) Extinguishment of the Sub-leases and Almondlot Management Agreement

Upon the refund of the moneys referred to in paragraph 9.3(b), the Participant Grower's Sub-lease and Almondlot Management Agreement 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 Moneys at any time, but not before the first transfer of Application Moneys is made pursuant to paragraph 9.3(a).

9.4 Compliance with AFSL Requirements

In the course of and in accordance with its duties as responsible entity and in order to:

- (a) comply with its AFSL; and
- (b) protect the interests of Participant Growers in the Project,

the Responsible Entity must lodge the Head Leases for registration in its name beneficially under the land titles law of the State or Territory in which the Almondlots

13.4 Sale of Crop and Product

Each Participant Grower severally authorises and requests the Responsible Entity to procure Timbercorp Securities to:

- (a) sell its Participating Interest in that part of the Crop that is not processed in accordance with clause 13.3;
- (b) sell its Participating Interest in the Product,

in accordance with the Almondlot Management Agreement and on such terms and conditions as Timbercorp Securities in its absolute discretion determines, and for this purpose to enter into any agreement for the sale of the Participant Grower's Participating Interest in the Product and any unprocessed Crop as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower.

13.5 Records

The Responsible Entity must keep full and complete records of the sale of the Participant Grower's Participating Interest in the Product and any unprocessed Crop and separately account to the Participant Grower for the sale of the Participant 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 Crop attributable to the Participant Growers' Almondlots to which the Participant Grower is entitled;
- (b) proceeds from the sale of Product produced from the Almonds and Crop, attributable to the Participant Growers' Almondlots to which the Participant Grower is entitled;
- (c) proceeds of any insurance policy to which the Participant Growers are entitled to benefit; and
- (d) any other amount properly related to the proceeds from the Participant Growers' Almondlots to which the Participant Growers are entitled.

13.7 Participant Grower's Entitlement

- (a) A Participant 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 Participant Grower's Sub-leases plus interest;
 - (ii) any fees payable under the Participant Grower's Almondlot Management Agreement plus interest; and
 - (iii) any other amounts payable by the Participant Grower under this Deed, Participant Grower's Almondlot Management Agreement and the Participant Grower's Sub-leases plus interest.
 - (iv) any Outstanding Loan Amounts due and payable by the Participant Grower for the Project for the period up to and including the date upon which the next distribution is to be made (in order of the date on which the amounts became due and payable, beginning with the oldest amount due and payable);

- (v) any fees or other amounts due and payable under the constitution and grower agreements of Other Timbercorp Projects (in order of the date on which the amounts became due and payable, beginning with the oldest amount due and payable); and
 - (vi) any Outstanding Loan Amounts due and payable by the Participant Grower for Other Timbercorp Projects or any other purpose for the period up to and including the date upon which the next distribution is to be made (in order of the date on which the amounts became due and payable, beginning with the oldest amount due and payable).
- (b) The Participant 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 Participant Grower.
- (c) Before making any deductions listed in paragraph 13.7(a)(iv)-(vi), the Responsible Entity must be in receipt of a certificate from the person to whom the moneys owing are due and payable, certifying the amounts payable. Such certificate shall, in the absence of manifest error, be conclusive evidence of the amounts due and payable.
- (d) 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 or adjustments to be made under paragraph 13.7(a) must be made in the priority in which they are listed.
- (e) The surplus available to each Participant Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Participant Grower. The payment must be made within five months after 30 June each year in which there is a Production Period provided that the Responsible Entity will not be under the obligation to make payments, directions and distributions of Proceeds in relation to the Project under this clause:
 - (i) unless and until the amount of Proceeds payable or distributable to the Grower is at least \$200 per Almondlot; and
 - (ii) unless Proceeds have been held in the Agency Account for no less than 30 days before the distribution is required to be made.
- (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).

13.8 Product Liability Insurance

The Responsible Entity must at all times keep current with a reputable insurance company a product liability policy in respect of all of the Product or Crop of the Participant Grower which is sold by or on behalf of the Participant Grower. The policy must be in the names of the Responsible Entity and the Participant Grower.

13.9 Intentionally Deleted

13.10 Interim distribution of entitlements

Despite anything contained in this Deed, the Responsible Entity may from time to time and at any time make such interim distributions to Participant Growers on account of their respective entitlements under this clause 13. The timing and the amount of the distributions is at the complete discretion of the Responsible Entity.

23.2 Indemnity of Responsible Entity

- (a) In addition to any indemnity under any Law, the Responsible Entity has a right of indemnity out of the Agency Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of its duties.
- (b) Such right of indemnity in respect of a matter ("Indemnified Matter") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of this Deed.
- (c) The right of indemnity continues to be available after the Responsible Entity retires or is removed as Responsible Entity.
- (d) The Responsible Entity may pay out of the Agency Account any amount for which the Responsible Entity would be entitled to be indemnified under paragraph 23.2(a).

24. LIABILITIES AND INDEMNITIES OF PARTICIPANT GROWERS

24.1 Liability Limited

Except as provided by any express indemnity given by any Participant Grower to the Responsible Entity, and except as provided in clause 26.6, the entire liability of each Participant Grower is limited to the balance of any Application Moneys owing (if any) and the Participant Grower's Participating Interest in the Proceeds, and no Participant Grower will have any liability to make any further contribution to the Project or payment to the Responsible Entity in respect of the Project, other than the payments required under clause 17.1.

24.2 Indemnity of each Participant Grower by Responsible Entity

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

24.3 No Indemnity by any Participant Grower

Despite any other provision of this Deed or provisions deemed to be included in this Deed, no Participant Grower will, by reason of this Deed or by reason of the relationship created under this Deed with the Responsible Entity, be under any obligation personally to indemnify the Responsible Entity in the event of there being any deficiency in relation to the Project except, in respect of the relevant Almondlots, out of any Application Moneys of the Participant Grower or other moneys held in the Agency Account in relation to the Participant Grower, or the payments required under clause 17.1.

**Almondlot Management
Agreement**

Timbercorp Securities Limited

**Each Several Participant Grower
named in the First Schedule to
this Agreement**

2007 Timbercorp Almond Project

10. NO LEASE OR LICENCE

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of Timbercorp Securities concerning the relevant Almondlots.

11. TIMBERCORP SECURITIES' FEES

11.1 Annual Fee and Charges Payable by Early Participant Growers

A Participant Grower who is an **Early Grower** must pay Timbercorp Securities the following management fees and charges in respect of the Orchard Services and all other services to be provided under this Agreement:

- (a) In consideration of the services described in clause 5.2 and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2007, an amount of \$6,363.63 per Almondlot payable in advance on or before the Commencement Date; and
- (b) In consideration of the Orchard Services and all other services to be provided under this Agreement in the period 1 July 2007 to 30 June 2008:
 - (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2007; and
 - (ii) for each Almondlot an amount equal to 3.25% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity;
- (c) In consideration of the Orchard Services and all other services to be provided under this Agreement in the period 1 July 2008 to 30 June 2009:
 - (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2008; and
 - (ii) for each Almondlot an amount equal to 3.5% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project from and including the 2013 Financial Year payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity; and
- (d) thereafter, in consideration of the Orchard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.2 Annual Fee and Charges Payable by Post 30 June Participant Growers

A Participant Grower who is a **Post 30 June Grower** must pay Timbercorp Securities the following management fees and charges in respect of the Orchard Services and all other services to be provided under this Agreement:

- (a) In consideration of the Orchard Services and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2008, an amount of \$7,727.27 per Almondlot payable in advance on or before the Commencement Date; and
- (b) In consideration of the Orchard Services and all other services to be provided under this Agreement in the period 1 July 2008 to 30 June 2009:

-
- (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2008; and
 - (ii) for each Almondlot an amount equal to 6.5% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity; and
 - (c) thereafter, in consideration of the Orchard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.3 Management Fees Payable by all Participant Growers

- (a) For each Financial Year after 30 June 2009 commencing on 31 October 2009 and each subsequent 31 October thereafter, Timbercorp Securities will be entitled to be paid in respect of all the Participant Grower's relevant Almondlots for the relevant Financial Year, the estimated costs of operating the relevant Almondlot (which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$50 per relevant Almondlot, Indexed (adopting 30 June 2007 as the base date)), as adjusted under paragraph 11.3(b).
- (b) Timbercorp Securities will:
 - (i) when notifying the Participant Grower under paragraph 11.3(a) of the estimated costs of operating the relevant Almondlots, notify the Participant Grower of its Participating Interest of the actual costs of Timbercorp Securities operating the relevant Almondlots for the preceding Financial Year, including overhead costs incurred by Timbercorp Securities or its contractors; and
 - (ii) adjust the estimated costs of operating the relevant Almondlots for the current Financial Year by the difference between the actual costs and the costs estimated by Timbercorp Securities under paragraph 11.3(a) for the preceding financial year unless the surplus per relevant Almondlot has been added, or the excess per relevant Almondlot has been deducted, from any distribution of Proceeds made to the Participant Grower following the end of the preceding Financial Year.

11.4 Responsible Entity to make certain payments

The Participant Grower agrees and acknowledges that the Responsible Entity is authorised to:

- (a) deduct from the Proceeds to which the Participant Grower is entitled, any amounts payable by the Participant Grower under this Agreement, the Sub-leases, the Project Documents and the Constitution including any amounts which are outstanding and in arrears; and
- (b) pay the deducted amounts to the persons entitled to them.

11.5 Incentive Fee

- (a) Timbercorp Securities will be entitled to be paid as an incentive fee in a Financial Year by the Participant Grower out of, and immediately prior to, any distribution 25% of so much of the annual Net Proceeds received by the Participant Grower in a Financial Year as exceeds the Incentive Fee

Sub-lease

Almond Land Pty Ltd

Timbercorp Securities Limited

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

2007 Timbercorp Almond Project

[Westmores Sub-lease – Post 30 June Growers]

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

on or before the Commencement Date in respect of the relevant Westmores Land Lots.

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

A Participant Grower must pay to Timbercorp Securities the following rent per Westmores Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 payable on or before the Commencement Date and 31 October 2008 respectively;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
 - (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
 - (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.
-

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Westmores Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Westmores Land Lots;
- (b) use the relevant Westmores Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Westmores Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Westmores Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Westmores Land Lots from time to time with or without equipment for the purposes of observing the state of the Westmores Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Westmores Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Westmores Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Westmores Land Lots adjoining the Westmores Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their

Sub-lease

Almond Land Pty Ltd

Timbercorp Securities Limited

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

2007 Timbercorp Almond Project

**[Menegazzo Property]
POST 30 JUNE GROWERS**

**PLEASE NOTE
THIS IS THE NEW SUB-LEASE FOR POST 30 JUNE
GROWERS**

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9800 3525
Facsimile: 9800 3527

- (b) is entitled to full and free access with or without vehicles to the relevant Menegazzo Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
 - (c) may at its own expense erect and maintain a sign on the Menegazzo Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.
-

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

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

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

A Participant Grower must pay to Timbercorp Securities the following rent per Menegazzo Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 payable on or before the Commencement Date and 31 October 2008 respectively;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace

it as the new "CPI".

- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Menegazzo Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Menegazzo Land Lots;
- (b) use the relevant Menegazzo Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Menegazzo Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Menegazzo Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Menegazzo Land Lots from time to time with or

Deed of Variation

**Modifying the Sub-lease - Menegazzo
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

Please note this Deed of Variation applies to both the Menegazzo Sub-lease Early Growers AND Post 30 June Growers for which separate Sub-leases are attached to this Deed.

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

(a) A Participant Grower must pay to Timbercorp Securities the following rent per Menegazzo Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Menegazzo Proportion payable on 31 October 2007 and 2008;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Menegazzo Proportion payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64 multiplied by the Menegazzo Proportion, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
 - (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
 - (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.
-

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Menegazzo Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Menegazzo Land Lots;
- (b) use the relevant Menegazzo Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Menegazzo Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Menegazzo Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Menegazzo Land Lots from time to time with or without equipment for the purposes of observing the state of the Menegazzo Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Menegazzo Land Lots adjoining the Menegazzo Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Menegazzo Land Lots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the

Deed of Variation

**Modifying the Sub-lease - Annuello
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

- (a) A Participant Grower must pay to Timbercorp Securities the following rent per Annuello Land Lot:
 - (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Annuello Proportion payable on 31 October 2007 and 2008;
 - (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Annuello Proportion payable on 31 October 2009, 2010 and 2011;
 - (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,483.64 multiplied by the Annuello Proportion, payable on 31 October 2012; and
 - (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Annuello Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Annuello Land Lots;
- (b) use the relevant Annuello Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Annuello Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Annuello Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Annuello Land Lots from time to time with or without equipment for the purposes of observing the state of the Annuello Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Annuello Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Annuello Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Annuello Land Lots adjoining the Annuello Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Annuello Land Lots, but such rights of access are limited to the unimpeded use of any

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**

"MAK-6"

2007 Almond Scheme - Forecast 2010 Harvest Result

2007 Timbercorp Almond Project (ARSN 122 511 040)

Net Sales	8,952,801	811,410	3,718,754	13,482,965
Less: JV Partners Share	0	0	0	0
Grower's Gross Proceeds	8,952,801	811,410	3,718,754	13,482,965
TIM Mgmt Fee	(604,314)	(54,770)	(281,016)	(910,100)
Admin Fee	(593,688)	(58,805)	(246,593)	(894,065)
Operating Costs	(21,660,437)	(1,963,127)	(8,997,166)	(32,620,730)
Temp Water	(2,595,054)	(235,185)	(1,077,916)	(3,908,165)
Licence Fee	(7,576,800)	(686,700)	(3,147,200)	(11,410,700)
Total Operating Expenditure	(33,030,272)	(2,993,597)	(13,719,891)	(49,743,760)
Net Operating Cashflow (excl capex)	(24,077,471)	(2,182,188)	(10,001,137)	(36,260,795)
Water Capital Expenditure	(21,302,569)	(1,709,365)	(7,834,151)	(30,846,085)
Non Water Capital Expenditure	(7,665,544)	(836,938)	(3,835,983)	(12,338,515)
Total Capital Expenditure	(28,968,113)	(2,546,353)	(11,670,134)	(43,184,600)
Net Operating Cashflow (incl capex)	(53,045,584)	(4,728,541)	(21,671,271)	(79,445,395)

2010 Crop Variables

a	Kilograms per Hectare (4 lots per hectare)	650	650	650
b	Net Sales Price (Kg) \$	5.09	5.09	5.09
c	Permanent Water Right Allocation	40%	40%	40%
c	Temporary Water Price \$ per ML	350	350	350
d	Sold Lots	10,824	981	4,496
d	Sold Area (Ha)	2,706	245	1,124
e	TIM Variable Mgmt Fee (PDS)	6.75%	6.75%	6.75%
f	JV Share	0.00%	0.00%	0.00%
g	Base Admin Fee per Lot (adjusted annually for CPI from Project c'ment)	50	50	50
h	Licence Fee per Lot (FY10 Rate per PDS)	700	700	700
i	CPI Assumption	2.5%	2.5%	2.5%

Net Operating Cashflow Incurred to Date

Operating Cashflow before Tax	(68,880,039)			(68,880,039)
2007	(19,685,543)	(7,920,011)	(36,785,508)	(64,391,062)
2008	(19,680,197)	(1,783,654)	(8,174,627)	(29,638,478)
2009				
Total	(108,245,779)	(9,703,665)	(44,960,135)	(162,909,579)
Almondlots	10,824	981	4,496	16,301
By Almondlot	(6,364)			(4,226)
2007	(1,819)	(8,073)	(8,182)	(3,950)
2008	(1,818)	(1,818)	(1,818)	(1,818)
2009				
Total	(10,001)	(9,892)	(10,000)	(9,994)

**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**

2007 Timbercorp Almond Project (ARSN 122 511 040)

Project: 2007 Almond Early – 10,824 lots

Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding
	\$1,285,963	\$21,648,000	\$1,147,399	5%

Timbercorp Finance Funding

Amount Borrowed	Value of loans in arrears	% of loans in arrears
\$29,323,079	\$10,313,572	35.1%

Percentage of growers with loans¹ 49.8%

	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value
Failed Direct Debits	80	\$41,154	264	\$115,586

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	▪ 32

Project: 2007 Almond Post June – 981 lots

Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding
	\$198,938	\$1,962,000	\$198,938	10%

Timbercorp Finance Funding

Amount Borrowed	Value of loans in arrears	% of loans in arrears
\$4,600,493	\$1,899,945	41.2%

Percentage of growers with loans¹ 79.1%

	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value
Failed Direct Debits	3	\$2,193	9	\$12,011

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	▪ 0

2007 Timbercorp Almond Project (ARSN 122 511 040)

Project: 2008 FinYr Almond – 4,496 lots

Grower Obligations	Total Arrears	Amount Invoiced (Oct 2008)	Amount Outstanding	% Outstanding
	\$265,207	\$18,992,000	\$265,207	3%

Timbercorp Finance Funding

Amount Borrowed	Value of loans In arrears	% of loans In arrears
\$14,924,325	\$1,901,625	12.7%

Percentage of growers with loans¹ 77.8%

	Pre Appointment (March) #	Pre Appointment Value	Post Appointment (May) #	Post Appointment Value
Failed Direct Debits	8	\$4,783	24	\$22,283

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	▪ 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 CHESSEY
Second and Third Plaintiffs**

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: June 2009
Filed on behalf of: the Plaintiffs
Arnold Bloch Leibler
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Level 21
333 Collins Street
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Solicitor's Code: 54
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**

2007 Timbercorp Almond Project (AR\$122.511.040) - 2007 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	2025	2026	2027	2028	2029	2030	2031	2032
Base \$ per kg	-\$1,747.54	-\$3,416.88	-\$4,009.66	(2,802)	(2,239)	(1,419)	(1,228)	(419)	53	457	774	823	854	881	908	936	965	994	1,025	1,056	1,087	1,120	1,153	1,188	7,203	885
4.00	-\$18,499.43	-\$14,039.68	-\$11,217.50	(2,835)	(2,597)	(2,352)	(2,613)	(2,280)	(2,031)	(1,864)	(1,748)	(1,760)	(1,799)	(1,839)	(1,879)	(1,921)	(1,963)	(2,007)	(2,052)	(2,098)	(2,145)	(2,193)	(2,242)	(2,293)	4,001	828
5.00	-\$12,254.89	-\$9,067.47	-\$8,513.04	(2,819)	(2,434)	(1,983)	(2,083)	(1,569)	(1,259)	(974)	(809)	(803)	(817)	(832)	(848)	(864)	(880)	(896)	(911)	(928)	(945)	(962)	(980)	(1,005)	5,183	660
6.00	-\$8,010.98	-\$6,095.65	-\$5,808.57	(2,803)	(2,271)	(1,619)	(1,594)	(939)	(407)	(111)	321	153	164	174	184	194	204	214	224	236	247	259	271	283	6,570	762
7.00	-\$2,941.18	-\$2,129.63	-\$3,104.11	(2,787)	(2,109)	(1,293)	(1,069)	(219)	283	753	1,051	1,113	1,145	1,180	1,215	1,251	1,287	1,325	1,363	1,403	1,443	1,483	1,527	1,571	7,555	924
8.00	\$4,478.72	\$1,848.38	-\$392.63	(2,772)	(1,948)	(897)	(534)	451	1,056	1,621	1,981	2,070	2,128	2,186	2,246	2,308	2,371	2,435	2,500	2,570	2,640	2,711	2,784	2,859	8,740	1,056
9.00	\$12,723.26	\$5,620.40	\$2,304.81	(2,756)	(1,783)	(829)	(40)	1,121	1,628	2,487	2,511	2,028	2,109	2,191	2,275	2,363	2,453	2,546	2,640	2,737	2,836	2,937	3,041	3,147	9,025	1,128

2007 Timbercorp Almond Project (AR\$122.511.040) - 2007 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	2025	2026	2027	2028	2029	2030	2031	2032
-15%	-\$3,203.70	-\$5,320.91	-\$3,118.52	(2,802)	(2,239)	(1,419)	(1,228)	(419)	53	484	87	30	26	42	49	55	62	69	76	83	91	99	107	115	6,122	752
Base	-\$1,747.54	-\$3,416.88	-\$4,009.66	(2,802)	(2,239)	(1,419)	(1,228)	(419)	53	457	774	823	854	881	908	936	965	994	1,025	1,056	1,087	1,120	1,153	1,188	7,203	885
15%	\$1,708.63	-\$1,512.80	-\$2,800.81	(2,802)	(2,139)	(1,419)	(1,228)	(419)	53	811	1,461	1,626	1,672	1,719	1,767	1,817	1,868	1,920	1,973	2,028	2,084	2,141	2,200	2,261	8,283	1,018

2007 Timbercorp Almond Project (AR\$122.511.040) - 2007 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	2025	2026	2027	2028	2029	2030	2031	2032
Base	-\$1,747.54	-\$3,416.88	-\$4,009.66	(2,802)	(2,239)	(1,419)	(1,228)	(419)	53	457	774	823	854	881	908	936	965	994	1,025	1,056	1,087	1,120	1,153	1,188	7,203	885
40%	-\$9,678.80	-\$5,383.92	-\$3,418.99	(2,802)	(2,319)	(1,683)	(1,666)	(836)	(383)	60	337	330	416	443	470	499	527	557	587	618	650	683	716	750	7,203	885
60%	-\$3,635.06	-\$4,643.15	-\$4,852.33	(2,781)	(2,220)	(1,526)	(1,534)	(723)	(281)	161	458	521	548	574	602	630	658	688	718	749	781	814	847	881	7,203	885
80%	-\$2,538.18	-\$4,143.02	-\$4,478.93	(2,655)	(2,134)	(1,447)	(1,447)	(333)	(154)	278	533	629	633	651	683	717	748	778	806	837	869	901	933	969	7,203	885

Notes

- NPV assessments are based on Timbercorp management's cashflow model for each project.
- Per Timbercorp management, the average forecast price for the 2009 almond crop is \$3.09 per kilogram.
- The base case yield assumes trees mature in 2016 and produce 864.79 kilograms per lot.
- Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
- NPV's are from the growers perspective, based on current agreements and assume that all CAPEX is in place. However, CAPEX of \$56.28m for permanent water rights and \$13.56m for other CAPEX 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.

"MARK-8"

2007 Timbercorp Almond Project (AR\$M 122 \$11 040) - 2007 Almonds Post June 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	2025	2026	2027	2028	2029	2030	2031	2032
Base	-\$1,747.54	-\$3,418.88	-\$4,009.66	(2,802)	(2,289)	(1,419)	(1,228)	(419)	53	497	774	828	854	881	908	936	963	994	1,025	1,056	1,087	1,120	1,153	1,188	7,203	835
\$ per kg				6.00	6.70	7.04	7.21	7.53	7.58	7.77	7.96	8.16	8.38	8.57	8.79	9.01	9.23	9.45	9.70	9.94	10.19	10.44	10.71	10.97	10.97	10.97
4.00	-\$18,459.43	-\$14,039.68	-\$11,217.50	(2,835)	(2,597)	(1,352)	(2,618)	(2,280)	(2,031)	(1,646)	(1,740)	(1,750)	(1,795)	(1,839)	(1,879)	(1,921)	(1,963)	(2,007)	(2,052)	(2,098)	(2,145)	(2,193)	(2,242)	(2,293)	4,001	828
5.00	-\$12,294.89	-\$10,067.67	-\$8,513.04	(2,819)	(2,434)	(1,983)	(2,050)	(1,550)	(1,259)	(978)	(809)	(803)	(817)	(832)	(848)	(864)	(880)	(896)	(913)	(931)	(949)	(967)	(986)	(1,005)	5,183	660
6.00	-\$6,010.96	-\$3,093.63	-\$3,808.57	(2,803)	(2,271)	(1,619)	(1,585)	(900)	(489)	(311)	121	153	164	174	184	194	204	214	224	234	247	259	271	285	8,370	782
7.00	\$294.38	-\$2,123.63	-\$3,104.11	(2,787)	(2,195)	(1,253)	(1,069)	(219)	289	759	1,051	1,113	1,148	1,180	1,213	1,251	1,287	1,325	1,363	1,403	1,443	1,483	1,523	1,571	7,833	924
8.00	\$6,478.22	\$1,643.38	-\$399.83	(2,772)	(1,996)	(857)	(534)	431	1,056	1,682	1,981	2,090	2,123	2,148	2,246	2,308	2,371	2,436	2,501	2,570	2,640	2,711	2,784	2,859	8,740	1,056
9.00	\$12,723.26	\$3,620.40	\$2,304.81	(2,758)	(1,793)	(820)	(60)	1,121	1,828	2,487	2,911	3,028	3,109	3,192	3,278	3,365	3,453	3,546	3,640	3,737	3,836	3,937	4,041	4,147	9,029	1,188

2007 Timbercorp Almond Project (AR\$M 122 \$11 040) - 2007 Almonds Post June																										
Mature Yield	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
-15%	-\$3,203.78	-\$5,820.91	-\$5,118.52	(2,802)	(2,239)	(1,419)	(1,228)	(419)	53	484	87	80	88	42	49	53	62	69	78	85	91	99	107	115	6,122	752
Base	-\$1,747.54	-\$3,418.88	-\$4,009.66	(2,802)	(2,239)	(1,419)	(1,228)	(419)	53	497	774	828	854	881	908	936	963	994	1,025	1,056	1,087	1,120	1,153	1,188	7,203	835
15%	\$1,708.69	-\$1,512.80	-\$2,900.81	(2,802)	(2,239)	(1,419)	(1,228)	(619)	85	511	1,461	1,636	1,672	1,710	1,757	1,817	1,868	1,920	1,973	2,028	2,084	2,141	2,200	2,261	8,283	1,018

2007 Timbercorp Almond Project (AR\$M 122 \$11 040) - 2007 Almonds Post June Temporary Water for 40%, 60% and 80% scenarios @ \$150 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	2025	2026	2027	2028	2029	2030	2031	2032
Base	-\$1,747.54	-\$3,418.86	-\$4,009.66	(2,802)	(2,289)	(1,419)	(1,228)	(419)	53	497	774	828	854	881	908	936	963	994	1,025	1,056	1,087	1,120	1,153	1,188	7,203	835
40%	-\$4,672.80	-\$3,388.92	-\$3,418.99	(2,802)	(2,319)	(1,603)	(1,650)	(856)	(353)	60	337	390	418	443	470	499	527	557	587	618	650	683	716	750	7,203	835
60%	-\$3,631.06	-\$4,643.83	-\$4,832.83	(2,781)	(2,220)	(1,526)	(1,534)	(725)	(251)	181	468	521	548	574	602	630	658	688	718	749	781	814	847	881	7,203	835
80%	-\$2,885.18	-\$4,143.02	-\$4,478.59	(2,635)	(2,154)	(1,447)	(1,447)	(638)	(196)	276	555	629	633	682	689	717	746	776	806	837	869	901	935	969	7,203	835

Notes

- NPV assessments are based on Timbercorp managements cashflow model for each project.
- Per Timbercorp management, the average forecast price for the 2009 almond crop is \$3.09 per kilogram.
- The base case yield assumes trees mature in 2016 and produce 694.75 kilograms per lot.
- Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
- NPV's are from the growers perspective, based on current agreements and assume that all CAPEX is in place. However, CAPEX of \$4.61m for permanent water rights and \$1.48m for other CAPEX 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.

2007 Timbercorp Almond Project (ARSN 122 511 040) - 2008 Fatty Almonds 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	2025	2026	2027	2028	2029	2030	2031	2032
Base \$ per kg	-\$1,747.54	-\$3,418.88	-\$4,009.58	(2,802)	(2,289)	(1,418)	(1,228)	(419)	53	497	774	828	854	881	908	938	965	994	1,025	1,058	1,097	1,130	1,158	1,188	7,203	883
				8.08	6.70	7.04	7.21	7.39	7.58	7.77	7.98	8.18	8.35	8.52	8.70	8.91	9.23	9.48	9.70	9.94	10.19	10.44	10.71	10.97	10.97	10.97
4.00	-\$18,459.43	-\$14,058.88	-\$11,217.50	(2,335)	(2,537)	(2,332)	(2,613)	(2,220)	(2,031)	(1,844)	(1,740)	(1,780)	(1,799)	(1,830)	(1,878)	(1,921)	(1,968)	(2,007)	(2,052)	(2,098)	(2,143)	(2,189)	(2,242)	(2,293)	4,001	524
5.00	-\$12,284.89	-\$10,067.67	-\$8,513.04	(2,810)	(2,494)	(1,883)	(2,098)	(1,500)	(1,239)	(978)	(800)	(603)	(417)	(332)	(248)	(164)	(80)	(86)	(91)	(96)	(101)	(106)	(111)	(116)	1,005	680
6.00	-\$8,010.38	-\$6,053.63	-\$3,808.57	(2,809)	(2,271)	(1,618)	(1,534)	(830)	(487)	(111)	121	183	194	174	184	194	204	214	225	236	247	259	271	283	8,370	794
7.00	-\$294.18	-\$2,123.61	-\$3,104.11	(2,787)	(2,105)	(1,288)	(1,069)	(213)	283	753	1,051	1,113	1,146	1,180	1,215	1,257	1,295	1,332	1,408	1,443	1,488	1,537	1,571	7,533	924	
8.00	-\$1,678.71	-\$1,848.33	-\$189.63	(2,772)	(1,948)	(887)	(594)	481	1,035	1,621	1,881	2,070	2,128	2,185	2,240	2,302	2,371	2,436	2,502	2,580	2,640	2,711	2,784	2,859	8,740	1,054
9.00	\$12,723.26	\$3,820.40	\$2,804.61	(2,256)	(1,785)	(520)	(47)	1,121	1,828	2,457	2,911	3,225	3,509	3,762	3,975	4,155	4,348	4,546	4,660	4,787	4,938	5,097	5,261	5,427	9,925	1,128

2007 Timbercorp Almond Project (ARSN 122 511 040) - 2008 Fatty Almonds																										
Mature Yield	NPV (10%)	NPV (15%)	NPV (20%)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
-15%	-\$3,201.76	-\$5,820.81	-\$5,118.52	(2,802)	(2,289)	(1,418)	(1,228)	(419)	53	494	87	80	38	42	45	53	62	69	76	83	91	99	107	115	8,322	752
Base	-\$1,747.54	-\$3,418.88	-\$4,009.58	(2,802)	(2,289)	(1,418)	(1,228)	(419)	53	497	774	828	854	881	908	938	965	994	1,025	1,058	1,097	1,130	1,158	1,188	7,203	883
15%	-\$1,708.68	-\$3,132.81	-\$2,900.81	(2,802)	(2,289)	(1,418)	(1,228)	(419)	53	511	1,461	1,826	1,872	1,719	1,767	1,813	1,868	1,920	1,978	2,028	2,084	2,141	2,200	2,261	8,233	1,611

2007 Timbercorp Almond Project (ARSN 122 511 040) - 2008 Fatty Almonds 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	2025	2026	2027	2028	2029	2030	2031	2032
Base	-\$1,747.54	-\$3,418.88	-\$4,009.58	(2,802)	(2,289)	(1,418)	(1,228)	(419)	53	497	774	828	854	881	908	938	965	994	1,025	1,058	1,097	1,130	1,158	1,188	7,203	883
40%	-\$4,674.80	-\$3,338.82	-\$3,418.59	(2,802)	(2,819)	(1,643)	(1,688)	(536)	(383)	50	837	890	416	493	490	493	527	537	537	618	650	683	716	750	7,203	883
60%	-\$1,613.06	-\$4,643.35	-\$4,632.35	(2,781)	(1,220)	(1,526)	(1,534)	(725)	(251)	131	468	821	548	874	602	830	830	683	718	749	781	814	847	881	7,203	883
80%	-\$2,021.18	-\$4,143.02	-\$4,638.08	(2,633)	(2,154)	(1,447)	(1,447)	(538)	(156)	278	833	809	615	682	683	717	748	775	808	837	869	901	933	969	7,203	883

Notes

- NPV assessments are based on Timbercorp management's cashflow model for each project.
- Per Timbercorp management, the average forecast price for the 2009 almond crop is \$5.09 per kilogram.
- The base case yield assumes trees mature in 2015 and produce 854.75 kilograms per lot.
- Water allocation base case (40% in 2010, 60% in 2011, 80% in 2012 and 100% from 2013 and beyond).
- NPVs are from the grower's perspective, based on current agreements and assume that all CAPEX is in place. However, CAPEX of \$12.03m for permanent water rights and \$6.77m for other CAPEX 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

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"

Custody Agreement

2007 Timbercorp Almond Project

Timbercorp Securities Limited

Trust Company Limited

2007 Timbercorp Almond Project

[EXECUTION COPY]

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000
Telephone: 0600 3525
Facsimile: 0600 3527

-
- (a) it is the only responsible entity of the Scheme and no action has been taken or is proposed to remove it as responsible entity of the Scheme;
 - (b) it is not in default under the terms of the Constitution or the Corporations Act 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.
-

10. TERM AND TERMINATION

10.1 Minimum Term of Agreement

- (a) Subject to paragraph 10.1(b) and 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.
- (b) Either party upon giving to the other party notice for no less than the notice period specified in Schedule 5 may terminate this Agreement.

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 the Responsible Entity (in which case Trust Company may terminate this Agreement in relation to the Scheme) or as a provider of custodial services in the case of Trust Company;
 - (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 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 Trust Company if ASIC or a Court having jurisdiction makes a written order vesting any property of the Responsible Entity in relation to the Scheme in ASIC or some other body other than the Responsible Entity.

10.3 Termination Does Not Affect Claims

- (a) The termination of this Agreement does not affect any claim which either party may have against the other.
- (b) Subject to this Agreement, on termination of this Agreement Trust Company must, at the expense of the Responsible Entity, promptly transfer the Scheme Assets to or according to the instructions of the Responsible Entity (subject to any contrary direction given to Trust Company which has the lawful effect of overriding this provision), and the Responsible Entity agrees promptly to accept the transfer or give the necessary instructions for the transfer of those assets. Trust Company must also, at the expense of the Responsible Entity, promptly deliver any documents evidencing title to those assets which it is holding, to or according to the instructions of the Responsible Entity. Despite the provisions of this clause, Trust Company may retain any assets which it is lawfully permitted to retain in the exercise of its rights under this Agreement.
- (c) Upon termination of this Agreement pursuant to paragraph 10.2(c), Trust Company will act upon the instructions of ASIC or an entity properly appointed in relation to the Scheme to the exclusion of the rights of the Responsible Entity 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 the Responsible Entity.

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 the Responsible Entity in relation to the Scheme in another person, Trust Company may upon the receipt of notice of such vesting order, disregard any future instructions of the Responsible Entity in relation to the Scheme and any existing instructions of the Responsible Entity 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.

11. 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) The Responsible Entity agrees to bear any stamp duty payable or assessed in connection with this Agreement and the transfer of any property to Trust Company to form part of the Scheme Assets.
-

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 2007 Almond Project.

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

**Almondlot Management
Agreement**

Timbercorp Securities Limited

**Each Several Participant Grower
named in the First Schedule to
this Agreement**

2007 Timbercorp Almond Project

Timbercorp Securities granting time, waiver or other indulgence to, compounding or compromising with, or wholly or partially releasing, one of the Joint Venturers in any way, from any obligation under this Agreement does not:

- (a) cause the other Joint Venturers' obligations and liabilities under this Agreement to be reduced or avoided;
- (b) prejudicially affect Timbercorp Securities' rights against the other Joint Venturers' under this Agreement.

1.7 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.8 Almondlot Management Agreement is not Project Property

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

2. COMMENCEMENT AND TERM OF THIS AGREEMENT

2.1 Term

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clause 2.1(c) and clause 2.2, this Agreement will continue until the date on which the Responsible Entity completes of all of its contractual obligations to the Participant Grower in relation to the sale of the Almonds harvested in the financial year ending 30 June 2030.
- (c) Notwithstanding clause 2.1(b), this Agreement will terminate forthwith upon the occurrence of any of the following possible events:
 - (i) the Project is terminated;
 - (ii) the Participant Grower's participation in the Project is terminated;
 - (iii) the Sub-lease is terminated;
 - (iv) the events specified in clauses 15.1 to 15.3.

2.2 Extension of Term

Timbercorp Securities may, by notice in writing to Participant Growers, extend the Term for a further period:

- (a) on the same terms and conditions as are contained in this Agreement other than this clause 2.2; and
- (b) until the Responsible Entity completes of all of its contractual obligations to the Participant Grower in relation to the sale of the Almonds harvested in the financial year ending 30 June 2032,

if:

- (c) before 30 June 2029, the Internal Rate of Return to a Participant Grower is not equal to or greater than 9.5% after tax; and

-
- (d) the Project has not been terminated before 30 June 2030 in any manner contemplated in clause 2.1(c); and
 - (e) the Responsible Entity is reasonably satisfied that it is in the best interests of Participating Growers to extend the Term in the manner described above.
-

3. RELATIONSHIP OF THE PARTIES

3.1 No Partnership etc

The relationship amongst the Participant Growers and between the Participant Growers and Timbercorp Securities is not, is not intended to be, is not deemed to be and is not to be treated as, a partnership association or a joint venture, other than the Joint Venture which may comprise a Participant Grower.

3.2 Project

The parties expressly agree and acknowledge that:

- (a) each party is an independent contracting party; and
 - (b) no party has any authority or power for or on behalf of any other party to enter into any contract, to pledge any credit, to incur any liabilities, to assume any obligations or to make any warranties or representations whatsoever except as specifically provided by this Agreement.
-

4. APPOINTMENT OF TIMBERCORP SECURITIES

4.1 Engagement of Timbercorp Securities

The Participant Grower engages Timbercorp Securities 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 Participant Grower and perform the Orchard Services.

4.2 Timbercorp Securities to Carry out Orchard Services as Independent Contractor

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

4.3 Authority to Act

Timbercorp Securities does not have any authority to act for, or to assume any obligation or liability on behalf of, the Participant Grower except such authority as is conferred on Timbercorp Securities by this Agreement or the Constitution.

4.4 Performance of Obligations

- (a) Subject to this Agreement, Timbercorp Securities must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and conduct the Project Operations:
 - (i) in a commercially reasonable manner;

conducting the Project Operations, subject to the express terms and conditions of this Agreement.

13.5 Reports

Within 5 months after the end of each Financial Year during this Agreement Timbercorp Securities will send a report to the Participant 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 Participant Grower's Almondlots and Almond Trees;
- (c) any other matters which Timbercorp Securities considers material concerning the Orchard, the relevant Almondlots or the Project and which ought reasonably to be made known to the Participant Grower; and
- (d) any other matter reasonably requested by the Participant 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, Timbercorp Securities will send to the Participant Grower an annual statement of income and expenses relating to the management of the relevant Almondlots and the sale of the Participant Grower's Participating Interest in the Product or Crop during the relevant Financial Year.

14. DISTRIBUTIONS

14.1 Distribution of Proceeds to the Participant Growers

Subject to this Agreement, Timbercorp Securities as the Responsible Entity must pay to the Participant Grower the amount of Proceeds standing to the credit of the Participant Grower in the Agency Account in accordance with the Constitution and comply with this Agreement in those respects in its personal capacity.

15 TERMINATION AND DEFAULT

15.1 Termination by the Participant Grower

The Participant Grower may terminate this Agreement by notice in writing to Timbercorp Securities:

- (a) immediately, if Timbercorp Securities:
 - (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 Timbercorp Securities or any part of its undertaking;
 - (ii) ceases to carry on business; or
 - (iii) fails or neglects to pay any moneys due to the Participant 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 Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied (except where

Timbercorp Securities has advised the Participant Grower 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 Timbercorp Securities and the Participant Growers agree) after the Participant Growers by Special Resolution at a meeting of Participant Growers resolve to terminate the engagement of Timbercorp Securities under the Agreement.

15.2 Termination by Timbercorp Securities

- (a) Subject to paragraph 15.2(c) and without prejudice to Timbercorp Securities rights under this Agreement, Timbercorp Securities may terminate this Agreement, with immediate effect in respect of all the Almondlots of the Participant Grower, if the Participant Grower fails to make a payment within the required time under this Agreement in relation to any Almondlot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Almondlot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower specifying the breach and requiring the Participant Grower to remedy the breach.
- (b) If this Agreement is terminated under paragraph 15.2(a) or in accordance with clause 15.2(c), then:
 - (i) the Participant Grower loses all rights as a participant in the Project; and
 - (ii) the Participant Grower remains liable for payment of all fees in respect of work done by Timbercorp Securities.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

15.3 Termination of Sub-leases

This Agreement terminates in respect of the relevant Almondlots immediately if the Sub-leases are terminated in respect of the relevant Almondlots for any reason.

15.4 Timbercorp Securities to Relinquish Property and Books and Records

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

15.5 Effect of Termination

- (a) The termination of this Agreement (whether under this clause 15 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.

**2007 Timbercorp Almond
Project**

Management Agreement

Timbercorp Securities Limited

Almond Management Pty Ltd

2007 Timbercorp Almond Project

2.2 Termination Date

Subject to clause 15, this Agreement will terminate on the earlier of:

- (a) termination of the Project; and
- (b) the date on which the Responsible Entity completes all of its contractual obligations to the Growers in relation to the sale of Almonds harvested in the financial year ending:
 - (i) 30 June 2030; or
 - (ii) if the Project is extended under clause 2.2 of the Almondlot Management Agreement, 30 June 2032.

3. APPOINTMENT OF ALMOND MANAGEMENT

3.1 Engagement of Almond Management

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

3.2 Almond Management to Carry Out Orchard Services as Independent Contractor

The parties agree and acknowledge that:

- (a) Almond Management will carry out the Orchard Services as an independent contractor and not as agent or contractor of the Grower;
- (b) Almond Management has no recourse in any circumstances whatsoever to a Grower or to assets of the Grower or the Project, including the proceeds from the sale of the Crop or Product, for any fees, expenses or amounts due to Almond Management from TSL under this Agreement.

3.3 Authority to Act

Almond Management does not have any authority to act for, or to assume any obligation or liability on behalf of, the Grower or the Growers except such authority as is conferred on Almond Management by this Agreement or the Constitution.

3.4 Performance of Obligations

- (a) Subject to this Agreement, Almond Management must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and conduct the Project Operations:
 - (i) in a commercially reasonable manner;
 - (ii) honestly;
 - (iii) generally in accordance with Best Horticultural Practice which are generally recognised and adopted in Australia and are known and acceptable to Almond Management and suitable for use on the Orchard; and
 - (iv) in the best interests of all the Growers and not in the interests of Almond Management if those interests are not the same as those of the Growers.

14. ORCHARD MANAGEMENT FEES

14.1 Fees Payable to Almond Management

In consideration of the Orchard Services and all other services to be provided by Almond Management under this Agreement, TSL will pay to Almond Management the following fees:

- (a) in respect of the period commencing on the Commencement Date and ending on 30 June 2007 an amount per Almondlot to be agreed between the parties payable on or before 30 June 2007 provided that the fee must be no less than \$1,772 per Almondlot; and
- (b) in respect of the period 1 July 2007 to 30 June 2008 - an amount per Almondlot to be agreed between the parties payable on or before 30 June 2008; and
- (c) in respect of the period 1 July 2008 to 30 June 2009 - an amount per Almondlot to be agreed between the parties payable on or before 30 June 2009; and
- (d) thereafter, in respect of each subsequent Financial Year during the Term, an amount per Almondlot calculated by Almond Management as the reasonable costs of managing the Almondlots payable on or before 30 June during that respective Financial Year.

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

15. TERMINATION

15.1 Termination of Agreement by TSL or Almond Management

Either party may terminate this Agreement if the other party commits a breach of any of its obligations under this Agreement and the default has not been remedied within 30 days after receiving notice notifying it of the breach and requesting it to be remedied.

15.2 Termination by TSL

TSL may terminate this Agreement without notice in its absolute discretion if at any time it considers such termination to be in the interests of the Growers of the Project.

15.3 Change of Responsible Entity

- (a) This Agreement will terminate immediately if TSL ceases to be the single responsible entity of the Project for any reason.
- (b) Immediately prior to:
 - (i) a meeting of Growers being called relating to the retirement or removal of TSL from the office of single responsible entity of the Project and a resolution being passed to that effect;
 - (ii) an application being made to the Court for the appointment of a temporary responsible entity to replace TSL; or

(iii) this Agreement being terminated under this clause 15,

TSL will be deemed to have exercised any rights of step-in which it is entitled to exercise under any contract between Almond Management and Select Harvests Limited (ACN 000 721 380) or any other contractor relating to the Orchard Services and other services under this Agreement.

15.4 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. The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.

16. INDEMNITY

Subject to this Agreement and the law, Almond Management must indemnify and keep indemnified TSL against any liability, demand, loss, costs, charges and expenses which may be incurred by TSL as a result of any breach of Almond Management's obligations under this Agreement, or any neglect or fraud on the part of Almond Management or any of its employees, servants or agents.

17. GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate in force from time to time.
- (c) The GST payable under paragraph 17(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 17(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.

Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen Street, Melbourne (DX 217)

Ref: A60529 (2007 'Menegazzo')

Customer Code: 1608A



AE758724V

30/11/2006 \$134.60 66



The Lessor leases to the Lessee the land for the term and yearly rental specified subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this lease and subject to the covenants and conditions contained in this lease.

Land: (volume and folio reference)

The land described in the following Certificates of Title:

Vol. 7246 Fol. 813 **VOL 7420 Fol 613** ✓

Vol. 8454 Fol. 067

Vol. 9491 Fol. 231

Vol. 7678 Fol. 095

Vol. 9210 Fol. 031

Vol. 9193 Fol. 257

Vol. 9746 Fol. 465

Vol. 9421 Fol. 203

Vol. 10950 Fol. 378

Lessor: (full name)

ALMOND LAND PTY LTD ACN 091 460 392 Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Lessee: (full name and address including postcode)

TIMBERCORP SECURITIES LTD ACN 092 311 469 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Term: (number of years, or commencement to completion date)

from the Commencement Date to 30 June 2032

Commencement date:

15 November 2006

Rental:

\$3,763,674

Covenants: (set out any further covenants and conditions and the extent (if any) to which the covenants and powers implied under the Transfer of Land Act 1958 are to be negated or modified)

As appears from the annexure of 14 pages, making 15 in total

Dated: **15 November 2006**

The signing clauses for the Lessor and the Lessee are on the annexure pages





ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 9 of *Approved Form 26 (Lease)* dated 15 November 2006 between ALMOND LAND PTY LTD ACN 091 460 392 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:

			
for and on behalf of Timbercorp Securities Limited		For and on behalf of Almond Land Pty Ltd	
Robert James Hance	Mark Hamilton Pryn	Robert James Hance	Mark Hamilton Pryn

11. TERMINATION

- 11.1. If the Project ends then this Lease is automatically terminated and the Lessor and the Lessee appoint each other as their attorney to do all things and sign all documents necessary to give effect to the termination of this Lease under this clause 11.
- 11.2. Despite any other provision of this Lease, in the event that a Grower ceases to participate in the Project due to a termination of its Almondlot Management Agreement, Sub-Lease (Menegazzo) and other Project sub-leases ("Past Grower"):
- (a) with the consent of the Lessor, the Lessee may sub-underlease or licence the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Sub-Lease (Menegazzo), with the intent that the Lessee will no longer be able to have the benefit of this Lease in respect of that part of the Land after termination;
 - (b) the sub-underleasing or licencing to the Lessor of part of the Land under this paragraph 11.2 is without prejudice to any rights and obligations that may have accrued prior to the effective date of the sub-underlease or licence as to that part of the Land.

Approval No. 330056A

A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the Annexure Page under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE IS NOT TO BE USED**
2. If multiple copies of a mortgage are lodged, original Annexure Pages must be attached to each.
3. The Annexure Pages must be properly identified and signed by the parties in the Approved Form to which it is attached.
5. All pages must be attached together by being stapled in the top left

AE758724V

30/11/2006 \$134.60 66



Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen Street, Melbourne (DX 217)

Ref: A60529(2007 'Annuello')

Customer Code: 1608A



AE864640K



The Lessor leases to the Lessee the land for the term and yearly rental specified subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this lease and subject to the covenants and conditions contained in this lease.

Land: (volume and folio reference)

The land described in the following Certificates of Title:

1. Volume 9071 Folio 270 (CA 21 Parish of Wemen), and;
2. Volume 9150 Folio 580 (CA 22 Parish of Wemen).

Lessor: (full name)

ALMOND LAND PTY LTD ACN 091 460 392 Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Lessee: (full name and address including postcode)

TIMBERCORP SECURITIES LTD ACN 092 311 469 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Term: (number of years, or commencement to completion date)

from the Commencement Date to 30 June 2032

Commencement date:

23 January 2007

Rental:

\$3,509,126

Covenants: (set out any further covenants and conditions and the extent (if any) to which the covenants and powers implied under the Transfer of Land Act 1938 are to be negatived or modified)

As appears from the annexure of 14 pages, making 15 in total

Dated: 22 January 2007

The signing clauses for the Lessor and the Lessee are on the annexure pages

ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 9 of *Approved Form 26 (Lease)* dated 22 January 2007 between ALMOND LAND PTY LTD
ACN 091 460 392 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:

for and on behalf of Timbercorp Securities Limited

For and on behalf of Almond Land Pty Ltd

10.5. Lessor's rights subject to Growers' rights

The Lessor's rights under this clause 10 are subject to the rights granted by the Lessor to Growers under paragraph 9.3.

11. TERMINATION

- 11.1. If the Project ends then this Lease is automatically terminated and the Lessor and the Lessee appoint each other as their attorney to do all things and sign all documents necessary to give effect to the termination of this Lease under this clause 11.
- 11.2. Despite any other provision of this Lease, in the event that a Grower ceases to participate in the Project due to a termination of its Almondlot Management Agreement, Sub-Lease (Annuello) and other Project sub-leases ("Past Grower"):
- (a) with the consent of the Lessor, the Lessee may sub-underlease or licence the Lessor to occupy and use that part of the Land that was occupied by the Past Grower under its Sub-Lease (Annuello), with the intent that the Lessee will no longer be able to have the benefit of this Lease in respect of that part of the Land after termination;
 - (b) the sub-underleasing or licencing to the Lessor of part of the Land under this paragraph 11.2 is without prejudice to any rights and obligations that may have accrued prior to the effective date of the sub-underlease or licence as to that part of the Land.

Approval No. 330056A

A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter a reference to the appropriate panel heading. **THE BACK OF THE ANNEXURE**
2. If multiple copies of a mortgage are lodged, original Annexure Pages
3. The Annexure Pages must be properly identified and signed by the person attached.
5. All pages must be attached together by being stapled in the top left corner.

AE864640K



ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 10 of *Approved Form 26 (Lease)* dated 22 January 2007 between ALMOND LAND PTY LTD ACN 091 460 392 and TIMBERCORP SECURITIES LTD ACN 092 311 869

Signatures of the parties:

for and on behalf of Timbercorp Securities Limited

For and on behalf of Almond Land Pty Ltd

- 11.3. Either the Lessee or the Lessor may terminate this Lease by notice in writing to the other if the terms of all of the Sub-leases are not extended from 29 June 2030 until 29 June 2032 under Clause 4.2 of the Sub-leases.

12. SURRENDER

- 12.1. The Lessee may at any time and from time to time, with the consent of the Lessor, surrender this Lease, for the purpose of re-granting to the Lessee a lease on the same terms and conditions as this Lease, save and except that:

- (a) the leased area, if less than a whole folio of the Register shall be surveyed at the expense of the Lessee; and
- (b) these rights may not be exercised to exclude from a leased area, an Almondlot or part thereof occupied by a Grower under a Sub-lease (Annuello).

- 12.2. It is intended that any such surrender and re-grant confer upon Growers with Sub-leases (Annuello) the benefits contained in Section 150 of the Property Law Act 1958.

13. LESSOR'S RISK

- 13.1. 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.

Approval No. 330036A

A1



1. If there is insufficient space to accommodate the required information the words "See Annexure Page 2" (or as the case may be) and enter under the appropriate panel heading. **THE BACK OF THE ANNEXURE**
2. If multiple copies of a mortgage are lodged, original Annexure Page must be attached.
3. The Annexure Pages must be properly identified and signed by the parties.
5. All pages must be attached together by being stapled in the top left corner.

AE864640K



Deed of Variation

**Modifying the Sub-lease - Menegazzo
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

Please note this Deed of Variation applies to both the Menegazzo Sub-lease Early Growers AND Post 30 June Growers for which separate Sub-leases are attached to this Deed.

NM TAYLOR
L A W Y E R S

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

**Telephone: 9600 3525
Facsimile: 9600 3527**

- (ii) such additional water licences do not attach to the Menegazzo Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
- (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Menegazzo Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Menegazzo Land Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Menegazzo Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Menegazzo Land Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

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

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed and the Almondlot Management Agreement with or without vehicles to the Menegazzo Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers which gives access to the Menegazzo Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Menegazzo Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Menegazzo Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Almondlot Management Agreement with Timbercorp Securities;
- (b) Timbercorp Securities entering into the Head Lease with the Land Owner;
- (c) the contemporaneous execution of the Sub-lease in respect of the Annuello Land Lots,

on or before the Commencement Date in respect of the relevant Menegazzo Land Lots.

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

(a) A Participant Grower must pay to Timbercorp Securities the following rent per Menegazzo Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Menegazzo Proportion payable on 31 October 2007 and 2008;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Menegazzo Proportion payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64 multiplied by the Menegazzo Proportion, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Menegazzo Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 Obligations

The Land Owner must:

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

9.2 Rights

The Land Owner:

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

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and

requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.1A Deemed termination

This Deed will terminate with immediate effect if the Sub-lease in respect of the Annuello Land is terminated other than as a result of circumstances described in clauses 10.3 and 10.4 of that sub-lease.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Menegazzo Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

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

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

10.4 Reduction of Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

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

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

10.5 Effect of Termination

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

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

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

11.2 Lack or unavailability of funds

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

11.3 Liability

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

11.4 Definition of Force Majeure

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

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

Deed of Variation

**Modifying the Sub-lease - Annuello
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

- (ii) such additional water licences do not attach to the Annuello Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Annuello Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Annuello Land Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Annuello Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Annuello Land Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Annuello Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Annuello Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

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

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed and the Almondlot Management Agreement with or without vehicles to the Annuello Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers which gives access to the Annuello Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Annuello Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Annuello Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Almondlot Management Agreement with Timbercorp Securities;
- (b) Timbercorp Securities entering into the Head Lease with the Land Owner;
- (c) the contemporaneous execution of the Sub-lease in respect of the Menegazzo Land Lots,

on or before the Commencement Date in respect of the relevant Annuello Land Lots.

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

(a) A Participant Grower must pay to Timbercorp Securities the following rent per Annuello Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Annuello Proportion payable on 31 October 2007 and 2008;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Annuello Proportion payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64 multiplied by the Annuello Proportion, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

existing access roads, pathways or fire-breaks on or about the Annuello Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 Obligations

The Land Owner must:

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

9.2 Rights

The Land Owner:

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

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of

written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.1A Deemed termination

This Deed will terminate with immediate effect if the Sub-lease in respect of the Menegazzo Land is terminated other than as a result of circumstances described in clauses 10.3 and 10.4 of that sub-lease.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Annuello Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Annuello Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Annuello Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Annuello Land Lots

If, in respect of the relevant Annuello Land Lots:

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

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

10.4 Reduction of Annuello Land Lots

If, in respect of the relevant Annuello Land Lots:

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

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

10.5 Effect of Termination

- (a) Termination of this Deed under clauses 10.1, 10.2 or 10.3 or reduction of the relevant Annuello Land Lots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
 - (b) Termination of this Deed in respect of any number of all of the relevant Annuello Land Lots or part of the relevant Annuello Land Lots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Annuello Land Lots or any other part of the reduced relevant Annuello Land Lots.
 - (c) If this Deed is terminated under clause 10.2 in relation to all of the Annuello Land Lots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project.
 - (d) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.
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11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

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

11.2 Lack or unavailability of funds

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

11.3 Liability

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

11.4 Definition of Force Majeure

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

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

Sub-lease

Almond Land Pty Ltd

Timbercorp Securities Limited

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

2007 Timbercorp Almond Project

[Westmores Sub-lease – Post 30 June Growers]

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

-
- (ii) such additional water licences do not attach to the Westmores Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
- (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Westmores Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Westmores Land Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Westmores Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Westmores Land Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Westmores Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Westmores Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

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

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed and the Almondlot Management Agreement with or without vehicles to the Westmores Land Lots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers which gives access to the Westmores Land Lots;
- (b) is entitled to full and free access with or without vehicles to the relevant Westmores Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Westmores Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

- (a) the Participant Grower entering into the Almondlot Management Agreement with Timbercorp Securities;
- (b) Timbercorp Securities entering into the Head Lease with the Land Owner;

on or before the Commencement Date in respect of the relevant Westmores Land Lots.

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

A Participant Grower must pay to Timbercorp Securities the following rent per Westmores Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 payable on or before the Commencement Date and 31 October 2008 respectively;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Westmores Land Lots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the Westmores Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 Obligations

The Land Owner must:

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

9.2 Rights

The Land Owner:

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

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material

obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Westmores Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Westmores Land Lots

If, in respect of the relevant Westmores Land Lots:

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

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

10.4 Reduction of Westmores Land Lots

If, in respect of the relevant Westmores Land Lots:

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

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

obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Westmores Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

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

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

10.4 Reduction of Westmores Land Lots

If, in respect of the relevant Westmores Land Lots:

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

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

10.5 Effect of Termination

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

11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

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

11.2 Lack or unavailability of funds

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

11.3 Liability

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

11.4 Definition of Force Majeure

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

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

**ALMOND ORCHARD MANAGEMENT AGREEMENT
2007 TIMBERCORP ALMOND PROJECT**

**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 LAND PTY LTD
ACN 091 460 392**

**GADENS LAWYERS
Level 25, Bourke Place
600 Bourke Street
MELBOURNE 3000**

**T 03 9252 2555
F 03 9252 2500**

Ref: BXP:DMS:2607075

2. Commencement and Term

This agreement commences on the earlier of:

- (a) the date of the product disclosure statement to be issued by Securities in respect of the Project; and
- (b) 30 June 2007,

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 Notice**) and any default the subject of such notice has not been remedied to the reasonable satisfaction of Select:
 - (i) clause 2A(b) will have no effect in respect of the Step-in Notice until and unless AMPL or the Land Owner (as the case may be) remedies any default or circumstance giving rise to the Termination Notice to the reasonable satisfaction of Select within a period of 21 days after the final date by which that default or circumstance was otherwise required to be remedied under that Termination Notice in accordance with this Agreement (**Extended Period**); and

- (a) the progress achieved in performance of the Services by reference to the Management Plan;
- (b) the progress and general condition of the Orchard, the Almond Trees and the Almonds including the results of harvest; and
- (c) any matters which AMPL, by notice in writing to Select, reasonably requires Select to report on with respect to the Orchard or the Services.

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 17 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, officer 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, 4.4(c)-4.4(d), 4.5, 4.6, 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

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 (except where the holding company is a company listed on Australian Stock Exchange Limited) 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

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.

21.2 Meeting

On receipt of the notice specified in clause 21.1, the parties to the dispute must seek to resolve the dispute within 7 Business Days, including high-level meetings between the respective chief executive officers or directors of the parties.

21.3 Appointment of expert

If the parties, acting reasonably and in good faith, are unable to resolve the dispute within a further 7 Business Days, the parties agree to appoint an expert to determine the dispute. If the parties cannot agree on the expert within 7 days, any of the parties may request the President for the time being of the Institute of Chartered Accountants of Australia to appoint an expert.

21.4 Legal representation

The parties are entitled to legal representation during the dispute resolution proceedings.

21.5 Expert's responsibilities

The parties must instruct the expert to:

TREE SUPPLY AND CAPITAL WORKS AGREEMENT

2007 TIMBERCORP ALMOND PROJECT

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

**SELECT HARVESTS LIMITED
ACN 000 721 380**

**TIMBERCORP LIMITED
ACN 005 185 067**

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

3.1 Almond Trees sourced from Select's nurseries

Select agrees to sell to the Land Owner, and the Land Owner agrees to buy from Select, 1 million Almond Trees on the following terms and conditions:

- (a) the purchase price is \$6.50 per Almond Tree;
- (b) the purchase price must be paid as follows:
 - (i) \$1,707,500 on (or before) the date of this agreement, payment of which is acknowledged by Select;
 - (ii) \$1,812,500 on or before 31 December 2006;
 - (iii) \$1,000,000 on or before 31 March 2007; and
 - (iv) \$1,980,000 on or before 30 June 2007;
- (c) the Almond Trees will comprise of the following varieties:
 - (i) approximately 50% "non-pareil";
 - (ii) approximately 33% "carmel"; and
 - (iii) approximately 17% "price".

3.2 Almond Trees sourced from contractor nurseries

Timbercorp acknowledges that Select may procure some of the Almond Trees referred to in clause 3.1 from nurseries other than its own.

3.3 General

- (a) 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;

- (b) works completed; and
- (c) quality control procedures set out in **Annexure B**.

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) works in progress;
- (b) works completed; and
- (c) quality control procedures set out in **Annexure B**.

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

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

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:

- (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.

**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

**2007 ALMOND PROJECT
WATER ENCUMBRANCES**

Property	Company	Water Share ID	Volume	First Mortgagee	Mortgage ID
Menegazzo #1	Almond Land Pty Ltd	WEE001013	199.7	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE004373	27.5	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE006486	88.8	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE020625	2519.7	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE024276	209.3	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE024278	125.2	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE026711	150.0	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE035297	172.5	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE035298	104.0	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE037096	500.0	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE037540	12.7		
Menegazzo #1	Almond Land Pty Ltd	WEE042699	29.0	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE043704	152.0	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE043933	30.0		
Menegazzo #1	Almond Land Pty Ltd	WEE044128	50.0	BOSI Security Services Ltd	MOR001572
Menegazzo #1	Almond Land Pty Ltd	WEE044372	30.0		
Menegazzo #1	Almond Land Pty Ltd	WEE044516	60.0		
Menegazzo #1	Almond Land Pty Ltd	WEE044817	764.5		
Menegazzo #2	Almond Land Pty Ltd	WEE035507	152.5	BOSI Security Services Ltd	MOR001572
Menegazzo #2	Almond Land Pty Ltd	WEE035559	500.0	BOSI Security Services Ltd	MOR001572
Menegazzo #2	Almond Land Pty Ltd	WEE035570	1000.0	BOSI Security Services Ltd	MOR001572
Menegazzo #2	Almond Land Pty Ltd	WEE035825	50.0	BOSI Security Services Ltd	MOR001572
Menegazzo #2	Almond Land Pty Ltd	WEE036148	39.4	BOSI Security Services Ltd	MOR001572
Menegazzo #2	Almond Land Pty Ltd	WEE037082	60.0	BOSI Security Services Ltd	MOR001572
Menegazzo #2	Almond Land Pty Ltd	WEE037264	32.8	BOSI Security Services Ltd	MOR001572
Menegazzo #2	Almond Land Pty Ltd	WEE039177	147.5	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE001036	114.2	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE004175	212.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE025911	307.2	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE034879	160.4	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035392	100.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035531	1260.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035581	250.0	BOSI Security Services Ltd	MOR001572

MAX - 10"

Annuello	Almond Land Pty Ltd	WEE035789	95.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035810	100.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035812	80.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035814	157.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035837	155.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036045	50.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036047	50.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036049	100.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036082	120.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036271	1100.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036274	450.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036377	340.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036722	77.6	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE036773	720.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE037122	171.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE042904	100.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE001036	114.2	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE004175	212.0	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE025911	307.2	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE034879	160.4	BOSI Security Services Ltd	MOR001572
Annuello	Almond Land Pty Ltd	WEE035392	100.0	BOSI Security Services Ltd	MOR001572

**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-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**

Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen Street, Melbourne (DX 217)

Ref: A60529 (2007 'Menegazzo')

Customer Code: 1608A



AE758724V

30/11/2006 \$134.80 66



The Lessor leases to the Lessee the land for the term and yearly rental specified subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this lease and subject to the covenants and conditions contained in this lease.

Land: (volume and folio reference)

The land described in the following Certificates of Title:

Vol. 7248 Fol. 813 **VOL 7420 Fol 613** ✓
 Vol. 8454 Fol. 067
 Vol. 9491 Fol. 231
 Vol. 7678 Fol. 095
 Vol. 9210 Fol. 031
 Vol. 9193 Fol. 257
 Vol. 9746 Fol. 465
 Vol. 9421 Fol. 203
 Vol. 10950 Fol. 378

Lessor: (full name)

ALMOND LAND PTY LTD ACN 091 460 392 Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Lessee: (full name and address including postcode)

TIMBERCORP SECURITIES LTD ACN 092 311 469 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Term: (number of years, or commencement to completion date)

from the Commencement Date to 30 June 2032

Commencement date:

15 November 2006

Rental:

\$3,763,674

Covenants: (set out any further covenants and conditions and the extent (if any) to which the covenants and powers implied under the Transfer of Land Act 1958 are to be negated or modified)

As appears from the annexure of 14 pages, making 15 in total

Dated: 15 November 2006

The signing clauses for the Lessor and the Lessee are on the annexure pages

ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 6 of *Approved Form 26 (Lease)* dated 15 November 2006 between ALMOND LAND PTY LTD ACN 091 460 392 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:

For and on behalf of Timbercorp Securities Limited

Robert James Hance

Mark Hamilton Pryn

For and on behalf of Almond Land Pty Ltd

Robert James Hance

Mark Hamilton Pryn

5. USE OF LAND

- 5.1. Subject to Clause 5.2, the Lessee must only use the Land in accordance with the Constitution, the Almondlot Management Agreement and the Sub-lease (Menegazzo).
- 5.2. The Lessee may only use the Land in any other manner with the prior and express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

6. GOVERNMENT REQUIREMENTS

- 6.1. The Lessor must comply with all statutes, ordinances, orders or regulations of any Commonwealth, State or local authority affecting or relating to the Land.

7. INSPECTION OF LAND

- 7.1. The Lessor may, at all reasonable times, enter upon the Land and view its state of repair.

8. QUIET ENJOYMENT

- 8.1. The Lessee may, during the term of this Lease, possess the Land without interruption from the Lessor or any person claiming through it, except to the extent that the interruption is expressly permitted by this Lease.

9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

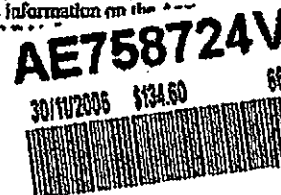
- 9.1. Assignment by Lessee

Subject to clause 9.2, the Lessee must not assign its interest under this Lease or transfer, sublet or part with possession of the Land or any part of the Land without the prior written consent of the

Approval No. 330036A



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all the information on the back under the appropriate panel heading. **THE BACK OF THE ANNEXURE**
2. If multiple copies of a mortgage are lodged, original Annexure Pages on
3. The Annexure Pages must be properly identified and signed by the party attached.
5. All pages must be attached together by being stapled in the top left corner



ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 7 of *Approved Form 26 (Lease)* dated 15 November 2006 between ALMOND LAND PTY LTD ACN 091 460 392 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:

for and on behalf of Timbercorp Securities Limited

Robert James Hanco

Mark Hamilton Pryn

For and on behalf of Almond Land Pty Ltd

Robert James Hanco

Mark Hamilton Pryn

Lessor, which consent is not to be unreasonably withheld in the case of an assignment of the whole of its interest.

9.2. Lessor consents to Lessee sub-letting

The Lessor consents and authorises the Lessee to enter into Sub-leases with Growers.

9.3. Following Termination

Upon this Lease terminating for whatever reason, the Lessor irrevocably authorises and consents to the granting or continuation (or both) by the Growers of a right to occupy or use the Land granted under the Sub-lease (Menegazzo), on the same terms and conditions as the Growers are granted Sub-leases, whether before or after the execution of this Lease, and with the Lessor accepting the obligations of the Lessee to the Growers under the Sub-lease (Menegazzo).

9.4. Lessee must not mortgage its interest

The Lessee must not mortgage, charge or otherwise encumber its estate or interest in this Lease without prior written consent of the Lessor. The consent may be granted conditionally or may be refused if the security documents entitle the mortgagee to enter into possession of the Land. In any other case, the consent must not be unreasonably withheld by the Lessor.

10. DEFAULT AND RE-ENTRY

10.1. Default by Lessee

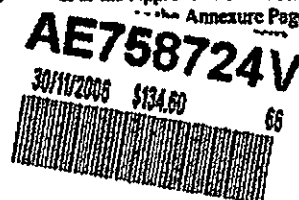
The Lessor and the Lessee covenant and agree that the following are events of default under this Lease:

Approval No. 330056A

A1



1. If there is insufficient space to accommodate the required information in the panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter all under the appropriate panel heading. **THE BACK OF THE ANNEXURE PAGE**
2. If multiple copies of a mortgage are lodged, original Annexure Pages.
3. The Annexure Pages must be properly identified and signed by the party attached.
5. All pages must be attached together by being stapled in the top left corner.



Lease

Section 66(1) Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: Stedman Cameron

Phone: 9670 7211

Address: 179 Queen Street, Melbourne (DX 217)

Ref: A60529(2007 'Annuello')

Customer Code: 1608A



AE864640K



The Lessor leases to the Lessee the land for the term and yearly rental specified subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this lease and subject to the covenants and conditions contained in this lease.

Land: *(volume and folio reference)*

The land described in the following Certificates of Title:

1. Volume 9071 Folio 270 (CA 21 Parish of Wemen), and;
2. Volume 9150 Folio 580 (CA 22 Parish of Wemen).

Lessor: *(full name)*

ALMOND LAND PTY LTD ACN 091 460 392 Level 8, 461 Bourke Street, Melbourne, Victoria, 3000

Lessee: *(full name and address including postcode)*

TIMBERCORP SECURITIES LTD ACN 092 311 469 Level 8, 461 Bourke Street Melbourne, Victoria, 3000

Term: *(number of years, or commencement to completion date)*

from the Commencement Date to 30 June 2032

Commencement date:

23 January 2007

Rental:

\$3,509,126

Covenants: *(set out any further covenants and conditions and the extent (if any) to which the covenants and powers implied under the Transfer of Land Act 1958 are to be negatived or modified)*

As appears from the annexure of 14 pages, making 15 in total

Dated: 22 January 2007

The signing clauses for the Lessor and the Lessee are on the annexure pages

ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 6 of *Approved Form 26 (Lease)* dated 22 January 2007 between ALMOND LAND PTY LTD
ACN 091 460 392 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:


for and on behalf of Timbercorp Securities Limited


For and on behalf of Almond Land Pty Ltd

(c) State and other land tax.

5. USE OF LAND

5.1. Subject to Clause 5.2, the Lessee must only use the Land in accordance with the Constitution, the Almondlot Management Agreement and the Sub-lease (Annuello).

5.2. The Lessee may only use the Land in any other manner with the prior and express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

6. GOVERNMENT REQUIREMENTS

6.1. The Lessor must comply with all statutes, ordinances, orders or regulations of any Commonwealth, State or local authority affecting or relating to the Land.

7. INSPECTION OF LAND

7.1. The Lessor may, at all reasonable times, enter upon the Land and view its state of repair.

8. QUIET ENJOYMENT

8.1. The Lessee may, during the term of this Lease, possess the Land without interruption from the Lessor or any person claiming through it, except to the extent that the interruption is expressly permitted by this Lease.

Approval No. 330056A



1. If there is insufficient space to accommodate the required information in a panel of the *Approved Form* insert the words "See Annexure Page 2" (or as the case may be) and enter all the info under the appropriate panel heading. **THE BACK OF THE ANNEXURE P.**
2. If multiple copies of a mortgage are lodged, original Annexure Pages must be attached.
3. The Annexure Pages must be properly identified and signed by the parties to be attached.
5. All pages must be attached together by being stapled in the top left corner.

AE864640K

29/01/2007 \$94.80 66


ANNEXURE PAGE

Approved Form A1
Victorian Land Titles Office

Transfer of Land Act 1958

This is page 7 of *Approved Form 26 (Lease)* dated 22 January 2007 between ALMOND LAND PTY LTD
ACN 091 460 392 and TIMBERCORP SECURITIES LTD ACN 092 311 469

Signatures of the parties:

for and on behalf of Timbercorp Securities Limited

For and on behalf of Almond Land Pty Ltd

9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

9.1. Assignment by Lessee

Subject to clause 9.2, the Lessee must not assign its interest under this Lease or transfer, sublet or part with possession of the Land or any part of the Land without the prior written consent of the Lessor, which consent is not to be unreasonably withheld in the case of an assignment of the whole of its interest.

9.2. Lessor consents to Lessee sub-letting

The Lessor consents and authorises the Lessee to enter into Sub-leases with Growers.

9.3. Following Termination

Upon this Lease terminating for whatever reason, the Lessor irrevocably authorises and consents to the granting or continuation (or both) by the Growers of a right to occupy or use the Land granted under the Sub-lease (Annuello), on the same terms and conditions as the Growers are granted Sub-leases, whether before or after the execution of this Lease, and with the Lessor accepting the obligations of the Lessee to the Growers under the Sub-lease (Annuello).

9.4. Lessee must not mortgage its interest

The Lessee must not mortgage, charge or otherwise encumber its estate or interest in this Lease without prior written consent of the Lessor. The consent may be granted conditionally or may be refused if the security documents entitle the mortgagee to enter into possession of the Land. In any other case, the consent must not be unreasonably withheld by the Lessor.

Approval No. 330056A

A1



1. If there is insufficient space to accommodate the required information in a panel of the Approved Form insert the words "See Annexure Page 2" (or as the case may be) and enter a under the appropriate panel heading. **THE BACK OF THE ANNEX**
2. If multiple copies of a mortgage are lodged, original Annexure Pages
3. The Annexure Pages must be properly identified and signed by the person attached.
5. All pages must be attached together by being stapled in the top left corner

AE864640K



Deed of Variation

**Modifying the Sub-lease - Menegazzo
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

Please note this Deed of Variation applies to both the Menegazzo Sub-lease Early Growers AND Post 30 June Growers for which separate Sub-leases are attached to this Deed.

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

- (ii) such additional water licences do not attach to the Menegazzo Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Menegazzo Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Menegazzo Land Lots to their original condition.
 - (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Menegazzo Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Menegazzo Land Lots at the time will become the absolute property of the Land Owner.
 - (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
 - (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

(a) A Participant Grower must pay to Timbercorp Securities the following rent per Menegazzo Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Menegazzo Proportion payable on 31 October 2007 and 2008;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Menegazzo Proportion payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64 multiplied by the Menegazzo Proportion, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

(a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".

(b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
 - (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
 - (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.
-

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Menegazzo Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Menegazzo Land Lots;
- (b) use the relevant Menegazzo Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Menegazzo Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Menegazzo Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Menegazzo Land Lots from time to time with or without equipment for the purposes of observing the state of the Menegazzo Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Menegazzo Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Menegazzo Land Lots adjoining the Menegazzo Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Menegazzo Land Lots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the

Menegazzo Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 Obligations

The Land Owner must:

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

9.2 Rights

The Land Owner:

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

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and

requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.1A Deemed termination

This Deed will terminate with immediate effect if the Sub-lease in respect of the Annuello Land is terminated other than as a result of circumstances described in clauses 10.3 and 10.4 of that sub-lease.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Menegazzo Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

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

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

10.4 Reduction of Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

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

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

Sub-lease

Almond Land Pty Ltd

Timbercorp Securities Limited

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

2007 Timbercorp Almond Project

**[Menegazzo Property]
POST 30 JUNE GROWERS**

**PLEASE NOTE
THIS IS THE NEW SUB-LEASE FOR POST 30 JUNE
GROWERS**

NM TAYLOR
LAWYERS

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

**Telephone: 9600 3525
Facsimile: 9600 3527**

- (ii) Timbercorp Securities is entitled under the Head Lease to grant the sub-lease under this Deed; and
- (iii) any consents which may be required to the granting of the sub-lease under this Deed have been obtained.

3.2 Water Licences

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

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Menegazzo Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Menegazzo Land Lots to their original condition.

- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Menegazzo Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Menegazzo Land Lots at the time will become the absolute property of the Land Owner.
 - (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
 - (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Menegazzo Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

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

5.2 Rights

Timbercorp Securities:

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

- (b) is entitled to full and free access with or without vehicles to the relevant Menegazzo Land Lots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, the Land Owner or other Participant Growers;
- (c) may at its own expense erect and maintain a sign on the Menegazzo Land Lots detailing such matters as Timbercorp Securities reasonably considers appropriate.

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Deed is subject to and conditional on:

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

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

A Participant Grower must pay to Timbercorp Securities the following rent per Menegazzo Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 payable on or before the Commencement Date and 31 October 2008 respectively;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace

it as the new "CPI".

- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Menegazzo Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Menegazzo Land Lots;
- (b) use the relevant Menegazzo Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Menegazzo Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Menegazzo Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Menegazzo Land Lots from time to time with or

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

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

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

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Menegazzo Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Menegazzo Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

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

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

10.4 Reduction of Menegazzo Land Lots

If, in respect of the relevant Menegazzo Land Lots:

Deed of Variation

**Modifying the Sub-lease - Annuello
Property Between:**

Timbercorp Securities Limited

Almond Land Pty Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

- (ii) such additional water licences do not attach to the Annuello Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
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4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
 - (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Annuello Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Annuello Land Lots to their original condition.
 - (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Annuello Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Annuello Land Lots at the time will become the absolute property of the Land Owner.
 - (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Annuello Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
 - (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Annuello Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
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5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

(a) A Participant Grower must pay to Timbercorp Securities the following rent per Annuello Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 multiplied by the Annuello Proportion payable on 31 October 2007 and 2008;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 multiplied by the Annuello Proportion payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64 multiplied by the Annuello Proportion, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with Interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
 - (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
 - (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.
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8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Annuello Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Annuello Land Lots;
- (b) use the relevant Annuello Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Annuello Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Annuello Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Annuello Land Lots from time to time with or without equipment for the purposes of observing the state of the Annuello Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Annuello Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Annuello Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Annuello Land Lots adjoining the Annuello Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their Annuello Land Lots, but such rights of access are limited to the unimpeded use of any

existing access roads, pathways or fire-breaks on or about the Annuello Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 Obligations

The Land Owner must:

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

9.2 Rights

The Land Owner:

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

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities falls or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of

written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.1A Deemed termination

This Deed will terminate with immediate effect if the Sub-lease in respect of the Menegazzo Land is terminated other than as a result of circumstances described in clauses 10.3 and 10.4 of that sub-lease.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Annuello Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Annuello Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Annuello Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Annuello Land Lots

If, in respect of the relevant Annuello Land Lots:

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

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

10.4 Reduction of Annuello Land Lots

If, in respect of the relevant Annuello Land Lots:

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

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

Sub-lease

Almond Land Pty Ltd

Timbercorp Securities Limited

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

2007 Timbercorp Almond Project

[Westmores Sub-lease – Post 30 June Growers]

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

-
- (ii) such additional water licences do not attach to the Westmores Land Lots of any of the Participant Growers, are not attributable to the Project and will at all times remain the property of the Land Owner.
-

4. TERM

4.1 Term

- (a) This Deed will commence on the Commencement Date.
- (b) Subject to clauses 4.2, 6, 10.1 to 10.3 and clause 10.5, this Deed will continue until the earlier of:
- (i) the date which is one day before the expiry or termination of the Head Lease;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2030, and;
 - (iv) termination of the Project.

4.2 Extension of Term

If the term of the Project is extended under Clause 2.2 of the Almondlot Management Agreement, the Term of this Deed shall be extended and the termination date stated in clause 4.1(b) (iii) shall be read and construed as 29 June 2032.

4.3 Grower's Obligations Upon Termination

- (a) At the end of this Deed, the Participant Grower must return the relevant Westmores Land Lots to the Land Owner in good condition, but the Participant Grower is not required to remove Almond Trees or restore the relevant Westmores Land Lots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the relevant Westmores Land Lots within 30 days after the end of this Deed. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities, the Land Owner and the Participant Grower, all structures and plant and equipment remaining on the relevant Westmores Land Lots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Participant Grower or Timbercorp Securities any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Westmores Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Westmores Land Lots that become the absolute property of the Land Owner in accordance with paragraph 4.3(b).
-

on or before the Commencement Date in respect of the relevant Westmores Land Lots.

6.2 Reasonable Endeavours

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

7. RENT

7.1 Rent

A Participant Grower must pay to Timbercorp Securities the following rent per Westmores Land Lot:

- (i) for each of the financial years ending 30 June 2008 to 30 June 2009:
 - (A) \$454.55 payable on or before the Commencement Date and 31 October 2008 respectively;
- (ii) for each of the financial years ending 30 June 2010 to 30 June 2012:
 - (A) \$700 payable on 31 October 2009, 2010 and 2011;
- (iii) for the Financial Year ending 30 June 2013, an amount equal to \$1,463.64, payable on 31 October 2012; and
- (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, Indexed.

7.2 Discontinuance or suspension of CPI

- (a) If the CPI is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Capacity

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

7.4 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 7.5, if the Participant Grower fails to make payment of any amount due under this Sub-lease, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled together with interest thereon calculated in accordance with clause 7.5 hereof.

7.5 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Deed:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
 - (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
 - (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.
-

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Westmores Land Lots solely for the purpose of the Almondlot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Almondlot Operations on the relevant Westmores Land Lots;
- (b) use the relevant Westmores Land Lots solely for the purpose of Almondlot Operations;
- (c) comply with Best Horticultural Practice;
- (d) comply with all laws and regulations relating to the use and occupancy of the relevant Westmores Land Lots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the relevant Westmores Land Lots in accordance with Best Horticultural Practice including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the relevant Westmores Land Lots from time to time with or without equipment for the purposes of observing the state of the Westmores Land Lots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Westmores Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed and the Almondlot Management Agreement;
- (i) permit the Land Owner and its employees, agents and contractors to enter upon the Westmores Land Lots from time to time with or without equipment for the purpose of performing its obligations under this Deed;
- (j) comply or procure compliance with the provisions of the Almondlot Management Agreement; and
- (k) give such rights of way and free access to the occupiers of any other Westmores Land Lots adjoining the Westmores Land Lots and their agents and contractors, as are necessary for their proper use and enjoyment of their

Westmores Land Lots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the Westmores Land Lots.

8.3 Delegation by the Participant Grower

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

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Deed.

9. LAND OWNER'S OBLIGATIONS AND RIGHTS

9.1 Obligations

The Land Owner must:

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

9.2 Rights

The Land Owner:

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

10. TERMINATION OF DEED

10.1 Termination by the Participant Grower

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

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) either the Land Owner or Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material

obligation under this Deed and such default continues for a period of 3 months after receipt by the Land Owner or Timbercorp Securities, as appropriate, of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where the Land Owner or Timbercorp Securities, as appropriate, has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination by Timbercorp Securities

- (a) Subject to paragraphs 10.2(b) and 10.2(c) and without prejudice to Timbercorp Securities' rights under this Sub-Lease, Timbercorp Securities may terminate this Deed in respect of all the Westmores Land Lots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution or commits a material breach of this Deed in relation to any Westmores Land Lots of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) Where Timbercorp Securities is the Responsible Entity at the relevant time, the provisions relating to default and termination as set out in clauses 18.3 to 18.4 of the Constitution are to apply.

10.3 Damage to Westmores Land Lots

If, in respect of the relevant Westmores Land Lots:

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

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

10.4 Reduction of Westmores Land Lots

If, in respect of the relevant Westmores Land Lots:

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

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

**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
2007 TIMBERCORP ALMOND PROJECT (ARSN 122 511 040)
First Plaintiff**

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

SUPPLEMENTARY AND REPLY AFFIDAVIT OF MARK ANTHONY KORDA -

2007 TIMBERCORP ALMOND PROJECT (ARSN 122 511 040)

Date of document: 7 July 2009

Filed on behalf of: the Plaintiffs

Prepared by:

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(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.
- CF
- 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 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 2007 Timbercorp Almond Project (ARSN 122 511 040) (2007 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 2007 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 2007 Almond Scheme Affidavit I did not provide detailed analysis of the projected month-by-month cashflow of the 2007 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 2007 Almond Early project, the second for the 2007 Almond Post June project and the third for the 2008 FinYr Almond 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.

ML

- 6.3 The Cashflow Analysis shows the timing of scheme receipts and expenses. It shows that the expenses the 2007 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 7.5 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 total estimated net sale 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.
- 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 2007 Almond Scheme Affidavit) states that TSL is entitled to use the defaulting 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 2007 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", "Temp Water" and the "Licence Fee" (see paragraphs 6 and 13 of my 2007 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 2007 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 as amended by the Deed of Variation dated 15 April 2008. (Exhibited at MAK-5 of my 2007 Almond Scheme Affidavit is the original clause rather than the clause as amended by the Deed of Variation).
- 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 15 of my 2007 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". These deductions are shown in the line "Deductions from Crop Proceeds". For the 2007 Almond Scheme, TSL is entitled to either deduct from grower proceeds what Timbercorp management refer to as the "TIM Management Fee", which is calculated as a percentage of the gross proceeds from crop sales. The entitlement to deduct "TIM Management Fee" and "Admin Fee" fees is in clause 11.1 and 11.2 of the Grower Agreement (as amended by the Deed of Variation exhibited at MAK-13). 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 to 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.

CP

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. 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 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. AMPL 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 to the extent the costs are incurred before they are recoverable from Growers.

8.4 Occupancy Cost - The Land for the 2007 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(d) of my 2007 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. TSL is the lessee in two head leases - the Menegazzo Head Lease and Annuello Head Lease. The lessor under both Head Leases is a Timbercorp Group Company. TSL's obligations under these leases are therefore shown in the line "Occupancy Cost - Internal" and the line "Occupancy Costs - External" is zero. TSL's obligation under each of the Head Leases is only to "pass through" the amount of rent TSL receives from the Growers. As such the Cashflow Analysis shows the "Occupancy Cost - Internal" arising only as monies are receipted from the Growers included in the line "Grower Scheme Costs".

8.5 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

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summer. This advice is the basis of the phasing of capital expenditure requirements for the 2007 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.

Net Operating Cashflow

- 8.6 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 \$5,363,000 for the 2007 Almond Early, \$486,000 for the 2007 Almond Post June and \$2,228,000 for the 2008 FinYr Almond (**Shortfall**). The Shortfall cannot be funded by the Growers as they are not required to pay before 31 October 2009 and TSL does not have the capacity to meet the Shortfall. The 2007 Almond Scheme is therefore insolvent.
- 8.7 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 September 2009 is estimated at \$50,096,000 (\$24,675,000 for the 2007 Almond Early, \$2,184,000 for the 2007 Almond Post June, and \$23,237,000 for the 2008 FinYr Almond) (**Shortfall with CAPEX**).
- 8.8 In summary, the analysis suggests that the 2007 Almond Scheme is insolvent because:
- a) There is an estimated "Cumulative Scheme Cashflow - Before CAPEX" deficit of \$8,077,000 to the end of September 2009; and
 - b) TSL does not have the capacity to fund the capital expenditure of \$42,020,000 identified as necessary to the end of September 2009.
- 8.9 In other words the 2007 Almond Scheme cannot meet these expenses as they fall due for payment.

Additional Analysis

- 8.10 The Timbercorp Group had planned on acquiring permanent water rights to the value detailed in the "Water – Capital Expenditure" line of the Cashflow Analysis. An alternative approach would be to defer the acquisition of permanent water rights and replace it with additional temporary water for the 2010 crop. The cost of acquiring

additional temporary water is detailed in the Cashflow Analysis, in the penultimate line. The net impact on the 2010 Harvest Result of purchasing additional temporary water, rather than acquiring permanent water, would be to reduce the cash required over the 2010 Harvest Result by \$44,146,000 (\$20,006,000 for the 2007 Almond Early, \$1,605,000 for the 2007 Almond Post June, and \$22,535,000 for the 2008 FinYr Almond). This is arrived at by subtracting the total "Water – Capital Expenditure" and adding instead the total "Alternative: Replace PWR water with Temp Water".

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 2007Almond Scheme Affidavit (Report)**
- 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 at 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 11.3 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.**

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- 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 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 2007 Almond Scheme Affidavit, leads us to the conclusion that the 2007 Almond Scheme is insolvent.

- 9.7 The 2007 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

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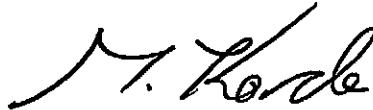
PK

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.

SWORN by the abovenamed deponent at)

Melbourne in the State of Victoria)

this 9 day of 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

**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
2007 TIMBERCORP ALMOND PROJECT (ARSN 122 511 040))
First Plaintiffs**

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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 7 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
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-12"
Cashflow Analysis**

2007 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	-	893	8,038	8,933
less: JV Partners Share	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Grower Proceeds	0	0	0	0	0	0	0	0	0	0	0	893	8,038	8,933
TIM Mgmt Fee	0	0	0	0	0	0	0	0	0	0	0	(60)	(544)	(604)
Admin Fee	0	0	0	0	0	0	0	0	0	0	0	(59)	(534)	(594)
Operating Costs	(1,137)	(1,599)	(2,157)	(1,789)	(1,676)	(2,243)	(858)	(1,134)	(1,145)	(3,613)	(2,495)	(1,203)	(571)	(21,560)
Temp Water	0	(68)	(408)	(248)	(573)	(614)	(408)	(120)	(166)	0	0	0	0	(2,535)
Occupancy Costs - Internal	0	0	0	0	0	(2,569)	(2,803)	(803)	(227)	(386)	(159)	0	0	(5,948)
Occupancy Costs - External	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Operating Expenditure	(1,137)	(1,666)	(2,565)	(2,032)	(2,250)	(5,426)	(4,069)	(2,038)	(1,538)	(4,000)	(2,594)	(1,322)	(1,750)	(32,401)
Net Operating Cashflow (excl. CAPEX)	(1,137)	(1,666)	(2,565)	(2,032)	(2,250)	(5,426)	(4,069)	(2,038)	(1,538)	(4,000)	(2,594)	(427)	6,308	(23,449)
Cumulative Operating Cashflow - Before CAPEX	(1,137)	(2,803)	(5,363)	(7,395)	(9,645)	(15,070)	(19,140)	(21,177)	(22,735)	(26,735)	(29,329)	(29,757)	(23,449)	(23,449)
Project Receipts & Distributions - TSL														
Grower Scheme Costs	0	0	0	10,992	11,958	9,437	973	1,654	681	0	0	0	0	29,735
Distributions to Growers	0	0	0	0	0	0	0	0	0	0	0	(821)	(7,389)	(8,210)
Deductions from Crop Proceeds	0	0	0	0	0	0	0	0	0	0	0	60	544	604
Net Project Receipts & Distributions - TSL	0	0	0	10,992	11,958	9,437	973	1,654	681	0	0	(761)	(6,845)	22,129
Net Scheme Cashflow - Before CAPEX	(1,137)	(1,666)	(2,565)	8,960	9,748	(1,989)	(3,097)	(404)	(857)	(4,000)	(2,594)	(1,188)	(537)	(1,319)
Cumulative Scheme Cashflow - Before CAPEX	(1,137)	(2,803)	(5,363)	3,597	13,345	11,357	8,260	7,856	6,999	2,999	405	(782)	(1,919)	(1,319)
Water - Capital Expenditure	0	(7,101)	(7,101)	(7,101)	0	0	0	0	0	0	0	0	0	(21,303)
Non-Water - Capital Expenditure	0	(2,555)	(2,555)	(2,555)	0	0	0	0	0	0	0	0	0	(7,665)
2010 Capital Expenditure	0	(9,656)	(9,656)	(9,656)	0	0	0	0	0	0	0	0	0	(28,968)
Net Op Cashflow (after Receipts and CAPEX)	(1,137)	(11,322)	(12,216)	(696)	9,748	(1,989)	(3,097)	(404)	(857)	(4,000)	(2,594)	(1,188)	(537)	(30,288)
Cumulative Net Cashflow	(1,137)	(12,459)	(24,675)	(25,371)	(15,623)	(17,611)	(20,708)	(21,112)	(21,969)	(25,969)	(28,563)	(29,751)	(30,288)	(30,288)
Additional Information:														
Alternative: Replace PWR water with Temp Water	0	(33)	(202)	(122)	(287)	(307)	(204)	(60)	(83)	0	0	0	0	(1,297)
JV Partner: Unfunded share of operating deficit	0	0	0	0	0	0	0	0	0	0	0	0	0	0

"MAX-12"

2007PJ Almond Project

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2008FY 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	-	372	3,347	3,719
less: JV Partners Share	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Grower Proceeds	0	0	0	0	0	0	0	0	0	0	0	372	3,347	3,719
TIM Mgmt Fee	0	0	0	0	0	0	0	0	0	0	0	(25)	(226)	(251)
Admin Fee	0	0	0	0	0	0	0	0	0	0	0	(25)	(222)	(247)
Operating Costs	(472)	(564)	(696)	(743)	(698)	(932)	(356)	(471)	(476)	(1,501)	(1,011)	(500)	(279)	(8,997)
Temp Water	0	(28)	(168)	(101)	(238)	(253)	(163)	(30)	(63)	0	0	0	0	(1,078)
Occupancy Costs - Internal	0	0	0	0	0	(1,087)	(1,164)	(334)	(94)	(161)	(66)	0	0	(2,886)
Occupancy Costs - External	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Operating Expenditure	(472)	(692)	(1,064)	(844)	(934)	(2,254)	(1,690)	(835)	(639)	(1,661)	(1,078)	(549)	(727)	(13,459)
Net Operating Cashflow (excl. CAPEX)	(472)	(692)	(1,064)	(844)	(934)	(2,254)	(1,690)	(835)	(639)	(1,661)	(1,078)	(177)	2,620	(9,740)
Cumulative Operating Cashflow - Before CAPEX	(472)	(1,164)	(2,228)	(3,072)	(4,006)	(6,260)	(7,950)	(8,805)	(9,444)	(11,105)	(12,183)	(12,360)	(9,740)	(9,740)
Project Receipts & Distributions - TSL														
Grower Scheme Costs	0	0	0	4,566	4,983	1,428	404	687	283	0	0	0	0	12,351
Distributions to Growers	0	0	0	0	0	0	0	0	0	0	0	(341)	(3,069)	(3,410)
Deductions from Crop Proceeds	0	0	0	0	0	0	0	0	0	0	0	25	226	251
Net Project Receipts & Distributions - TSL	0	0	0	4,566	4,983	1,428	404	687	283	0	0	(316)	(2,843)	9,192
Net Scheme Cashflow - Before CAPEX	(472)	(692)	(1,064)	3,722	4,049	(826)	(1,286)	(168)	(356)	(1,661)	(1,078)	(433)	(223)	(548)
Cumulative Scheme Cashflow - Before CAPEX	(472)	(1,164)	(2,228)	1,494	5,543	4,717	3,431	3,263	2,907	1,246	168	(325)	(548)	(548)
Water - Capital Expenditure	0	(7,671)	(7,671)	(7,671)	0	0	0	0	0	0	0	0	0	(23,012)
Non-Water - Capital Expenditure	0	(2,834)	(2,834)	(2,834)	0	0	0	0	0	0	0	0	0	(8,503)
2010 Capital Expenditure	0	(10,505)	(10,505)	(10,505)	0	0	0	0	0	0	0	0	0	(31,514)
Net Op Cashflow (after Receipts and CAPEX)	(472)	(11,197)	(11,568)	(6,783)	4,049	(826)	(1,286)	(168)	(356)	(1,661)	(1,078)	(433)	(223)	(32,063)
Cumulative Net Cashflow	(472)	(11,669)	(23,237)	(30,020)	(25,971)	(26,797)	(28,083)	(28,251)	(28,607)	(30,268)	(31,346)	(31,839)	(32,063)	(32,063)
Additional Information:			</											

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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
(IN LIQUIDATION)**

ACN 092 311 469

**TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
2007 TIMBERCORP ALMOND PROJECT (ARSN 122 511 040)
First Plaintiffs**

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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: **7** 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 **7** 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-13"
**Grower obligations under Almondlot
Management Agreement**

"MAK-13"

Deed of Variation

**Modifying the Almondlot Management
Agreement Between:**

Timbercorp Securities Limited

Each Several Grower

2007 Timbercorp Almond Project

ARSN 112 511 040

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

9.6 Failure to Perform if Access Denied

Timbercorp Securities 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 by any Participant Growers in the Project.

10. NO LEASE OR LICENCE

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of Timbercorp Securities concerning the relevant Almondlots.

11. TIMBERCORP SECURITIES' FEES

11.1 Annual Fee and Charges Payable by Early Participant Growers

A Participant Grower who is an **Early Grower** must pay Timbercorp Securities the following management fees and charges in respect of the Orchard Services and all other services to be provided under this Agreement:

- (a) In consideration of the Orchard Services and all other services to be provided under this Agreement in the period 1 July 2007 to 30 June 2008:
 - (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2007; and
 - (ii) for each Almondlot an amount equal to 3.25% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity;
- (b) In consideration of the Orchard Services and all other services to be provided under this Agreement in the period 1 July 2008 to 30 June 2009:
 - (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2008; and
 - (ii) for each Almondlot an amount equal to 3.5% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project from and including the 2013 Financial Year payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity; and
- (c) thereafter, in consideration of the Orchard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.2 Annual Fee and Charges Payable by Post 30 June Participant Growers

A Participant Grower who is a **Post 30 June Grower** must pay Timbercorp Securities the following management fees and charges in respect of the Orchard Services and all other services to be provided under this Agreement:

- (a) In consideration of the Orchard Services and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2008, an amount of \$7,727.27 per Almondlot payable in advance on or before the Commencement Date; and
- (b) In consideration of the Orchard Services and all other services to be provided

under this Agreement in the period 1 July 2008 to 30 June 2009:

- (i) an amount of \$1,363.63 per Almondlot payable on 31 October 2008; and
- (ii) for each Almondlot an amount equal to 6.5% of the Gross Proceeds of the sale of Crop and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity; and
- (c) thereafter, in consideration of the Orchard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.3 Management Fees Payable by all Participant Growers

- (a) For each Financial Year after 30 June 2009 commencing on 31 October 2009 and each subsequent 31 October thereafter, Timbercorp Securities will be entitled to be paid in respect of all the Participant Grower's relevant Almondlots for the relevant Financial Year, the estimated costs of operating the relevant Almondlot (which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$50 per relevant Almondlot, indexed (adopting 30 June 2007 as the base date)), as adjusted under paragraph 11.3(b).
- (b) Timbercorp Securities will:
 - (i) when notifying the Participant Grower under paragraph 11.3(a) of the estimated costs of operating the relevant Almondlots, notify the Participant Grower of its Participating Interest of the actual costs of Timbercorp Securities operating the relevant Almondlots for the preceding Financial Year, including overhead costs incurred by Timbercorp Securities or its contractors; and
 - (ii) adjust the estimated costs of operating the relevant Almondlots for the current Financial Year by the difference between the actual costs and the costs estimated by Timbercorp Securities under paragraph 11.3(a) for the preceding financial year unless the surplus per relevant Almondlot has been added, or the excess per relevant Almondlot has been deducted, from any distribution of Proceeds made to the Participant Grower following the end of the preceding Financial Year.

11.4 Responsible Entity to make certain payments

The Participant Grower agrees and acknowledges that the Responsible Entity is authorised to:

- (a) deduct from the Proceeds to which the Participant Grower is entitled, any amounts payable by the Participant Grower under this Agreement, the Sub-lease(s), the Project Documents and the Constitution including any amounts which are outstanding and in arrears; and
- (b) pay the deducted amounts to the persons entitled to them.

11.5 Incentive Fee

- (a) Timbercorp Securities will be entitled to be paid as an incentive fee in a Financial Year by the Participant Grower out of, and immediately prior to, any distribution 25% of so much of the annual Net Proceeds received by the Participant Grower in a Financial Year as exceeds the Incentive Fee

Threshold.

- (b) But, if in the immediately preceding Financial Year, the Net Proceeds received by the Participant Grower were less than the Incentive Fee Threshold the amount of the deficit must be deducted from the Net Proceeds when calculating the fee payable to Timbercorp Securities under this clause in respect of the Financial Year to which reference is first made.

11.6 Discontinuance or suspension of CPI

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

11.7 Capacity

All Management Fees and other amounts to be paid to Timbercorp Securities under this Agreement are paid to Timbercorp Securities in its personal capacity.

11.8 Timbercorp Securities may pay on Behalf of Defaulting Growers

Without limiting any other rights Timbercorp Securities may have under clause 11.9, if the Participant Grower fails to make payment of any amount due under this Agreement, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed the amount so paid together with interest thereon calculated under clause 11.9 out of any Proceeds to which the Participant Grower is entitled.

11.9 Interest

Without limiting any other rights Timbercorp Securities may have, if the Participant Grower fails to make a payment of any amount due under this Agreement:

- (a) the Participating Grower must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be such rate determined by Timbercorp Securities from time to time provided that it must not be more than 600 basis points above the rate from time to time fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until the date such payment is made in full; and
- (c) interest that is payable under this clause on any amount due and unpaid will be capitalised monthly in arrears.

12. INSURANCE

12.1 Timbercorp Securities to Keep Insurance

Timbercorp Securities will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Participant

**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
2007 TIMBERCORP ALMOND PROJECT (ARSN 122 511 040)
First Plaintiffs**

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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: **7** 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-14" now produced and shown to **MARK ANTHONY KORDA**
at the time of swearing his affidavit on **7** 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

2007 ALMOND SCHEME: SUMMARY OF RENTAL PAYMENT OBLIGATIONS

Lease Agreement	Doc ID	When is rent payable?	Amount payable
Menegazzo Head Lease between Almond Land Pty Ltd (Lessor) and TSL (Lessee)	A 2007 004A	Payable by TSL to Almond Land within 60 days of the date on which TSL receives the rent from the Growers under the Menegazzo sub-leases (cl 3.1)	From 30 June 2008 onwards, the aggregate amount of rent (GST exclusive) received by TSL from Growers under Menegazzo sub-leases (cl 1.1), plus GST (cl 3.2)
Menegazzo Sub-leases between Almond Land Pty Ltd (Land Owner), TSL and each participant grower named in the Schedule (Participant Grower)	A 2007 005C and A 2007 005D	Payable by the Grower on 31 October of the relevant year (cl 7.1)	For both 'early' and 'post 30 June' growers: for each of the financial years ending 30 June 2008 to 30 June 2009, \$454.55 multiplied by the Menegazzo Proportion; for each of the financial years ending 30 June 2010 to 30 June 2012, \$700 multiplied by the Menegazzo Proportion; for the financial year ending 30 June 2013, \$1,463.64 multiplied by the Menegazzo Proportion; and for each subsequent financial year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, indexed (cl 7.1).
Annuello Head Lease between Almond Land Pty Ltd (Lessor) and TSL (Lessee)	A 2007 004B	Payable by TSL to Almond Land within 60 days of the date on which TSL receives the rent from the Growers under the Annuello sub-leases (cl 3.1)	From 30 June 2008 onwards, the aggregate amount of rent (GST exclusive) received by TSL from Growers under Annuello sub-leases (cl 1.1), plus GST (cl 3.2)

Lease Agreement	Doc ID	When is rent payable?	Amount payable
Annuello Sub-leases between Almond Land Pty Ltd (Land Owner), TSL and each participant grower named in the Schedule (Participant Grower)	A 2007 005E and A 2007 005F	Payable by the Grower on 31 October of the relevant year (cl 7.1)	For both 'early' and 'post 30 June' growers: for each of the financial years ending 30 June 2008 to 30 June 2009, \$454.55 multiplied by the Annuello Proportion; for each of the financial years ending 30 June 2010 to 30 June 2012, \$700 multiplied by the Annuello Proportion; for the financial year ending 30 June 2013, \$1,463.64 multiplied by the Annuello Proportion; and for each subsequent financial year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, indexed (cl 7.1).
Westmore Sub-lease between Almond Land Pty Ltd (Land Owner), TSL and each participant grower named in the Schedule (Participant Grower)	A 2007 005G	Payable by the Grower on 31 October of the relevant year (cl 7.1)	For each of the financial years ending 30 June 2008 to 30 June 2009, \$454.55 multiplied by the Westmore Proportion; for each of the financial years ending 30 June 2010 to 30 June 2012, \$700 multiplied by the Westmore Proportion; for the financial year ending 30 June 2013, \$1,463.64 multiplied by the Westmore Proportion; and for each subsequent financial year during the Term, an amount equal to the rent payable on the immediately preceding 31 October, indexed (cl 7.1).