

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
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MELBOURNE 3000

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

This is the exhibit marked 'MAK-21' 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-21'

**Copy of ANZ Almond
Facility**



Deacons

Dated *24 December* 2008

First Deed of Amendment and Acknowledgement

\$45 Million Loan Facility

Parties

The Timbercorp Companies named in this document

Almond Land Pty Ltd
ABN 85 091 460 392

Timbercorp Securities Limited
ABN 12 092 311 489

Australia and New Zealand Banking Group Limited
ABN 11 005 357 522

Contact

Gillad Dalal
Partner

RACV Tower, 485 Bourke Street, Melbourne, Victoria 3000

Telephone: 03 8686 6368

Email: gillad.dalal@deacons.com.au

Website: www.deacons.com.au

Our Ref: 2666783

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Deed dated 24 December 2008

Parties

Almond Australia Pty Ltd ABN 48 094 429 419
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Almond Management Pty Ltd ABN 71 094 468 845
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Timbercorp Finance Pty Ltd ABN 98 054 581 190
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Timbercorp Finance (Vic) Pty Ltd ABN 57 091 480 356
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Timbercorp Forestry Pty Ltd ABN 47 070 952 742
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Timbercorp Lands Pty Ltd ABN 54 085 886 835
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Timbercorp Limited ABN 87 055 185 087
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

Timbercorp Securities Limited ABN 12 092 311 469
Level 8, 461 Bourke Street, Melbourne, Victoria 3000

(together the Guarantors)

Almond Land Pty Ltd ABN 65 091 460 392
of Level 8, 461 Bourke Street, Melbourne, Victoria
(the Borrower)

Timbercorp Securities Limited ABN 12 092 311 469
Level 8, 461 Bourke Street, Melbourne, Victoria, 3000
(TSL)

Australia and New Zealand Banking Group Limited
ABN 11 005 357 622 of Level 3, 100 Queen Street, Melbourne, Victoria
(the Lender)

Introduction

- A. The Lender has provided financial accommodation to the Borrower under the Facility Agreement between the Lender, the Borrower and TSL.
- B. The parties wish to amend the terms of the Facility Agreement in accordance with the terms of this Deed.

It is agreed

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context requires another meaning:

Terms defined in the Facility Agreement have the same meaning in this Deed. In addition, unless the context requires another meaning:

Effective Date means the date on which the Lender has received to its satisfaction:

- (1) this Deed executed by all parties; and
- (2) the Nonandie Deed of Priority between TSL, the Borrower, the Lender and BOSI Security Services Limited executed by all parties dated on or about 22 December 2008; and
- (3) the Syndicate Deed of Priority between the Borrower, the Lender, BOSI Security Services Limited and others executed by all parties dated on or about 22 December 2008; and
- (4) the Mortgage of Land in respect of Certificates of Title Volume 10923 Folio 773, Volume 10867 Folio 452, Volume 10867 Folio 456, Volume 10867 Folio 457, Volume 10867 Folio 458, Volume 10867 Folio 463, Volume 10867 Folio 484, Volume 10867 Folio 485, Volume 10867 Folio 466 and Volume 10867 Folio 467 executed by the Borrower; and
- (5) the mortgage of water shares in respect of Water Share Identification Numbers WEE 022352, WEE 035779, WEE 035515, WEE 035831, WEE 036358, WEE 036410, WEE 036484, WEE 036411, WEE 036513, WEE 036710, WEE 036731, WEE 036761, WEE 036774, WEE 036853, WEE 036858, WEE 037044, WEE 037240, WEE 037244, WEE 042676, WEE 042717, WEE 043025, WEE 043569, WEE 035781, WEE 036360, WEE 036486, WEE 036733, WEE 036776 and WEE 043061 executed by the Borrower.

Facility Agreement means the \$45,000,000 Facility Agreement between the Borrower, TSL and the Lender dated 26 September 2008.

1.2 Interpretation

- (1) A term defined in the Facility Agreement, and not defined in this Deed, has the same meaning when used in this Deed.
- (2) Clause 1.2 of the Facility Agreement applies to this Deed as if set out in full in this Deed

2. Amendment of the Facility Agreement

From the Effective Date, the Facility Agreement is amended in accordance with the Facility Agreement attached as Annexure A in which all agreed changes have been marked up.

3. Confirmation of the Facility Agreement

- 3.1 Subject to the provisions of this Deed, the Borrower and TSL confirm that the Facility Agreement remains valid, binding and enforceable against each of them in accordance with the terms of the Facility Agreement as amended by this Deed. This Deed and the Facility Agreement will be read and construed as one document.
- 3.2 Nothing in this Deed:
- (1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Facility Agreement before the Effective Date; nor
 - (2) discharges, releases or otherwise affects any liability or obligation arising under the Facility Agreement before the Effective Date.

4. Acknowledgment of the Guarantee

Each of the Guarantors:

- (1) acknowledge the terms of the Facility Agreement and this Deed;
- (2) consent to the amendment of the Facility Agreement as set out in Annexure A of this Deed; and
- (3) confirm, that subject to the provisions of this Deed, the Security to which each is a party remain in full force and effect and in respect of that Security, the "Secured Money", "Guaranteed Liabilities" and/or "guaranteed money" includes all money, obligations and liabilities due, owing or payable by the Guarantors or any of them to or for the amount of the Lender under or in relation to the Facility Agreement as amended, supplemented or replaced by this Deed.

5. Further Assurance

Each of the parties, other than the Lender, must promptly at their own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

6. Severability

If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

7. Entire understanding

This Deed:

- (1) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Deed; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

8. Variation

An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

9. Notices

9.1 A notice or other communication connected with this Deed has no legal effect unless it is in writing.

9.2 In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid post to the address of the addressee set out in this Deed or subsequently notified;
- (2) sent by facsimile to the facsimile number of the addressee; or
- (3) delivered at the address of the addressee set out in this Deed or subsequently notified.

9.3 If the Notice is sent or delivered in a manner provided by clause 9.2, it must be treated as given to and received by the party to which it is addressed:

- (1) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (2) if sent by facsimile before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (3) if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

9.4 Despite clause 9.3(2):

- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and
- (2) a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

9.5 A Notice sent or delivered in a manner provided by clause 9.2 must be treated as validly given to and received by the party to which it is addressed even if:

- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
- (2) the Notice is returned unclaimed.

9.6 Any Notice by a party may be given and may be signed by its solicitor.

9.7 Any Notice to a party may be given to its solicitor by any of the means listed in clause 9.2 to the solicitor's business address or facsimile number.

10. Governing law and jurisdiction

10.1 The law of Victoria governs this Deed.

10.2 The parties submit to the non-exclusive jurisdiction of the courts of Victoria and of the Commonwealth of Australia.

Executed as a deed.

Guarantors

Executed by Almond Australia Pty Ltd
ABN 48 094 429 419 in accordance with
section 127 of the *Corporations Act 2001*:


Director/company secretary

Gideon Meltzer
Name of director/company secretary
(BLOCK LETTERS)


Director

Sol Charles Rabinowicz
Name of director
(BLOCK LETTERS)

Executed by Almond Management Pty
Ltd ABN 71 094 468 845 in accordance
with section 127 of the *Corporations Act*
2001:


Director/company secretary

Gideon Meltzer
Name of director/company secretary
(BLOCK LETTERS)


Director

Sol Charles Rabinowicz
Name of director
(BLOCK LETTERS)

Executed by Timbercorp Finance Pty
Ltd ABN 88 054 581 190 in accordance
with section 127 of the *Corporations Act*
2001:


Director/company secretary

Gideon Meltzer
Name of director/company secretary
(BLOCK LETTERS)


Director

Sol Charles Rabinowicz
Name of director
(BLOCK LETTERS)

Executed by Timbercorp Finance (Vic)
Pty Ltd ABN 57 091 460 356 in
accordance with section 127 of the
Corporations Act 2001:


Director/company secretary

Gideon Meltzer

Name of director/company secretary
(BLOCK LETTERS)


Director

Sol Charles Rabinowicz

Name of director
(BLOCK LETTERS)

Executed by Timbercorp Forestry Pty
Ltd ABN 47 070 952 742 in accordance
with section 127 of the Corporations Act
2001:


Director/company secretary

Gideon Meltzer

Name of director/company secretary
(BLOCK LETTERS)


Director

Sol Charles Rabinowicz

Name of director
(BLOCK LETTERS)

Executed by Timbercorp Lands Pty Ltd
ABN 54 085 886 835 in accordance with
section 127 of the Corporations Act 2001:


Director/company secretary

Gideon Meltzer

Name of director/company secretary
(BLOCK LETTERS)


Director

Sol Charles Rabinowicz

Name of director
(BLOCK LETTERS)

Executed by Timbercorp Limited ABN
67 055 185 087 in accordance with
section 127 of the Corporations Act 2001:


Director/company secretary

Gideon Meltzer

Name of director/company secretary
(BLOCK LETTERS)


Director

Sol Charles Rabinowicz


Name of director
(BLOCK LETTERS)

Executed by Timbercorp Securities
Limited ABN 12 092 311 469 in
accordance with section 127 of the
Corporations Act 2001:



Director/company secretary
Gideon Meltzer

Name of director/company secretary
(BLOCK LETTERS)



Director
Sol Charles Rabinowicz

Name of director
(BLOCK LETTERS)

Borrower

Executed by Almond Land Pty Ltd ABN
65 091 460 392 in accordance with
section 127 of the Corporations Act 2001:



Director/company secretary
Gideon Meltzer

Name of director/company secretary
(BLOCK LETTERS)



Director
Sol Charles Rabinowicz

Name of director
(BLOCK LETTERS)

TSL

Executed by Timbercorp Securities
Limited ABN 12 092 311 469 in
accordance with section 127 of the
Corporations Act 2001:



Director/company secretary
Gideon Meltzer

Name of director/company secretary
(BLOCK LETTERS)



Director
Sol Charles Rabinowicz

Name of director
(BLOCK LETTERS)

Lender


Signed for and on behalf of Australia and
New Zealand Banking Group Limited
ABN 11 005 357 522 by a duly appointed
attorney in the presence of:



Signature of Witness



Name of Witness (please print)



Signature of Attorney (I have no notice of
revocation of the power of attorney under
which I sign this document)



Name of Attorney (please print)



Deacons

Annexure A

Dated

\$45,000,000 Facility Agreement

Parties

Almond Land Pty Ltd
ABN 65 091 460 392

Timbercorp Securities Limited
ABN 12 092 311 489

Australia and New Zealand Banking Group Limited
ABN 11 005 357 522

Contact

Gillad Dalal
Partner
RACV Tower, 485 Bourke Street, Melbourne VIC 3000
Telephone: 03 8686 6368
Email: gillad.dalal@deacons.com.au
Website: www.deacons.com.au
Our ref: 256353

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Agreement dated

Parties

Almond Land Pty Ltd ABN 65 091 460 392
of Level 8, 461 Bourke Street, Melbourne, Victoria 3000
(Borrower)

Timbercorp Securities Limited ABN 12 092 311 469
of Level 8, 461 Bourke Street, Melbourne, Victoria 3000
(TSL)

Australia and New Zealand Banking Group Limited
ABN 11 005 357 522
of Level 10, 530 Collins St, 100 Queen Street, Melbourne, Victoria
3000
(Lender)

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context requires another meaning:

Accounting Standards means for a company incorporated in Australia:

- (1) the accounting standards applicable for the purposes of the *Corporations Act*;
- (2) the requirements of the *Corporations Act* for the preparation and content of financial reports, directors' reports and auditors' reports; and
- (3) generally accepted and consistently applied accounting principles and practices in Australia, except those inconsistent with the standards or requirements referred to in paragraphs (1) or (2).

Accounts means, for a particular period:

- (1) for the Borrower or a Security Provider, its statement of financial performance and statement of cash flows for that period and its statement of financial position as at the end of that period; and
- (2) for the Group, the consolidated statement of financial performance and statement of cash flows of the Group for that period and the consolidated statement of financial position of the Group as at the end of that period,

and all disclosures, reports and notes required to be included or attached to or intended to be read with any of those financial statements and all directors' declarations and auditor's reports (if applicable) about those financial statements.

Additional Security means any additional Security Interest over property acceptable to the Lender (in the Lender's absolute discretion) granted or caused to be granted by the Borrower to the Lender pursuant to clause 12.4.

Adjusted Interests means the amount equal to the deemed debt components, as determined under Accounting Standards, of the converting preference shares issued by the Sponsor in 2001, the reset preference shares issued by the Sponsor in 2004, the subordinated unsecured reset convertible notes issued (or to be issued) by the Sponsor in 2006 and any future hybrid securities issued by the Sponsor.

Advance means the principal amount advanced or to be advanced by the Lender to the Borrower in accordance with a Drawdown Notice or the amount of the Advance which remains outstanding.

Almond Competitors means Futuris Corporation Limited (ABN 34 004 336 636), Gunns Limited (ABN 29 009 478 148), Willmott Forests Limited (ABN 17 063 263 650), Forest Enterprises Australia Limited (ABN 47 009 553 548), Great Southern Plantations Limited (ABN 54 052 046 536), Rewards Group Limited (ABN 90 087 702 547), Rural Funds Management Limited (ABN 65 077 492 838), EnvironInvest Limited (ABN 81 080 743 791), SAITeysMcMahon Property Limited (ABN 90 006 387 435), SAITeysMcMahon Agrinvest Limited (ABN 95 085 398 189), SAITeysMcMahon Vineyards Limited (ABN 90 081 547 346), SAITeysMcMahon Investments Limited (ABN 23 077 235 879), Palandri Limited (ABN 41 087 787 415).

Amount Owed means all money, obligations and liabilities of any kind of the Borrower to or for the account of the Lender that are now or may in the future become due, owing or payable, whether actually, contingently or prospectively, under or in relation to a Finance Document including on account of principal, interest, fees, expenses, indemnity payments, losses or damages and irrespective of:

- (1) the capacity of the Borrower or the Lender (whether as principal, agent, trustee, beneficiary, partner or otherwise);
- (2) whether the Borrower is liable as principal debtor or as surety;
- (3) whether the Borrower is liable alone, jointly or jointly and severally with another person;
- (4) whether or not the money, obligation or liability is owed to the Lender, or to its account, as a result of an assignment, transfer or other dealing with or without the Borrower's consent; or

(5) whether the money, obligation or liability is owed or secured before or after the date of:

- (a) this Agreement; or
- (b) any assignment of this Agreement or any other Finance Document.

Approved Purpose means the funding of the almond operations of the Group including the Projects.

Arrears Reports means statements provided by the Borrower or other member of the Group summarising the amount of the Management Fees or Rent in respect of each Project which are more than 90 days in arrears.

ASIC means the Australian Securities and Investments Commission.

Australian Financial Services Licence means the licence granted to TSL by ASIC with number 235 653 under section 911A(1) of the Corporations Act.

Authorisation means:

- (1) any authorisation, approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them; and
- (2) for anything which a Government Agency may prohibit or restrict within a specified period, the expiry of that period without intervention or other action by that Government Agency.

Authorised Officer means:

- (1) for the Borrower or a Security Provider, a director or a secretary of the Borrower or that Security Provider or any other person nominated by the Borrower or that Security Provider by notice to the Lender to be an Authorised Officer, the notice to be accompanied by a certified copy of the signature of any person nominated; and
- (2) for the Lender, a director or a secretary of the Lender, any employee of the Lender whose title includes the word "Manager", "Director" or "Associate Director" or any duly authorised attorney of the Lender and includes a person acting in any of those capacities or any other person nominated by the Lender by notice to the Borrower to be an Authorised Officer.

Availability Period means the period starting on the date of this Agreement and ending on the earlier of:

- (1) 18 months from the date of this Agreement; and

-
- (2) the date on which the Commitment is cancelled in full or terminated under this Agreement,
-

or such other date as agreed to by the Lender.

Bank means an authorised deposit-taking institution authorised by the Australian Prudential Regulation Authority to carry on banking business under the *Banking Act 1959* (Cth).

Base Rate means, in relation to an Advance or other relevant amount and an Interest Period (other than an Interest Period which is greater than 6 months) or other relevant period:

- (1) the rate (expressed as a percentage per annum) determined by the Lender to be:
- (a) the average bid rate quoted on the page designated as "BBSY" on the Reuters Monitor Money Rates Services or another page that replaces the "BBSY" page on that system to display average bid rates for Bills accepted by a Bank, rounded up, if necessary, to the nearest four decimal places; or
 - (b) the average of the buying rates for Bills accepted by a Bank quoted by 3 Banks selected by the Lender, rounded up, if necessary, to the nearest four decimal places, if:
 - (i) the page designated as "BBSY" (or another page that replaces the "BBSY" page) on the Reuters Monitor Money Rates Services is not available for any reason; or
 - (ii) the basis on which the rate quoted on that page is determined is changed and, in the opinion of the Lender, that rate no longer reflects its cost of funding to the same extent as it does at the date of this Agreement;

In either case determined:

- (c) at or about 10:30 am on the first day of the relevant period; and
 - (d) for the amount and period closest to the relevant amount and relevant period; or
- (2) If the Base Rate cannot be determined under paragraph (1), the rate (expressed as a percentage per annum) determined by the Lender in good faith to be the appropriate rate and for this purpose the Lender may have regard to comparable indices then available in any market the Lender considers appropriate.

Bill has the meaning given to "bill of exchange" in the *Bills of Exchange Act 1909* (Cth).

Business Day means a day on which banks are open for business in Melbourne other than a Saturday, a Sunday or a public holiday.

Capitalisation means the sum of:

- (1) Total Debt; and
- (2) Total Shareholders Equity plus all Adjusted Interests.

Claim means any claim, cost, damages, debt, expense, Tax, liability, loss, allegation, suit, action, demand, cause of action or proceeding of any kind irrespective of:

- (1) how or when it arises;
- (2) whether it is actual or contingent;
- (3) whether or not it is in respect of legal or other costs, damages, expenses, fees or losses;
- (4) whether or not it is in respect of a breach of trust or of a fiduciary or other duty or obligation; and
- (5) whether or not it arises at law or in any other way.

Cleared Funds means money that is immediately available to the recipient and freely transferable by it.

Commitment means the maximum amount which the Lender is committed to provide under the Facility being the lesser of:

- (1) the Commitment Amount; and
- (2) \$45,000,000,

as reduced or cancelled in accordance with this Agreement.

Commitment Amount means, from time to time, the amount notified by the Lender to the Borrower pursuant to clause 2.1 as the amount which is equal to 60% of the Initial Value.

Compliance Auditor means the auditor of the Compliance Plan appointed by it in accordance with the *Corporations Act*.

Compliance Committee means the compliance committee established in relation to the Scheme in accordance with the *Corporations Act*.

Compliance Plan means, in respect of each Scheme, the plan complying with section 601HA of the *Corporations Act* and lodged with Australian Securities and Investments Commission under section 601 EA of the *Corporations Act*.

Constitution means the constitution for the establishment of each Scheme as may be amended from time to time.

Controller has the meaning given to "controller" in section 9 of the *Corporations Act*.

Crop means, in relation to a Project to the extent it is conducted on the Nenandie Property, Almonds (as defined in the Project Documents) harvested from Trees, together with any product derived from them.

Custodian means the Custodian referred to in the Custodian Agreement.

Custodian Agreement means the Custodian Agreement referred to in the Project Documents.

Derivatives Transaction means a futures contract (as defined in the *Corporations Act*), swap, option, swaption, cap, collar, floor, forward rate agreement, foreign exchange agreement, hedge or any other derivatives agreement similar to or having, in respect of its subject matter, a similar effect or a combination of such agreements.

Disclosure Documents means any documents prepared for the purposes of Chapter 7.9 of the *Corporations Act*.

Dollars and \$ means the lawful currency of Australia.

Drawdown Date means the date on which an Advance is, or is to be, made to the Borrower under this Agreement.

Drawdown Notice means a notice given under clause 4.1 which satisfies the requirements of clause 4.1(4).

Environmental Law means any law about the environment, planning, building or local government and includes any law about:

- (1) land use or occupation of land or buildings;
- (2) occupational health and safety;
- (3) heritage preservation, protection or conservation of natural or cultural resources;
- (4) pollution or contamination of air, water or soil;
- (5) waste disposal, treatment or storage;
- (6) chemical, toxic, hazardous, poisonous or dangerous substances;
- (7) pesticides; or
- (8) noise or odour.

Event of Default means an event listed in clause 13.1.

Excluded Tax means a Tax imposed on the overall net income of the Lender other than a Tax:

- (1) imposed as a result of the Lender being deemed to be organised, doing business, resident or receiving income in a jurisdiction only because it has executed or delivered a Finance Document, or performed its obligations, received a payment under or enforced a Finance Document in that jurisdiction; or
- (2) calculated by reference to the gross amount of any payment received or receivable by the Lender under any Finance Document (without allowance for any deduction).

Facility means the facility made available to the Borrower under clause 2.

Final Repayment Date means the third anniversary of the date of this Agreement.

First Valuation means the valuation of the Nenandle Property provided by the Borrower to the Lender pursuant to clause 3.1(5).

Finance Document means:

- (1) this Agreement;
- (2) each Security;
- (3) the First Deed of Amendment and Acknowledgement dated on or about 22 December 2008;
- (4) the Nenandle Deed of Priority between Timbercorp Securities Limited, the Borrower, the Lender and BOSI Security Services Limited dated on or about 22 December 2008;
- (5) the Syndicate Deed of Priority between the Borrower, the Lender, BOSI Security Services Limited and others dated on or about 22 December 2008;
- ~~(2)(6)~~ each document which the parties agree is a Finance Document for the purposes of this Agreement; and
- ~~(4)(7)~~ each document entered into or provided under any of the documents described in paragraphs (1) to (3) or for the purposes of amending or novating any of those documents.

Gearing Ratio means Total Debt divided by Capitalisation expressed as a percentage.

Government Agency means:

- (1) a government, whether foreign, federal, state, territorial or local;
- (2) a department, office or minister of a government acting in that capacity; or

-
- (3) a commission, delegate, instrumentality, agency, board or other government, semi-government, judicial, administrative, monetary or fiscal authority, whether statutory or not.
-

Group means the Sponsor and all its Subsidiaries and member of the Group or Group Company means any one of them.

Growers means the persons described as "growers" in the Offer Documents and who have been allocated Landlots in accordance with the Offer Document and who are listed in Schedules provided to the Lender prior to the date of this Agreement as those Schedules are updated from time to time by the Borrower to the Lender.

GST means any goods and services tax, value added tax or other similar tax.

Guarantee means a guarantee, indemnity, letter of credit, performance bond, letter of comfort or other assurance or assumption of responsibility, however it is described, given for a debt or liability of another person or the solvency or financial condition of another person.

Head Leases means the Nanandia Head Lease and the Narcooya Head Lease.

Head Lease Rent means the rent payable by TSL to the Borrower under the Head Leases.

Holding Company has the meaning given to "holding company" in the *Corporations Act*.

Indebtedness of a person means any debt or other monetary obligation of that person relating to any financial accommodation, whether actual or contingent and whether present or future, including:

- (1) for money borrowed or raised;
- (2) under a Guarantee;
- (3) under any debenture, bond, note, loan stock or similar instrument or bill of exchange, negotiable or other financial instrument;
- (4) the par value, premium and accrued dividend of a redeemable preference share issued by that person;
- (5) under any letter of credit, acceptance, endorsement or bill discounting or note purchase facility;
- (6) under a lease, licence or hire arrangement if, under Accounting Standards, that lease, licence or hire arrangement should be capitalised on the balance sheet of that person (in which case the amount of the indebtedness is the amount that does or should appear on that balance sheet for the lease, licence or hire arrangement);

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- (7) under any hire purchase arrangement or for the deferred purchase price of any asset or service, except trade debts which arise in the ordinary course of business and which are payable within 90 days;
 - (8) under any put option, buy-back or discounting arrangement;
 - (9) under a Derivatives Transaction (in which case the amount of the indebtedness is the amount reasonably determined by the Lender as the liquidation or termination value of the relevant Derivatives Transaction based on market practices prevalent from time to time); or
 - (10) under any transaction having the commercial effect of borrowing.

Initial Value means the value of the Nenandle Property, as determined in the First Valuation or as subsequently determined by subsequent valuations of the Nenandle Property provided by the Borrower to the Lender pursuant to clause 2.1 and which are acceptable to the Lender.

Insolvency Event means, for any person that is a body corporate, the happening of one or more of the following events without prior written consent of the Lender:

- (1) except for the purpose of a solvent reconstruction or amalgamation which has the prior written consent of the Lender:
 - (a) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets and that process is not being diligently contested by that body corporate in a manner satisfactory to the Lender and no other event referred to in this definition has occurred;
 - (b) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (c) a resolution that it be wound up is passed or proposed;
- (2) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (3) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (4) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (5) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;

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- (6) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken and that process is not being diligently contested by that body corporate in a manner satisfactory to the Lender and no other event referred to in this definition has occurred;
- (7) it is insolvent within the meaning of section 95A of the *Corporations Act*, as disclosed in its Accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
- (8) as a result of the operation of section 459F(1) of the *Corporations Act*, it is taken to have failed to comply with a statutory demand;
- (9) it stops or suspends or threatens to stop or suspend:
- (a) the payment of all or a class of its debts; or
 - (b) the conduct of all or a substantial part of its business;
- (10) any event or circumstance set out in section 461 of the *Corporations Act* occurs in relation to it; or
- (11) anything having a substantially similar effect to any of the events specified in paragraphs (1) to (10) inclusive happens to it under the law of any jurisdiction.

Internal Security means the mortgage granted to the Borrower by TSL over certain of its rights from the Growers to secure TSL's obligations to pay the Head Lease Rent to the Borrower.

Interest Payment Date means:

- (1) the last day of an Interest Period; and
- (2) in the case of an Interest Period of more than 6 months, the last day of each month during that Interest Period.

Interest Period means, for an Advance, a period selected in accordance with clause 6.2.

Landlots means the almond lots on the Properties as described in the Offer Documents.

Leases means the Head Leases, and the Sub-leases.

Loan to Value Ratio means the ratio of Principal Outstanding under this Agreement at any point in time to the Value of the Security.

Manager means Almond Management Pty Ltd (ABN 71 094 468 845).

Management Fees means:

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- (1) in respect of TSL, the fees payable by the Growers to TSL under the Project Documents on account of the management of the Project by TSL; and
 - (2) in respect of the Manager, the fees payable by TSL to the Manager under the Project Documents on account of the management of the Project by the Manager,

but only to the extent they relate to the Nenandle Property.

Material Adverse Effect means, in the reasonable opinion of the Lender, a material adverse effect on:

- (1) the ability of the Borrower and the Security Providers (taken as a whole) to perform their obligations under any Finance Document;
- (2) the priority, enforceability, registrability or validity of any Finance Document;
- (3) the financial condition, assets, revenues, business or prospects of the Borrower or a Security Provider; or
- (4) the value of all or any part of a person's assets, revenues or business the subject of a Security.

Narcooyla Head Lease means the lease between the Borrower and TSL in connection with the area of the Nenandle Property that relates to the 2006 Timbercorp Almond Project.

Nenandle Head Lease means the lease between the Borrower and TSL in connection with the area of the Nenandle Property that relates to the 2005 Timbercorp Almond Project.

Nenandle Property means the property described in Item 3 of Schedule 4 and any other interest (including water rights) relating to that property.

Offer Documents means the documents including the disclosure documents offering to prospective growers interests in:

- (1) the 2005 Timbercorp Almond Project; and
- (2) the 2006 Timbercorp Almond Project.

Other ANZ Facility Agreement means any agreement between any of Timbercorp Finance Pty Ltd (ABN 68 054 581 190) or any other subsidiary of Timbercorp Limited and the Lender relating to financial accommodation provided or to be provided by the Lender from time to time to Timbercorp Limited or any of its subsidiaries other than Timbercorp Treasury Pty Ltd and any other agreement which the Lender and Borrower agree is to be designated as an "Other ANZ Facility Agreement".

Permitted Indebtedness means:

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- (1) any Indebtedness incurred under any Transaction Document;
 - (2) any Indebtedness due to a Related Body Corporate
 - (3) any Indebtedness incurred which is not secured over any property or asset subject to a Security or an Internal Security.

Permitted Security Interest means in relation to a person:

- (1) a Security Interest arising under a Transaction Document or an Internal Security;
- (2) a lien or charge arising by operation of law in the ordinary course of business, other than one securing an obligation not discharged when due;
- (3) a Security Interest created with the prior written consent of the Lender; or
- (4) a Security Interest over an asset or property which is not subject to a Security or an Internal Security;
- (5) a pledge over documents of title to stock-in-trade created in the ordinary course of business to secure the purchase price of that stock-in-trade or trade finance on usual terms from the supplier or that person's banker or a confirming house which is not associated with that person granted to finance the purchase of that stock-in-trade;
- (6) a right of title retention in connection with the acquisition of goods in the ordinary course of business on the usual terms of sale of the supplier where there is no default in connection with the relevant acquisition; or
- (7) any Security Interest:
 - (a) over any stock-in-trade to secure a monetary obligation maturing no more than 90 days after the date on which it is originally incurred and to be paid out of the proceeds of that stock-in-trade;
 - (b) arising by operation of law to secure a monetary obligation maturing not more than 90 days after the date on which it is originally incurred;
 - (c) under any order of attachment, distraint or similar legal process arising in connection with current proceedings if their execution or enforcement is effectively stayed and the claims to which they relate are being diligently contested in good faith by appropriate proceedings and adequate provision has been made for adverse judgments or orders.

Potential Event of Default means an event which would become an Event of Default with the giving of notice, the passage of time or the fulfilment of any other condition.

Primary Security Provider means Borrower and the Manager.

Principal Outstanding means, at any time, the total of all outstanding Advances at that time.

Projects means the individual managed investment schemes described in the Offer Documents in each case only to the extent referable to the Nenandie Property.

Project Documents means the underlying agreements between the Growers, TSL, the Borrower, other members of the Group and others which establish the Projects being each of the documents listed in item 1 and item 2 of Schedule 4.

Properties mean the Nenandie Property and all other land interests (including water rights) on, or in relation to which, the 2005 and 2006 Timbercorp Almond projects are operated including the properties known as Narcooyia, Mitchells, Carina West, Wangera and Westmores.

Receivables means all right title and interest of:

- (1) the Borrower (in respect of the Head Lease Rent);
- (2) TSL (in respect of the Sub-lease Rent and the Management Fees payable to TSL); and
- (3) the Manager (in respect of Management Fees payable to it by TSL) and;
- (4) TSL to all present and future debts and monetary liabilities of each Grower under or in respect of the Project Documents, including without limitation rights arising from or related to any breach or termination of a Project Document and all proceeds paid or collected, received or recovered in respect of, or in connection with, those debts and liabilities.

Related Body Corporate of a body corporate means another body corporate which is related to the first body corporate within the meaning of section 50 of the *Corporations Act*.

Rent means either or both the Sub-lease Rent or the Head Lease Rent.

Scheme means the 2005 Timbercorp Almond Project as constituted by the Constitution with ARSN 112 935 092 and the 2006 Timbercorp Almond Project as constituted by the Constitution with ARSN 118 387 974, or either of them as the case may be.

Security means each of the documents listed in Schedule 2 and each other Guarantee, Security Interest or other document entered into by any

person to secure or assume responsibility in respect of the payment, repayment or satisfaction of the Amount Owed or any part of it.

Security Interest means a right, interest, power or arrangement in relation to an asset which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or liability and includes a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation, or any arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts.

Security Provider means a person who grants or enters into a Security other than the Borrower.

Sponsor means Timbercorp Limited ABN 87 055 185 067.

Sub-leases means the leases between the Growers and TSL in connection with the Nenandie Property.

Sub-lease Rent means the rent payable by the Growers to TSL under the Sub-leases.

Subsidiary of a body corporate means a subsidiary of that body corporate within the meaning of Part 1.2 Division 6 of the *Corporations Act* or a corporation controlled by that body corporate within the meaning of the Accounting Standards.

Tax means a tax, levy, charge, impost, deduction, withholding or duty of any nature (including stamp and transaction duty and GST) at any time:

- (1) imposed or levied by any Government Agency; or
- (2) required to be remitted to, or collected, withheld or assessed by, any Government Agency,

and any related interest, expense, fine, penalty or other charge on those amounts and includes any amount that a person is required to pay to another person on account of that other person's liability for Tax but does not include an Excluded Tax.

Tax Ruling means the Tax Rulings described in Item 4 of Schedule 4 relating to the Projects.

Total Debt means all the indebtedness of the Group on a consolidated basis, excluding the Adjusted Interests and any securitisation trust vehicle associated interest bearing indebtedness incurred by any member of the Group.

Total Shareholders Equity means in respect of the Group on a consolidated basis, the aggregate of paid up share capital, retained earnings and the balance of any asset revaluation reserve less outside equity interests determined in accordance with the Accounting Standards.

Transaction Documents means:

- (1) the Finance Documents;
- (2) the Project Documents;
- (3) each document which the Lender and the Borrower or a Security Provider agree in writing is a Transaction Document for the purposes of this Agreement; and
- (4) each document entered into or provided under any of the documents described in paragraphs (1) to (3) or for the purpose of amending or novating any of those documents,

and Transaction Document means any of them and, when used in relation to the Borrower or a Security Provider, means any of those documents to which the Borrower or that Security Provider is a party.

Trees means the trees grown on the Nenandie Property by the Growers pursuant to the Project Documents.

Undrawn Commitment means, at any time, the Commitment at that time less the Principal Outstanding at that time.

Value of the Security means, at any time in relation to the Nenandie Property, the most recent value of the Nenandie Property as determined by a valuer approved and appointed by the Lender in accordance with clause 3.1(5) and 12.1(13).

1.2 Interpretation

- (1) In this Agreement, unless the context requires another meaning, a reference:
 - (a) to the singular includes the plural and vice versa;
 - (b) to a gender includes all genders;
 - (c) to a document (including this Agreement) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
 - (d) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (e) to a party means a party to this Agreement;
 - (f) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this Agreement;

(g) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with a Finance Document;

(h) to a person (including a party) includes:

(i) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and

(ii) the person's successors, permitted assigns, substitutes, executors and administrators;

(i) to a law:

(i) includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange; and

(ii) is a reference to that law as amended, consolidated, supplemented or replaced; and

(iii) includes a reference to any regulation, rule, statutory instrument, by-law or other subordinate legislation;

(i) to proceedings includes litigation, arbitration and investigation;

(k) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;

(l) to time is to Melbourne time;

(m) to an accounting term is to be interpreted according to the Accounting Standards;

(n) to the words "including" or "includes" means "including, but not limited to" or "includes, without limitation"; and

(o) to drawing, endorsement, acceptance or other dealing in respect of a Bill is a reference to drawing, endorsement, acceptance or other dealing within the meaning of the *Bills of Exchange Act 1909* (Cth).

(2) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

(3) Headings are for convenience only and do not affect interpretation of this Agreement.

(4) This Agreement may not be interpreted adversely to a party only because that party was responsible for preparing it.

2. The Facility

2.1 Commitment/Advances

- (1) Subject to this Agreement, the Lender grants to the Borrower the Facility under which the Borrower may draw Advances in an amount in total not exceeding the Commitment.
- (2) The Lender will promptly notify the Borrower in writing, after receipt of the First Valuation of the Initial Commitment Amount.
- (3) In the event that the Commitment Amount is less than \$45,000,000 in the first twelve months from the date of this Agreement, the Borrower may, in that period, obtain valuations of the Nenandie Property from a valuer and on terms acceptable to the Lender to recalculate the Commitment Amount ("New Valuation").
- (4) In the event that the Borrower provides the Lender with a New Valuation, the Lender will consider the New Valuation and, if the New Valuation is acceptable to the Lender and if that New Valuation increases the Commitment Amount, then the Lender will promptly notify the Borrower that it has accepted the New Valuation and also notify the Borrower of what the new Commitment Amount is. The new Commitment Amount will be effective from the date the relevant notice from the Lender is given to the Borrower.
- (5) Notwithstanding any other provision in this Agreement, the Commitment Amount cannot exceed \$45,000,000.

2.2 Purpose

- (1) The Borrower must use an Advance only for the Approved Purposes.
- (2) The Lender is not bound to enquire as to the application of an Advance and has no responsibility for that application.

2.3 Availability

The Undrawn Commitment is cancelled at 5:00 pm on the last day of the Availability Period, or such later date as the Lender may agree (in its absolute discretion).

3. Conditions precedent

3.1 Conditions precedent

The Lender is not obliged to make the Facility available and provide the first Advance to the Borrower unless the Lender receives each of the following, in a form and substance acceptable to the Lender, no later than 11:00 am 2 Business Days before the proposed Drawdown Date or a later time agreed in writing by the Lender:

- (1) a certificate in the form of Schedule 3 providing the details and annexures specified in that schedule dated not more than 5 days before the proposed Drawdown Date, for the Borrower and each Security Provider;
- (2) each original power of attorney under which a Finance Document has been or will be executed by any party other than the Lender;
- (3) each Finance Document signed by or on behalf of all parties other than the Lender;
- (4) evidence that all necessary filings and registrations have been completed and that all Taxes and other fees have been paid to ensure that the Finance Documents are valid binding and enforceable;
- (5) valuations over the Nenandie Property including the valuation dated 30 December 2005 either addressed to, or assigned to, the Lender from a valuer acceptable to the Lender and in a form and substance acceptable to the Lender;
- (6) a confirmation that the Borrower or other member of the Group has entered into an interest rate hedging arrangement with the Lender or other party acceptable to the Lender for a minimum of 75% of the Principal Outstanding effective immediately after the first Drawdown Date, for a term not less than 2 years and on terms satisfactory to the Lender;
- (7) original policies of insurance in respect of the Nenandie Property noting the Lender's interest thereon from an insurance company acceptable to the Lender and with risks and for an amount acceptable to the Lender together with a certificate of currency;
- (8) true and complete copies of each of the Project Documents for each Project;
- (9) duplicate certificates of title for the Nenandie Property;
- (10) an Arrears Report dated not less than 5 Business Days prior to the first Drawdown Date;
- (11) Releases from any security holders who have a Security Interest over property the subject of a Security;

(12) a review conducted by Deacons of the Project Documents, the results of which are acceptable in form and substance to the Lender;

(13) Schedules listing the "growers" who have been allocated Landlots in accordance with the Offer Documents;

(14) Legal opinion from Deacons as to the Finance Documents in form and substance acceptable to the Lender;

(15) Legal opinion from Coms as to the stamp duty liability in respect of the Internal Security and the Security in a form and substance acceptable to the Lender;

(16) an amendment to the Head Leases to ensure that the Rent payable under the Sub-leases is equal to the Rent payable under the Head Leases; and

(17) any other documents, assurances, opinions and information that the Lender reasonably requires.

3.2 Benefit of conditions precedent

The conditions precedent in clause 3.1 are for the benefit of the Lender only and may only be waived by the Lender. If satisfaction of any condition precedent is waived on condition that the Borrower satisfy that or any other requirement at or before a particular time, the Borrower must comply with that condition.

4. Drawdown

4.1 Availability

The Borrower may only drawdown an Advance if:

(1) the requirements of clause 3.1 have been satisfied or waived by the Lender before the Drawdown Notice for that Advance is given;

(2) the Lender has received a Drawdown Notice which satisfies the requirements of clause (4);

(3) as at the date of the Drawdown Notice and the Drawdown Date:

(a) all representations and warranties made by the Borrower or a Security Provider in, or in connection with, a Finance Document are true and not misleading, by omission or in any other way by reference to circumstances then current; and

(b) no Event of Default or Potential Event of Default has occurred which has not been remedied or waived or would result from the drawing of the Advance; and

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- (4) after the Drawdown Dates for that Advance no more than 5 Advances will be current.
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4.2 Requirements of Drawdown Notice

Each Drawdown Notice must:

- (1) be in legible writing substantially in the form of Schedule 1 and must specify the matters set out in that schedule;
- (2) be signed by an Authorised Officer of the Borrower;
- (3) specify the amount of the Advance, which must be at least \$1,000,000 and a whole multiple of \$500,000 and less than the Undrawn Commitment;
- (4) specify the Drawdown Date, which must be a Business Day during the Availability Period;
- (5) in the case of fixed rate Advances specify acceptance of the fixed rate quoted by the Lender pursuant to clause 5; and
- (6) be received by the Lender no later than 11:00 am 3 Business Days before the proposed Drawdown Date or a later time agreed in writing by the Lender.

4.3 Effect of Drawdown Notice

Each Drawdown Notice:

- (1) constitutes a representation and warranty under this Agreement that:
 - (a) all representations and warranties made by the Borrower or a Security Provider in, or in connection with, a Finance Document, including those set out in clause 11.1, are true and not misleading, by omission or in any other way, as at the date of the Drawdown Notice and the Drawdown Date; and
 - (b) no Event of Default or Potential Event of Default has occurred which has not been remedied or waived or will occur as a result of drawing the Advance; and

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- (2) once given is irrevocable.
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5. Fixed Interest Option

5.1 Quotations

If the Borrower proposes to select an Interest Period which is longer than 180 days but shorter than or equal to 3 years, the Borrower may, at least 5 days prior to the proposed Drawdown Date or the last day of an Interest

Period, ask the Lender (at the discretion of the Lender) to quote a fixed interest rate for:

- (1) all or part of the amount of an Advance ("Relevant Amount"); and
- (2) for the relevant Interest Period.

5.2 Acceptance

If the Lender's quoted fixed interest rate for the Relevant Amount and for the relevant Interest Period is acceptable to the Borrower then the Borrower may select that rate in the Drawdown Notice given to the Lender in accordance with clause 4. If the Relevant Amount is not the whole amount of the relevant Advance, then with effect on and from the first day of that Interest Period, each of the Relevant Amount and the remainder of the relevant Advance will be taken to be a separate Advance for the purposes of this Agreement.

6. Interest

6.1 Interest

- (1) The Borrower must pay interest on each Advance to the Lender:
 - (a) at the rate determined under either clause 6.1(2)(a) for Interest Periods which are 180 days or less and clause 6.1(2)(b) for Interest Periods which are greater than 180 days; and
 - (b) in arrears on each Interest Payment Date.
- (2)
 - (a) The rate of interest for an Interest Period which is 180 days or less, is the rate of interest per annum determined by the Lender to be the sum of the Base Rate for that Interest Period and 0.75% per annum; and
 - (b) The rate of interest for an Interest Period which is greater than 180 days is the rate per annum quoted by the Lender to the Borrower pursuant to clause 5.
- (3) Interest under this clause 6.1:
 - (c) accrues from day to day; and
 - (d) is calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and a 365 day year.

6.2 Selection

- (1) Subject to this clause 6.2 and clause 6.3 the length of the Interest Period for an Advance is the period selected by the Borrower in the Drawdown Notice for that Advance or in a notice delivered to

the Lender at least 3 Business Days prior to the end of a relevant Interest Period.

- (2) The Interest Period selected may be a period of 30, 60, 90 or 180 days or any other period that the Lender agrees in writing.
- (3) If the Borrower does not select an Interest Period in the Drawdown Notice for an Advance or in the notice referred to in clause 6.2(1), or selects an Interest Period which does not comply with this clause 6.2 or clause 6.3, the Borrower is considered to have selected an Interest Period of 30 days or any longer period selected by the Lender.

6.3 Interest Periods

- (1) The Interest Period for an Advance starts on the Drawdown Date for that Advance.
- (2) An Interest Period which would otherwise end on a day that is not a Business Day instead ends on the following Business Day or, if that Business Day is in another calendar month, on the immediately preceding Business Day.
- (3) No Interest Period may end after the Final Repayment Date. An Interest Period which would otherwise end after the Final Repayment Date instead ends on the Final Repayment Date.

7. Repayment, prepayment and cancellation

7.1 Repayment of Amount Owing

The Borrower must pay the Amount Owing in full to the Lender on the Final Repayment Date.

7.2 Prepayment

- (1) The Borrower may only prepay an Advance in accordance with this Agreement.
- (2) The Borrower may prepay to the Lender all or any part of an Advance on an Interest Payment Date by giving the Lender not less than 2 Business Days prior notice specifying the amount and date of prepayment.
- (3) The amount of any partial prepayment must be at least \$1,000,000 and a whole multiple of \$500,000.
- (4) A notice of prepayment given under this clause 7.2 is irrevocable.
- (5) On the proposed prepayment date the Borrower must:
 - (a) prepay the amount specified in the notice; and

- (b) pay all interest, fees, expenses and other amounts accrued ~~due under the Finance Documents on the amount prepaid to the prepayment date (whether or not yet payable).~~

- (6) The Borrower must not make a prepayment on any date other than the last day of an Interest Period.
- (7) Amounts prepaid may not be re-borrowed under this Agreement and will reduce the Commitment by the amount of that prepayment.

7.3 Cancellation

The Borrower may cancel all or part of the Undrawn Commitment at any time during the Availability Period if:

- (1) the Lender receives at least 2 Business Days prior notice specifying the proposed date and amount of the cancellation; and
- (2) in the case of a partial cancellation, it is at least \$1,000,000 and a whole multiple of \$500,000.

7.4 Provisions applicable to cancellation

- (1) A notice of cancellation given under clause 7.3 is irrevocable once given.
- (2) The Undrawn Commitment (or that part of it specified in the notice given under clause 7.3) is cancelled with effect from the proposed date of cancellation specified in a notice of cancellation by an amount equal to the amount specified in the notice of cancellation.
- (3) The Borrower must pay to the Lender all fees (including the line fee accrued under clause 10.1(2) to and including the date of cancellation), expenses and other amounts accrued due under the Finance Documents to the date of cancellation (whether or not yet payable) on or before the date of cancellation.
- (4) If all or part of the Undrawn Commitment is cancelled after the Lender has received a Drawdown Notice for an Advance, the amount of that Advance is reduced accordingly.

8. Payments

8.1 Payments by the Borrower

All payments by the Borrower to the Lender under a Finance Document must be made:

- (1) not later than 11:00 am on the due date for payment;
- (2) in Cleared Funds in Dollars; and

(3) to the account specified by the Lender;

~~or in any other manner that the Lender notifies to the Borrower.~~

8.2 Business Days

If an amount would otherwise be due for payment on a day that is not a Business Day, that amount is due on the next Business Day or, if that Business Day is in another calendar month, on the preceding Business Day.

8.3 Payable on demand

An amount payable under a Finance Document that is not payable on a specified date or after a specified period is payable on demand by the Lender.

8.4 Payments in gross

Subject to clause 8.5, all money payable by the Borrower under a Finance Document must be paid unconditionally and in full without:

- (1) set-off or counterclaim of any kind; or
- (2) deduction or withholding for Tax or any other reason, unless the deduction or withholding is required by applicable law.

8.5 Deductions and withholdings

- (1) If the Borrower or any other person is required by law to make a deduction or withholding for Tax from a payment to the Lender under a Finance Document or the Lender is required to make a payment for Tax on any payment received or receivable by it under a Finance Document, the Borrower:

- (a) indemnifies the Lender against any Claim in respect of the Tax; and
- (b) must immediately pay an additional amount to the Lender so that, after all applicable deductions, withholdings or payments for Tax, the Lender actually receives for its own benefit a net amount equal to the amount which it would have received if no deductions, withholdings or payments had been required.

- (2) If the Borrower is required by law to make a deduction or withholding for Tax from a payment to the Lender under a Finance Document, the Borrower must pay the full amount of the deduction or withholding to the appropriate Government Agency in accordance with applicable law and deliver the original receipts to the Lender.

8.6 Allocation of receipts

The Lender may allocate payments made by or for the account of the Borrower towards principal, interest or other money owing under a Finance Document as it considers appropriate.

9. Unlawfulness or increased costs

9.1 Unlawfulness

- (1) If the Lender correctly determines that it is or will be unlawful, or it is or will be contrary to any requirement of any Government Agency (whether or not having the force of law) for the Lender to make, fund or maintain the Facility or to otherwise perform its obligations under a Finance Document, the Lender must notify the Borrower of its determination. On the giving of that notice to the Borrower, the Lender's obligation to make, fund or maintain the Facility or perform the relevant obligation ceases and the Commitment is cancelled.
- (2) The Borrower must pay the Amount Owing to the Lender in full on the earlier of:
 - (a) 30 days from receipt of the notice under clause 9.1(1); or
 - (b) the date specified in the notice and certified by the Lender as the last day on which payment is required or permitted in order to comply with the relevant law or requirement.

9.2 Increased costs

- (1) If the Lender correctly determines that:
 - (a) the introduction of, implementation of or a change in any law, or any official directive, requirement or request of any central bank or any other Government Agency (whether or not having the force of law but compliance with which is in accordance with the practice of responsible banks or financial institutions in the relevant jurisdiction) including any one of them relating to:
 - (i) capital adequacy, reserve, liquidity or deposit requirements, the classification or allocation of capital or prudential supervision; or
 - (ii) a Tax on or affecting payments made or to be made under a Finance Document; or
 - (b) any change in the interpretation or application of any law, official directive, requirement or request referred to in paragraph (1)(a) by a Government Agency;

In each case occurring after the date of this Agreement (and where the Lender was not aware of the matter before the date of this Agreement) directly or indirectly:

- (c) increases the cost to the Lender of underwriting, making, funding or maintaining the Facility or performing an obligation under a Finance Document;
- (d) reduces the amount of any payment made or payable by or for the account of the Borrower or a Security Provider or received or receivable by the Lender under a Finance Document;
- (e) reduces the effective return to the Lender on capital which is or becomes allocated by the Lender to the Facility or the effective return on overall capital of the Lender;
- (f) imposes any requirement that the Lender make any payment or forego any interest or other return on or calculated by reference to:
 - (i) any sum received or receivable by it under any Finance Document in an amount which the Lender considers material; or
 - (ii) any capital or other amount directly or indirectly allocated by the Lender to making the Facility available in an amount which the Lender considers material; or
- (g) restricts or prevents the Lender from entering into any other transaction with the result that the Lender incurs any cost or loss of interest or other return specified in paragraphs (3), (4), (5) or (6);

the Borrower must pay to the Lender on demand the amounts certified by the Lender as necessary to compensate it for that increased cost, reduction, loss of return or payment.

- (2) Where an increased cost, reduction, loss of return or payment referred to in clause 9.2(1) arises from circumstances which relate not only to the Lender's funding of the Facility, but also to other business, the Lender is entitled to claim as compensation for the increased cost, reduction, loss of return or payment the amount it determines in good faith is fairly attributable to its funding of the Facility. The Lender may use averaging and attribution methods commonly used by the Lender or any other method it considers appropriate.
- (3) In providing a certificate under this clause 9.2, the Lender must provide reasonable details of the basis of its calculations but is not required to disclose any confidential information relating to the organisation of its business.

- (4) It will not be a defence that any increased cost, reduction, loss of return or payment referred to in clause 9.2(1) could have been avoided.
- (5) The Lender must use all reasonable endeavours to minimise any increased costs or other amounts payable by the Borrower under this clause 9.2.
- (6) If the Borrower has received a notice or certificate from the Lender under clause 9.2(1) and that notice has not been withdrawn by the Lender, the Borrower may, within 20 days of receipt of the notice from the Lender, and, without being obliged to make any payment, give notice to the Lender under clause 9.2(1), to either:
- (a) terminate the Lender's obligation to make the Facility available; or
 - (b) within 10 days of giving notice to the Lender, repay the Amount Owed together with any amount owing under clause 15.1(1).
- (7) Any notice given by the Borrower under clause 9.2(6);
- (a) is effective from the time of its actual receipt in legible form by the Lender;
 - (b) is irrevocable; and
 - (c) binds the Borrower to act in accordance with any election made in that notice.

10. Fees, expenses, costs and Taxes

10.1 Fees

- (1) (a) The Borrower must pay to the Lender a non-refundable establishment fee of 0.80% of the Commitment Amount, less the payment of \$60,000 paid upon execution of the committed term sheet. The remainder of the establishment fee is payable on the earlier to occur of:
- (i) the initial Drawdown Date; and
 - (ii) 30 September 2006,
- provided that the minimum amount payable by the Borrower as the establishment fee shall be the amount of \$288,000 (which equates to a Commitment Amount of \$36,000,000).
- (b) If the Commitment increases pursuant to clause 2.1(2) the Borrower must pay to the Lender a non-refundable establishment fee of 0.80% of the amount by which the

Commitment Amount increases. The non-refundable establishment fee is payable on the date that the increased Commitment is drawn.

- (2) (a) The Borrower must pay to the Lender a non-refundable line fee of 1.00% per annum of the Commitment Amount from time to time. The line fee is payable in advance on the date of this Agreement and on the first Business Day of each of September, December, March and June of each year (each a "Fee Payment Date") until the Amount Owed under this Agreement is repaid in full;
- (b) The line fee accrues from day to day and is calculated:
- (i) on each Fee Payment Date for the period commencing on, and including, the Fee Payment Date and ending on, but excluding, the immediately preceding Fee Payment Date; and
 - (ii) in the case of the last Fee Payment Date, for the period commencing from, and including, the Fee Payment Date and ending on, but excluding, the date on which the Amount Owed under this Agreement is repaid in full.
- (c) If the Commitment Amount increases (pursuant to clause 2.1(2)) after a Fee Payment Date the Borrower must immediately pay to the Lender, for the period commencing on the date that the Commitment Amount is increased and ending on but excluding the next Fee Payment Date, or the date the Amount Owed is repaid in full (as the case may be), a line fee calculated on the amount by which the Commitment Amount increases.

(3) The Borrower must pay to the Lender a non-refundable fee of \$450,000 upon the earlier of:

- (a) the sale of the Nenandia Property;
- (b) the repayment of the Facility; or
- (c) the Final Repayment Date;

In consideration of the Lender agreeing to BOSI Security Services Limited taking a second ranking mortgage over the Nenandia Property such consent being conditional on BOSI Security Services Limited executing a Deed of Priority providing the Lender with first ranking security in respect of that security in a form acceptable to the Lender in its absolute discretion.

(4) The Borrower must pay the Lender a non-refundable drawdown fee of \$72,000 upon the earlier of:

- (a) the sale of the Nenandia Property;

(b) the repayment of the Facility; or

(c) the Final Repayment Date;

in consideration of the Lender having made an Advance under the Facility in July 2008.

10.2 Expenses

- (1) Whether or not an Advance is made, the Borrower must pay to or reimburse the Lender on demand for:
 - (a) all reasonable costs, expenses and Taxes incurred or payable by the Lender for:
 - (i) the negotiation, preparation, execution, completion, stamping and registration of the Finance Documents;
 - (ii) the arrangement of the Facility;
 - (iii) any attendance, inspection, calculation, approval, consent, waiver, variation, release or discharge made or given by the Lender under a Finance Document; and
 - (iv) any enquiry by any Government Agency concerning the Borrower, any Security Provider or any transaction contemplated by or funded under a Finance Document; and
 - (b) all costs, expenses and Taxes incurred or payable by the Lender for any contemplated or actual enforcement of a Finance Document, or the preservation of its rights, powers and remedies under a Finance Document.
- (2) The costs, expenses and Taxes of the Lender to be paid or reimbursed by the Borrower under clause 10.2(1) include:
 - (a) internal and external legal fees and disbursements (together with Taxes on those costs, expenses, fees and disbursements) on a full indemnity basis; and
 - (b) any costs, expenses and Taxes incurred in retaining an independent consultant or other person to evaluate any matter of concern.
- (3) Wherever practicable in the circumstances referred to in clause 10.2(1)(a) the Lender must agree estimates of the costs, expenses and taxes referred to in this clause 10.2(1)(a) with the Borrower.

10.3 Costs

The Borrower must bear the cost of doing or refraining from doing any act, matter or thing which it is required to do or refrain from doing under or in connection with a Finance Document.

10.4 Taxes

- (1) The Borrower must pay all Tax in relation to the execution, delivery, registration, performance, release, discharge, variation, enforcement or attempted enforcement of or otherwise in respect of the Finance Documents.
- (2) The Borrower indemnifies the Lender against all Claims in respect of any amount payable under clause 10.4(1).

10.5 Goods and Services Tax

- (1) The Borrower must pay to the Lender any amount ("GST Amount") payable on account of GST as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this Agreement by the Lender including the provision of any financial advice or release of a claim.
- (2) The GST Amount must be calculated by multiplying the amount on which the GST is required to be calculated at law by the prevailing rate of GST.
- (3) The Borrower must pay any GST Amount at the same time and in the same manner as making payment of any consideration on which the GST Amount is calculated or 7 days after a liability for GST arises, whichever is earlier. To the extent that the GST Amount is not calculated on consideration, the Borrower must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Lender.
- (4) If an adjustment is made or required to be made between the Lender, or other payer of GST and the relevant taxing authority on account of any amount paid as GST as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this Agreement by the Lender, a corresponding adjustment must be made as between the Borrower and the Lender and any payment necessary to give effect to the adjustment must be made.
- (5) The Borrower must pay any amount it is required to pay under this clause 10.5 in full and without deduction, notwithstanding any entitlement that it may have to a credit or offset.
- (6) No later than 14 days after receipt of payment of any GST Amount the Lender must provide to the Borrower a tax invoice complying with any legislation under which GST is imposed.

- (7) If any supply is made or deemed to be made to the Lender, to the extent that the supply relates whether directly or indirectly to the making of a supply or deemed supply by the Lender under or in connection with this Agreement, the Lender may obtain from the Borrower reimbursement of any part of the consideration for the supply made to it that is attributable to GST. This clause will not apply to the extent that the Lender is entitled to an input tax credit in respect of the supply made or deemed to be made to it. The Borrower must pay to the Lender an amount required to be paid under this clause within 7 days of written demand from the Lender.

11. Representations and warranties

11.1 Representations and warranties

The Borrower and TSL represent and warrant to the Lender in respect of itself and each Security Provider that:

(1) General Representations and Warranties

- (a) **status:** it is a corporation with limited liability and is properly incorporated (or taken to be incorporated) or registered and validly existing under the *Corporations Act*;
- (b) **power:** it has full power and authority to own its assets and to carry on its business as it is presently being conducted and to enter into and perform the transactions contemplated by the Transaction Documents;
- (c) **corporate authority:** it has taken all corporate and other action necessary to authorise the execution and performance of each Transaction Document so that each Transaction Document is fully valid and binding on and enforceable against it;
- (d) **documents binding:** the Transaction Documents constitute (or will, when signed and delivered, constitute) its legal, valid and binding obligations enforceable against it in accordance with their terms;
- (e) **ranking:** each Security which is intended to create a Security Interest creates the Security Interests which it purports to create and the obligations secured by each such Security rank ahead of all its other payment obligations, other than those which on a winding-up, liquidation, dissolution or similar process must be preferred by operation of law;
- (f) **insolvency:** an Insolvency Event has not occurred;
- (g) **transactions permitted:** the execution of the Transaction Documents by it and the performance by it of its obligations

or the exercise of its rights under the Transaction Documents does not:

- (i) contravene its constitution or any of the provisions of the *Corporations Act* that apply to it as replaceable rules or mandatory rules;
 - (ii) contravene a law or Authorisation;
 - (iii) contravene an agreement or obligation binding on it or applicable to its assets, revenues or business;
 - (iv) exceed any limits on its powers or the powers of its directors;
 - (v) result in the creation of a Security Interest over its assets, revenues or business, other than a Permitted Security Interest;
 - (vi) result in the acceleration, cancellation, liquidation or early termination of an agreement or obligation relating to its indebtedness; or
 - (vii) involve any act, matter or thing which constitutes (or which would be likely to constitute, with the giving of notice, the passage of time or the fulfilment of any other condition) an event of default or prepayment, cancellation, liquidation, early termination or similar event under an agreement or obligation relating to its indebtedness;
- (h) registration: as at the date of this document, other than registration of any Security that is a charge at the Australian Securities and Investments Commission under the *Corporations Act* and any Security that is a mortgage under the appropriate law in the jurisdiction where property encumbered by that mortgage is located, it is not necessary under the laws in force on the date of this Agreement that a Finance Document be filed or registered with any Government Agency to ensure:
- (i) the validity, enforceability or admissibility in evidence of the Finance Documents in any relevant jurisdiction; or
 - (ii) that each Finance Document which is a Security Interest has the priority it is intended to have;
- (i) Authorisations: all Authorisations necessary or advisable for or in connection with the execution, validity, performance or enforceability of each Finance Document have been obtained and are fully effective;

- (j) **Environmental Laws** it is not in breach of any ~~Environmental Laws applicable to the Nenandie Property or the terms and conditions of any Authorisation issued under those Environmental Laws where the breach would have a Material Adverse Effect;~~
- (k) **other default:** it is not in default under any law, Authorisation, agreement or obligation binding on it or applicable to its assets, revenues or business in circumstances which would have a Material Adverse Effect and no Event of Default (except as disclosed to the Lender in writing) has occurred which has not been remedied or waived in writing;
- (l) **no litigation:** except as previously disclosed to the Lender, no litigation or arbitration, administrative proceedings or other procedure for the resolution of disputes is currently taking place, pending or, to its knowledge threatened against it or its assets, revenues or business involving in the case of the Borrower a claim or claims in an amount exceeding (whether alone or in total) \$1,000,000 or in the case of the Borrower or TSL, which if successful will prevent it from carrying on all or substantially all of its business except any such matter which has been previously disclosed to the Lender or which is disclosed within 5 Business Days from the date the relevant matter takes place;
- (m) **Accounts:** its and the Group's most recent Accounts for the time being and any Accounts delivered to the Lender under this Agreement:
- (i) were prepared in accordance with Accounting Standards; and
 - (ii) show a true and fair view of its and the Group's financial position as at the end of the financial period to which they relate and the results of its and the Group's operations for that period and as at the end of that financial period it and the members of the Group did not have any material liabilities (contingent or otherwise) or material unrealised or anticipated losses which were not disclosed in those Accounts or reserved against in those Accounts;
- (n) **no adverse change:** since the date of the Accounts referred to in clause 11.1(1)(m), there has been no change in the assets, revenues, business or financial condition of itself or the Group which could reasonably be expected to have a Material Adverse Effect;
- (o) **no Security Interest:** no Security Interest exists over any of its assets, revenues or business except a Permitted Security Interest;

- (p) **accuracy of information:** at the time it is given, all information given to the Lender by or with its authority (including without limitation the Arrears Reports) is true in all material respects and is not, by omission or in any other way, misleading in any material respect and all forecasts and projections provided to the Lender by or with its authority were arrived at after due and careful consideration by the Borrower and were, in its considered opinion, based on reasonable assumptions and fair and reasonable when made;
- (q) **not a trustee:** it is not a trustee of any trust other than as disclosed to the Lender;
- (r) **no immunity:** neither it or any of its assets, revenues or business has any immunity from jurisdiction or execution;
- (s) **tax returns:** all Tax returns, reports and statements required to be filed by it have been filed properly completed and on time with the appropriate Government Agency in all jurisdictions in which those returns, reports and statements are required to be filed and all Taxes have been paid on or before the due date for payment;
- (t) **financial benefit to a related party:** the execution of the Finance Documents to which it is a party and the performance by it of its obligations or the exercise of its rights under them does not constitute a contravention of section 208 or section 209 of the *Corporations Act* by any person;
- (u) **certifications:** each document, matter or thing certified by an Authorised Officer of the Borrower or a Security Provider is true and complete in all material respects and up to date;
- (v) **benefit:** it benefits by entering into, exercising its rights and performing its obligations under the Finance Documents;
- (w) **completeness:** there is no fact known to it which could reasonably be expected to have a Material Adverse Effect; and
- (x) **location of assets:** all the property of TSL which relates to the Projects other than the property secured by the Internal Security is located in Victoria, Northern Territory or the Australian Capital Territory.

(2) Project Representations and Warranties

(a) project documentation:

- (i) the Offer Documents accurately describe the operation and structure of the Projects and the Project Documents;
- (ii) the Project Documents are the only documents relevant to the creation of the Projects and the Project Documents are the documents which establish the Project with each Grower;
- (iii) to its best knowledge and belief the Growers and other parties had, when executing the Project Documents full power and authority to enter into and to perform all transactions contemplated by the Project Documents;
- (iv) to its best knowledge and belief all Authorisations necessary or advisable for or in connection with the execution, validity, performance or enforceability of each of the Project Documents by the Growers and other parties had been obtained and were fully effective at the time the Project Documents were executed;
- (v) to its best knowledge and belief the Project Documents constitute legal, valid and binding obligations enforceable against each party in accordance with its terms;
- (vi) except as previously disclosed to the Lender, it is not aware of any breach of the Project Documents by any party which would entitle a non defaulting party to exercise rights of termination of the Projects;
- (vii) except as previously disclosed to the Lender, it is not aware of any Grower having appointed an independent consultant to opine, for the purpose of considering a termination of the Projects, on whether the Projects are "commercially viable" as that term is used in the Project Documents;
- (viii) the Projects for each Grower are all conducted on the Nenandle Property and the Properties;

(b) Growers:

- (i) the Growers have subscribed for and have been allocated all the Landlots in the Projects and the Growers are the persons listed in the Schedules provided to the Lender under clause 3.1(13);

- (II) ~~except as previously disclosed to the Lender, it is not aware of any dispute or threatened litigation, arbitration, administrative proceedings or other~~ procedure for the resolution of disputes between a member of the Group and 50% or more of the Growers, where each of those Growers have the same or similar claim or issue as each other;
- (III) except as previously disclosed to the Lender, it is not aware of 50% or more of the Growers having the intention of exercising their rights to terminate the Projects;
- (c) **Rights to Management Fees:** The Manager has, pursuant to the Project Documents, a legal right to receive the Management Fees from TSL;
- (d) **Right to Sub-lease Rent:** TSL has, pursuant to the Project Documents, a legal right to receive the Sub-lease Rent and Management Fees from the Growers in respect of that Grower's participation in the Project;
- (e) **Right to Head Lease Rent (Almond Land):** The Borrower has, pursuant to the Project Documents for the Projects, a legal right to receive from TSL the Head Lease Rent.
- (f) **Trees:**
 - (i) The Trees and the Crop, on termination of the Projects, will be the property of the Borrower; and
 - (ii) During the life of the Projects the Trees are the property of the Borrower and the Crop will be the Property of the Grower.
- (g) **Receivables:** The Receivables are:
 - (i) free of any right of set off, counterclaim or other equity;
 - (ii) constitute legal, valid and binding obligations against the Growers (in respect of Sub-lease Rent and the Management Fees payable by the Growers to TSL) and TSL (in the case of Management Fees payable by TSL to the Manager) in accordance with the terms of the Project Documents.
- (3) In respect of TSL (in this subclause called "it") and each Scheme:
 - (a) **Authorisation:** it holds an Australian Financial Services Licence authorising it to operate the Scheme under sections 601FA and 911A(1) of the *Corporations Act*;

→ if terminate

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- (b) **Sole responsible entity:** It is the sole responsible entity of the Scheme;
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- (c) **Licence conditions:** it complies in all material respects with all of its Australian Financial Service Licence conditions;
- (d) **Legislative compliance:** it complies with the *Corporations Act* and any other relevant financial services laws;
- (e) **Scheme duly established:** the Scheme has been duly constituted and registered with ASIC and it complies in all material respects with Chapter 5C of the *Corporations Act* and that such compliance (other than strict compliance) will not cause a Material Adverse Effect;
- (f) **Schemes' constitution:** the Scheme Constitution complies in all material respects with the *Corporations Act* and with ASIC's policy requirements and it complies in all material respects with its obligations and duties under the Scheme Constitution and that such compliance (other than strict compliance) will not cause a Material Adverse Effect;
- (g) **Schemes' Compliance Plan:** the Compliance Plan complies in all material respects with the *Corporations Act* and with ASIC's policy requirements and it complies with its obligations and duties under the Compliance Plan in all material respects;
- (h) **Compliance Plan Auditor:** the auditor of the Compliance Plan has consented to act as auditor of the Compliance Plan and such appointment has been notified to ASIC;
- (i) **Disclosure Documents:** Disclosure Documents have been prepared and distributed in accordance with the *Corporations Act*;
- (j) **Transaction permitted:** the execution, delivery and performance by it and of the Transaction Documents to which it is expressed to be a party do not and will not violate in any material respect any provision of:
- (i) the Scheme Constitution;
 - (ii) the Compliance Plan; or
 - (iii) the Custodian Agreement;
- (k) **Benefit:** the Scheme benefits by the execution of the Transaction Documents to which it is expressed to be a party in its capacity as responsible entity of the Scheme;
- (l) **Power:** it has power under the Scheme's Constitution to enter into and observe its obligations under each
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Transaction Document to which it is a party in its capacity as responsible entity of the Scheme;

- (m) **No removal:** so far as it is aware having made due enquiry, no action has been taken or proposed to remove it as responsible entity of the Scheme;
- (n) **No grounds for winding up:** it is not aware having made due enquiry of any grounds on which any other person may apply to a court for the winding up of the Scheme;
- (o) **No termination:** to the best of its knowledge and belief having made due enquiry no action has been taken or proposed to terminate the Scheme;
- (p) **Indemnity:** it has a right to be fully indemnified out of the Scheme in respect of obligations incurred by it under each Transaction Document to which it is a party;
- (q) **No ASIC notice:** it has not received any notice under the *Corporations Act* requiring a modification of its Australian Financial Service Licence, the Scheme Constitution, Compliance Plan and Disclosure Documents which is likely to or would cause a Material Adverse Effect;
- (r) **No immunity:** the Scheme does not, nor do any of the Scheme's assets, enjoy immunity from any suit or execution; and
- (s) **Taxes:** the Scheme has complied in all material respects with all laws relating to Tax in all applicable jurisdictions and have paid all Taxes due and payable by it as applicable.

11.2 Continuing representations and warranties

The representations and warranties in this Agreement, including those in clause 11.1, survive the execution of each Finance Document and are repeated on the date of each Drawdown Notice, each Drawdown Date and each Interest Payment Date while any of the Amount Owing remains outstanding.

11.3 Acknowledgment of reliance

The Borrower acknowledges that the Lender has entered into each Finance Document in reliance on the representations and warranties in this Agreement.

11.4 Additional representations and warranties

The representations and warranties in this Agreement are in addition to any other representations and warranties in any other Finance Document.

12. Undertakings

12.1 Positive undertakings

Unless the Lender otherwise agrees in writing, the Borrower must:

(1) corporate reporting: supply to the Lender:

- (a)** within 90 days of the end of each financial year, copies of the consolidated audited Accounts, directors' report and auditor's report of the Group for that financial year prepared for distribution to its members under section 314(1)(a) of the *Corporations Act* and prepared in accordance with Accounting Standards;
- (b)** within 90 days of the end of each financial year, a set of consolidated audited Accounts for the Borrower certified by a Director of the Borrower as representing a true and fair view of the financial condition of the Borrower;
- (c)** within 60 days of the end of each financial half year, copies of the consolidated unaudited Accounts of the Borrower and the Sponsor for that half-year, certified by a Director or the principal accounting officer of the Sponsor or the Borrower as applicable, as representing a true and fair view of the financial condition of the Sponsor and the Borrower for that half year;
- (d)** within 45 days of the end of March, June, September and December in each year:
 - (i)** the unaudited quarterly Accounts of the Sponsor and Borrower for that quarter; and
 - (ii)** an Arrears Report for that quarter; and
 - (iii)** an update of the names and entitlements of each new person who is a "grower" under the Projects,

certified by a Director or the principal accounting officer of the Sponsor and Borrower as applicable, as representing a true and fair view of the financial condition or statements made in them;

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- (e)** promptly on request, any additional financial or other information that the Lender reasonably requests; and
 - (f)** copies of any other accounts, notices or other documents required to be lodged with a securities exchange, the Australian Securities and Investments Commission or other Government Agency, at the same time as they are required to be lodged.

(2) **basis of accounting:** ensure that each set of Accounts delivered under clause 12.1(1) is prepared in accordance with law and the Accounting Standards;

(3) **directors certificate:** supply to the Lender with the Accounts referred to in clause 12.1(1) a certificate signed by a director or the Company confirming that the financial covenants contained in clause 12.3 are being complied with, detailing the calculation of those financial covenants and giving the actual financial ratios as at the most recent date that they were required to be tested;

(4) **books and records:** prepare and maintain, in accordance with the Accounting Standards, proper and adequate books and financial records reflecting fully all transactions entered into by it;

(5) **inspection:** to the fullest extent permitted by law, permit the Lender or professional consultants appointed by the Lender, or both, to inspect and examine at reasonable times and on reasonable notice (but not more frequently than one in every 12 month period following the first Drawdown Date if no Event of Default subsists):

(a) its books and financial records and to take copies of those books and financial records; and

(b) any property used or owned by it to determine whether the Borrower and each Security Provider is complying with the Finance Documents or to carry out an environmental audit,

and to co-operate fully with the Lender or its professional consultants or both in the conduct of that inspection and examination including giving full access to all its premises and employees;

(6) **notice to Lender:** promptly inform the Lender of:

(a) the occurrence of an Event of Default or Potential Event of Default of which it becomes aware;

(b) the commencement of any litigation or other proceedings or procedure described in clause 11.1(1)(i) of which it becomes aware;

(c) any matter or thing notified by it to its members and provide the Lender with copies of all documents distributed by it to its members;

(d) the occurrence of any event or circumstance of which it becomes aware which has had or may have a Material Adverse Effect on the Borrower or any Security Provider; and

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- (e) the giving by the Borrower or any Security Provider of any financial assistance under section 260A(1)(a) of the Corporations Act;
-

and on the Lender's request (which request shall not be made more than once per week), promptly provide to the Lender a certificate signed by an Authorised Officer of the Borrower stating that there are no matters to be notified to the Lender under this clause 12.1(6);

- (7) **maintain existence:** maintain its corporate existence and conduct its business in a proper and efficient manner and, where failure to do so would have a Material Adverse Effect in compliance with all laws, Authorisations, agreements and obligations binding on it or applicable to its assets or revenues or the conduct of its business;
- (8) **comply with laws:** comply with and observe all laws and all applicable guidelines, directions, requests or requirements of a Government Agency where failure to do so would have a Material Adverse Effect;
- (9) **pay Taxes:** file all Tax returns, reports and statements required to be filed by it on time and pay all Taxes payable by it in full and on time;
- (10) **Insurance:** insure all of its assets which are of an insurable nature for amounts and on terms reasonably acceptable to the Lender, with an insurance company acceptable to the Lender (and in relation to the obligations of each Security Provider under the Finance Documents in relation to Insurance for loss of rent and civil liability for material breaches of Environmental Laws, the parties will cooperate with a view to obtaining insurance which it would be commercially prudent to obtain having regard to the Security Provider's business and the Lender's exposure and which is available at a reasonable cost and on reasonable terms having regard to those matters);
- (11) **maintain Authorisations:** keep the Authorisations described in clause 11.1(1)(i), clause 11.1(1)(j), and clause 11.1(1)(k) in full force and effect and comply with those Authorisations in every material respect and take immediate steps to obtain and keep in effect any other Authorisations which may become necessary or advisable for:
- (a) the execution, validity, performance and enforceability of the Transaction Documents; or
- (b) the use of its assets or revenues or the conduct of any part of its business;
- (12) **ranking of obligations:** ensure that its obligations under the Finance Documents at all times rank at least equally with all its unsecured and unsubordinated obligations, other than those which on its winding-up, liquidation, dissolution or similar process must

be preferred by operation of law and in the case of each Security Provider which has granted a Security ensure the obligations of those Security Providers under the Security are first ranking obligations;

- (13) **valuations:** provide the Lender at the cost of the Borrower with written valuations of the Nenandie Property from a valuer acceptable to the Lender (which, if practicable, will be the same valuer for each valuation) and in a form and substance acceptable to the Lender within 30 days of the date which is 24 months after the date of the most recent valuation of the Nenandie Property which has been provided to the Lender; and

- (14) **ensure compliance:** ensure that:

- (a) each Security Provider complies with the obligations set out in clause 12.1(4), 12.1(5), 12.1(6), 12.1(7), 12.1(8), 12.1(9) and 12.1(11); and
- (b) each Primary Security Provider complies with the obligations set out in clause 12.1(10) as those clauses pertain to the Primary Security Provider,

as if those obligations were its own obligations instead of obligations of the Borrower; and

- (15) **water mortgage:** ensure that:

- (a) application is made to transfer water share identification numbers WEE037068, WEE037268 and WEE037948 and any other water share entitlements that relate to the Nenandie Property and are not currently attached to the Nenandie Property to the Borrower within 7 Business Days of 22 December 2008; and
- (b) it does everything in its control and power to have water share identification numbers WEE037068, WEE037268 and WEE037948 and any other water share entitlements that relate to the Nenandie Property and are not currently attached to the Nenandie Property transferred to the Borrower and shall on request provide the Lender with updates as to the progress of the relevant transfers; and
- (c) it grants the Lender a mortgage of water shares in respect of water share identification numbers WEE037068, WEE037268 and WEE037948 and any other water share entitlements that relate to the Nenandie Property and are not currently attached to the Nenandie Property within 7 Business Days of them being transferred to the Borrower. Such mortgage of water shares must be in registrable form and in a form that it is acceptable to the Lender.

12.2 Negative undertakings

Unless the Lender otherwise agrees in writing, the Borrower must not and must ensure that each Primary Security Provider does not (unless stated otherwise) do any of the following:

- (1) **merger or dissolution:** merge or consolidate with another entity or take steps toward dissolution, administration, liquidation or winding-up;
 - (2) **capital reorganisation:** purchase or redeem its issued shares, reduce its capital, pass a resolution under section 254N of the *Corporations Act* or make a distribution of assets or other capital to its members;
 - (3) **disposal of assets:** except as permitted or contemplated by the Project Documents, sell, transfer, lease or otherwise dispose of or deal with all or part of its business or its assets or revenues which are the subject of a Security Interest in favour of the Lender or an Internal Security and whose aggregate value exceeds \$50,000 in any calendar year, whether by a single transaction or by a number of transactions, whether related or not, except for sales of stock in trade in the ordinary course of its business on arm's length commercial terms;
 - (4) **Security Interests:** create or permit to exist a Security Interest over all or any part of its assets, revenues or business, other than a Permitted Security Interest;
 - (5) **Insolvency Event:** do anything which would cause an Insolvency Event to occur in respect of itself or any Security Provider;
 - (6) **share transfers:** other than in respect of a transfer of shares to the Sponsor or any wholly owned subsidiary of the Sponsor, register a transfer of shares in its capital;
 - (7) **dealings with Related Bodies Corporate:** the Borrower must not acquire assets from a Related Body Corporate, or dispose of assets to a Related Body Corporate, other than for a fair market value and for Cleared Funds;
 - (8) **Indebtedness:** incur or permit to remain outstanding any Indebtedness other than Permitted Indebtedness; or
 - (9) **Ensure compliance:** ensure that TSL complies with the obligations set out in clause 12.2(1), (3), (4), (5), (6) and (8) as if those obligations were its own obligations instead of the obligations of the Borrower.
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12.3 Negative Undertakings

Unless the Lender agrees in writing, the Borrower must not:

- (1) **issue shares:** issue or agree to issue shares or grant options or warrants to subscribe for shares in its capital to any person other than an existing shareholder and for cash or by way of bonus issue;
- (2) **dividends:** declare or pay a dividend or otherwise distribute income to its members or repay any shareholder loan if an Event of Default or Potential Event of Default has occurred which has not been remedied to the satisfaction of the Lender or waived in writing;
- (3) **acquisition of property:** except as permitted or contemplated by the Project Documents and other than in the case of Almond Management Pty Ltd, purchase, start or otherwise acquire a business not carried on by it at the date of this Agreement or purchase, lease or otherwise acquire the use of assets whose aggregate value exceeds \$1,000,000 except in the ordinary course of its business, or promote a company or trust to do any of those things;
- (4) **constitution and replaceable rules:**
 - (a) if it has a constitution, modify or repeal all or any provision of its constitution if that modification or repeal would be material or any of those actions would adversely affect the rights of the Lender; or
 - (b) if it has no constitution, adopt a constitution if to do so would adversely affect the rights of the Lender; or
 - (c) by its constitution, displace or modify after the date of this Agreement the provisions of the *Corporations Act* that apply to it as replaceable rules if that modification would be material or any of those actions would adversely affect the rights of the Lender; or
- (5) **accounting policies:** materially change the basis of accounting or the accounting policies applied in the preparation of its Accounts or change its accounting year end.

12.4 Financial Undertakings

Unless the Lender otherwise agrees in writing the Borrower must ensure that at all times:

- (1) **Loan to Value Ratio:**
 - (a) that the Principal Outstanding at no time exceeds 60 per cent of the Value of the Security. If on any day the Principal Outstanding exceeds such percentage, the

Lender may give the Borrower notice requiring it either to ~~make a payment to the Lender or to grant or cause to be granted Additional Security in favour of the Lender so as to~~ ensure that, immediately thereafter, the Borrower is in compliance with this undertaking;

- (b) the Borrower agrees, upon receipt of a notice under this clause, to make a payment or to grant or cause to be granted Additional Security in a form acceptable to the Lender within 5 business days (or such longer period as the Lender agrees) of receiving such a notice;
- (2) **Gearing Ratio:** The Gearing Ratio of the Group on a consolidated basis will not exceed 65%. The Gearing Ratio will be tested as at 31 March and 30 September in each year; and
- (3) **Cure right:** If, after delivering the Accounts to the Lender under clause 12.1(1), the Borrower is found to be in breach of its undertaking in clause 12.3(1), the Lender may give the Borrower notice requiring it to procure such payments from the Sponsor to the Borrower ("Payment") so as to ensure that, immediately thereafter, the Borrower is in compliance with the relevant undertaking. The Borrower must ensure that the Sponsor makes the Payment within 5 Business Days (or such longer period as the Lender agrees in writing) after receiving the notice. If any amount is paid to the Borrower by the Sponsor pursuant to this clause, that amount can be repaid by the Borrower to the Sponsor so long as that repayment is not in breach of any provision of the Finance Documents.

12.6 Project Undertakings

Unless the Lender otherwise agrees in writing the Borrower and TSL must:

- (1) **notices:** promptly inform the Lender of:
 - (a) any notice of which it is aware given by a Grower stating that a independent consultant has determined, for the purposes of considering the termination of a Project, that the Project is no longer "commercially viable" as that term is used in the Project Documents;
 - (b) any notice of which it is aware given by any person to convene a meeting of Growers to discuss the termination of the Projects or the change of the responsible entity or the Manager to the Projects; and
 - (c) a breach by a Grower (other than a failure to pay money) or any member of the Group of the Project Documents of which it becomes aware which could either entitle the non defaulting party to terminate the Project or lead to a Material Adverse Effect;

and on the Lender's request promptly provide to the Lender a certificate signed by an Authorised Officer of the Borrower stating that there are no matters to be notified to the Lender under this clause.

- (2) **comply with Project Documents:** comply with, and observe all of its obligations under the Project Documents to the extent that the Projects are conducted on the Nenandie Property and not make any material amendment to the Project Documents (such consent not to be unreasonably withheld);
- (3) **Defaulting Growers:** Diligently pursue the payment of Management Fees and Rent by the Growers, and ensure that appropriate proceedings are commenced against any defaulting Grower where it is commercially prudent to do so;
- (4) **tax ruling:** comply with any obligations imposed on it under any Tax Ruling and ensure that the Projects are conducted in a manner materially consistent with the Tax Ruling and not do anything which would prejudice the continued application of the Tax Ruling to the Project;
- (5) **termination:** not take any steps to terminate any Project;
- (6) **copies of documents:** within 45 days after the end of each of March, June, September and December send a copy to the Lender of all reports and other information sent to Growers relating to the Project and a summary of all invoices sent to Growers for the payment of Management Fees and Rent showing the total amount invoiced to Growers in respect of each Project;
- (7) **Allocation of Landlots:** if an Event of Default has occurred and is subsisting on request by the Lender and at the Borrower's cost
 - (a) reallocate Landlots to the Growers pursuant to the Constitution for each relevant Project, as directed by the Lender to ensure that the Landlots of any Growers who have not defaulted in their obligations under the Project Documents are grouped to the extent possible; and/or
 - (b) use its best endeavours to subdivide the Nenandie Property at the Victorian Land Titles Office as directed by the Lender to ensure that Landlots of defaulting Growers and Landlots of non-defaulting Growers are contained in separate titles; and/or
 - (c) amend the Leases so that the Leases do not apply to the portion of the Nenandie Property occupied or otherwise used by the Grower whose individual Project has been terminated, ensuring at all times that the rights of those Growers are not prejudiced by such actions.

The Lender will not require the Borrower to do or refrain from doing anything which results in the Landlots of the

non-defaulting Growers not having the benefit of such infrastructure, water rights, rights of access and other things as will enable the Projects to be maintained for the benefit of those Growers only, in accordance with the relevant Project Documents; and

- (8) **Security interests:** not create or allow to exist any Security Interest other than a Permitted Security Interest over any of the right, title and interest to all present and future debts and monetary liabilities of:
 - (a) the Borrower from TSL;
 - (b) TSL from any Growers who have been allocated Landlots in respect of, or in connection with, the Nenandie Property; and
 - (c) the Manager from TSL in respect of, or in connection with, the Nenandie Property.

12.6 TSL Undertakings

TSL must ensure that it:

- (1) **Compliance with laws:** complies with all laws binding on the Scheme or any of its assets in all material respects and reports all significant breaches to ASIC in accordance with section 912D of the *Corporations Act*;
- (2) **Compliance with licence:** complies with all its Australian Financial Service Licence conditions in all material respects and reports all significant breaches to ASIC in accordance with section 912D of the *Corporations Act*;
- (3) **Compliance with documents:** at all times fully complies with, observes and perform in all material respects all the covenants, terms, conditions and obligations under the Transaction Documents to which it is a party;
- (4) **Resettlement:** does not resettle, set aside or transfer any asset of the Scheme other than a transfer which complies with the Scheme's Constitution and each Transaction Document to which it is a party;
- (5) **No additional responsible entity:** ensures that no additional person is appointed as responsible entity of the Scheme;
- (6) **Not retire:** does not do anything which would cause its removal, nor retirement as responsible entity of the Scheme;
- (7) **Notices from members:** promptly gives the Lender copies of all material documents and notices received by it from any member of the Scheme or which it gives to a member of the Scheme;

(8) **Notices:** give notice to the Lender as soon as it becomes aware of any of the following:

- (a) any litigation, arbitration or administrative proceeding in respect of the Scheme or any asset of the Scheme being commenced or threatened which has or is likely to have a Material Adverse Effect;
 - (b) any Security Interest, other than any Permitted Security Interest, being created or entered into affecting the Scheme; or
 - (c) any proposal of, or notification being given to it by any Government Agency to compulsorily acquire any of the assets of the Scheme;
- (9) **Auditor's report:** delivers to the Lender a copy of the auditor's report on the Compliance Plan under section 601HG(3)(c) of the *Corporations Act* as soon as available and in any event within 4 months after the end of each financial year of the Scheme;
- (10) **Not appoint additional custodian:** for so long as it is the responsible entity of the Scheme, does not remove the Custodian as custodian or appoint any additional custodian of the Scheme to hold any assets on account of and on behalf of the Scheme;
- (11) **Notice of change of adverse effect:** provides the Lender with prompt notice of any change which is likely to or would have a material adverse effect on its ability to meet the financial requirements prescribed in its Australian Financial Services Licence conditions and the *Corporations Act* or to perform and comply with its obligations under the Scheme's Constitution, Compliance Plan or as stated in its Disclosure Documents;
- (12) **Appointment of new responsible entity:** unless it is required to do so under section 252B of the *Corporations Act*, does not call a meeting of the members of the Scheme to consider its retirement and the appointment of a new responsible entity of the Scheme.
- (13) **Appointment of temporary responsible entity:** applies to the court for an appointment of a temporary responsible entity under section 601FL of the *Corporations Act* if a meeting of members held to consider the appointment of a new responsible entity fails to do so, or the company appointed by the members does not consent to the appointment of a responsible entity for the Scheme;
- (14) **Meeting to appoint new responsible entity:** calls a meeting of the members to appoint a new responsible entity for the Scheme, as soon as possible (and in any event within 3 months) after the appointment of a temporary responsible entity for the Scheme;
- (15) **Not to amend Scheme's constitution:** does not amend, supplement or replace the Scheme's Constitution in any material respect;
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- (16) **Maintain authorisation registration:** maintains the Australian Financial Services Licence and registration of the Scheme in accordance with the *Corporations Act*;
- (17) **Notification to ASIC:** gives the Lender a copy of all notices or reports issued or lodged by or on its behalf in relation to the Scheme, the Compliance Committee or the Compliance Auditor to ASIC (other than ASIC filings by it of a routine or administrative nature) which are material promptly after each such notice or report is given to ASIC;
- (18) **Breaches:** gives to the Lender promptly following receipt by it, a copy of each notification by ASIC to it advising of any actual or suspected breach of the *Corporations Act*, Compliance Plan, constitution or its Australian Financial Services Licence which has or is likely to have a Material Adverse Effect;
- (19) **Notification by Compliance Committee:** gives to the Lender promptly following receipt by it, a copy of each notification by any member of the Compliance Committee to it concerning any actual or suspected material failure by it to comply with its obligations under the Compliance Plan which has or is likely to have a Material Adverse Effect;
- (20) **Notification of possible deregistration of Scheme:** gives notice to the Lender promptly of anything being done or permitted to be done that results or may result in deregistration of the Scheme as a managed investment scheme under Part 5C.10 of the *Corporations Act*;
- (21) **Notification of possible winding-up of Scheme:** gives to the Lender promptly notice of any application being made under Section 601FN of the *Corporations Act*; and
- (22) **Other changes to Scheme:** gives the Lender prompt notice of any action undertaken or threatened which if successful would materially affect the correctness of any warranty or representation contained in this Agreement in relation to it or relating to the Scheme.

13. Events of Default

13.1 Events of Default

It is an Event of Default if:

- (1) **non-payment of principal:** the Borrower fails to repay any Advance in accordance with this Agreement;
- (2) **non-payment of other money:** the Borrower or a Security Provider fails to pay within 2 Business Days of the due date for payment any interest, fees, costs, charges, expenses or other money payable under a Finance Document;

(3) **other default:** the Borrower or a Security Provider fails to perform or observe any other obligation under a Finance Document or another event of default (however described) occurs under a Finance Document and:

- (a) the Lender considers that the failure or default cannot be remedied; or
- (b) the Lender considers that the failure or default can be remedied but it is not remedied to the Lender's satisfaction within 10 Business Days (or any longer period the Lender approves) from the earlier of:
 - (i) the date the Borrower or the Security Provider became aware of the default; and
 - (ii) receipt by the Borrower of a notice from the Lender requiring it or the Security Provider to remedy the default;

(4) **representations:** a representation or warranty made or deemed to be made by the Borrower or a Security Provider in, or in connection with, a Finance Document is untrue or misleading (by omission or in any other way) in any material respect when made or repeated;

(5) **Authorisations:** an Authorisation described in clause 12.1(11) is not granted or ceases to be in full force and effect for any reason or is varied in a manner which has a Material Adverse Effect;

(6) **cross default:** in respect of an amount exceeding \$1,000,000:

- (a) any indebtedness of the Borrower or a Primary Security Provider in total becomes due and payable or capable of being declared due and payable before it would otherwise have been due and payable;
- (b) there occurs a liquidation of obligations under, or an early termination of, any agreement or obligation relating to indebtedness to which the Borrower or a Primary Security Provider is a party by the other party to the relevant agreement or by the party owed the obligation or that party becomes entitled to take that action; or
- (c) the Borrower or a Primary Security Provider fails to pay any indebtedness when due or within any applicable grace period;

(7) **Security Interest:**

- (a) a Security Interest created by the Borrower or a Primary Security Provider is enforced or becomes capable of being enforced or the holder of a Security Interest takes

possession or control of any of the assets, revenues or
business of the Borrower or a Primary Security Provider;

- (b) a Security Interest created by TSL over property the subject of a Security or an Internal Security is enforced or becomes capable of being enforced or the holder of that Security Interest takes possession or control of any of that property;
- (8) **Insolvency Event:** an Insolvency Event occurs in respect of the Borrower or a Security Provider;
- (9) **Investigations:** an investigation of the affairs of the Borrower or a Primary Security Provider is commenced under any law relating to companies in circumstances which have a Material Adverse Effect;
- (10) **execution:** distress, attachment, execution or other court process is issued, levied or enforced on or against the Borrower, TSL or a Security Provider or any assets, revenues or business of the Borrower, TSL or a Primary Security Provider in respect of indebtedness exceeding \$200,000;
- (11) **disposals:** the Borrower in breach of this Agreement:
 - (a) substantially changes the nature or scope of its business;
 - (b) disposes of all or a substantial part of its business or assets; or
 - (c) proposes to do any of the things in clause 13.1(11)(a) or (b);a Primary Security Provider:
 - (d) substantially changes the nature or scope of its business;
 - (e) disposes of all or a substantial part of its business or assets; or
 - (f) proposes to do any of the things in clause 13.1(11)(a) or (b);
- (12) **expropriation:** a Government Agency expropriates all or a substantial part of the assets or business of the Borrower or a Primary Security Provider;
- (13) **reduction of capital and buy backs:** the Borrower or a Primary Security Provider reduces or takes steps to reduce its capital as contemplated by Division 1 or Division 3 of Part 2J.1 of the *Corporations Act* or in any other way, limits or restricts calls over its issued but uncalled capital including by passing a resolution under section 254N of the *Corporations Act* or buys shares in itself as contemplated by Division 2 of Part 2J.1 of the *Corporations Act*, or proposes to do any of those things;

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- (14) **acquisition of own shares:** the Borrower or a Primary Security Provider contravenes section 259A, section 259B or section 259D of the *Corporations Act*, or issues or transfers shares or units of shares if that issue or transfer is void under section 259C of the *Corporations Act*;
- (15) **financial assistance:** the Borrower or a Primary Security Provider contravenes section 260A of the *Corporations Act* or does an act or thing under section 260B of the *Corporations Act* other than for the purpose of approving any Security;
- (16) **vitiating of documents:**
- (a) a Finance Document or a provision of a Finance Document ceases for any reason to be of full force and effect or becomes void, voidable or unenforceable;
 - (b) a law suspends, varies, terminates or excuses performance by the Borrower or a Security Provider of any of its obligations under a Finance Document or purports to do so;
 - (c) it becomes impossible or unlawful for the Borrower or a Security Provider to perform an obligation under a Finance Document or for the Lender to exercise all or any of its rights, powers and remedies under a Finance Document in circumstances which are likely to have a Material Adverse Effect; or
 - (d) the Borrower or a Security Provider alleges that a Finance Document has been affected as described in this clause 13.1(16);
- (17) **material adverse effect:** an event or circumstance occurs which has a Material Adverse Effect;
- (18) **undertakings:** an undertaking given to the Lender or an agent or adviser of the Lender by or on behalf of the Borrower, a Security Provider or an agent or adviser of any of them is not honoured strictly in accordance with its terms;
- (19) **Environmental Law:** under an Environmental Law:
- (a) a Government Agency takes action against the Borrower or a Primary Security Provider;
 - (b) there is a Claim made against or suffered by the Borrower or a Primary Security Provider or the Borrower;
 - (c) the Borrower or a Security Provider is obliged to make expenditure, alter or cease the mode of conduct of any part of its business; or
 - (d) an Authorisation is not granted or ceases to be in full force and effect for any reason or is varied in a manner;
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which has a Material Adverse Effect;

(20) ~~change of control: the Sponsor ceases to be a Holding Company of the Borrower or a Security Provider;~~

(21) **Project:**

- (a) the Projects are terminated, or a notice is given to terminate, by a number of Growers which will cause a Material Adverse Effect; or
- (b) any Group member breaches its obligations under a Project Document where such breach would entitle Growers to terminate the Project;

(22) **Other ANZ Facility Agreement default:** an event of default (however described) occurs under any Other ANZ Facility Agreement;

(23) **TSL Defaults:** in relation to TSL and the Scheme:

- (a) **Seizure:** any governmental agency, seizes or compulsorily acquires any of the Scheme's assets or otherwise interferes in any manner which curtails the conduct of the Scheme's business;
- (b) **Court Order:** an order is made by any court for its removal as responsible entity of the Scheme;
- (c) **Scheme Constitution of Scheme:** the Scheme is held or is conceded by its responsible entity not to have been constituted or to have been imperfectly constituted which has a Material Adverse Effect;
- (d) **Custodian:** The Custodian, as custodian of the Scheme, ceases to be authorised under the Custodian Agreement or the Scheme's Constitution to hold the property of the Scheme in its name and to perform its obligations under the Transaction Documents or any Project Document to which it is a party;
- (e) **Indemnification:** it ceases to be entitled to be indemnified in respect of liabilities to any lender, including without limitation the Lender, out of the assets of a Scheme in respect of its obligations under this Agreement or any other Transaction Document;
- (f) **Limitation of Indemnification:** there is at any time after the date of this Agreement any further restriction or limitation or derogation from its right of indemnity or that right of indemnity does not at any time have priority over the rights of members of the Scheme, which has a Material Adverse Effect;

- (g) ~~Changes to constitution: a change is made to the Scheme's Constitution which adversely affects the validity or enforceability of this Agreement or any other Transaction Document or the ability to perform obligations under this Agreement, or any other Transaction Document; and~~
- (h) **Changes to Responsible Entity:** In the case of the Scheme, it ceases to be a responsible entity and is not replaced by another person acceptable to the Lender (which approval is not to be unreasonably withheld where that person is a public trustee) who, within 5 Business Days of it ceasing to be the responsible entity, executes an accession agreement (in a form reasonably required by the Lender) agreeing that it is bound by such of the Transaction Documents to which it was party and it satisfies any conditions precedent in that accession agreement.

13.2 Consequences of default

- (1) If an Event of Default occurs the Lender may by notice to the Borrower:
 - (a) declare the Amount Owng to be either:
 - (i) payable on demand; or
 - (ii) immediately due and payable without further demand, notice or other legal formality of any kind;
 - (b) declare the Facility terminated and the Commitment of the Lender cancelled; or
 - (c) enforce all or any of the Securities,or make all of those declarations.
- (2) A notice given under clause 13.1(22)(1) is effective on receipt.
- (3) If the Lender gives a notice under clause 13.1(22)(1)(a)(ii), the Borrower must immediately pay to the Lender the Amount Owng in full.

14. Interest on overdue amounts

14.1 Default Interest

- (1) The Borrower must pay interest to the Lender on demand on any amount due and payable by the Borrower under a Finance Document but unpaid (including interest payable under this clause 14.1).

(2) Interest under clause 14.1(1):

- (a) accrues on each unpaid amount from and including the due date for payment to the date of actual payment at the rate determined by the Lender to be the sum of 4% per annum and the rate of interest determined in accordance with clause 8.1(2) calculated with reference to successive periods of 1 month, starting on the due date for payment;
- (b) accrues from day to day;
- (c) is calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and a 365 day year; and
- (d) may be compounded by the Lender at intervals selected by the Lender at not less than 1 month intervals.

14.2 Additional interest

If a liability under a Finance Document becomes merged in a judgment, the Borrower must, as an independent obligation, pay interest on the amount of that liability to the Lender. Interest on the amount of that liability will accrue from the date the amount becomes due until the date the amount is paid, both before and after judgment, at the rate which is the higher of:

- (1) the rate payable under the judgment; and
- (2) the rate referred to in clause 14.1(2).

15. Indemnities

15.1 General indemnity

- (1) The Borrower unconditionally and irrevocably indemnifies the Lender against any Claim suffered or incurred or payable by the Lender arising directly or indirectly as a result of:
 - (a) an Event of Default or Potential Event of Default or the exercise or attempted exercise by the Lender of a right or power arising from an Event of Default or Potential Event of Default;
 - (b) the failure by the Borrower to draw down an Advance for any reason (including failure to satisfy a condition precedent but excluding default by the Lender); or
 - (c) the failure of the Borrower to make a prepayment in accordance with a notice of prepayment or a repayment of an Advance or any part of an Advance being made on any day other than the last day of an Interest Period for that Advance and in accordance with this Agreement.
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- (2) Without limiting clause 15.1(1), the indemnity of the Borrower includes an indemnity against loss of profit or other loss, cost, penalty, expense or Tax incurred or payable by the Lender in:
- (a) liquidating or redeploying funds acquired from third parties; or
 - (b) terminating, reversing or varying arrangements to fund the Facility or any part of it or any interest rate or currency hedge, related trading position or other derivatives arrangement put in place by the Lender in respect of the Facility or any part of it.

The amount of loss of profit or other loss may be determined by the Lender by reference to a pool of funds and averaging techniques rather than by reference to a specific borrowing or a specific contract made in respect of the Facility or any part of it.

- (3) Without limiting clause 15.1(1), the indemnity of the Borrower includes an indemnity for legal costs and other expenses (and Taxes on those amounts) on a full indemnity basis.
- (4) If the Lender derives any net benefit by terminating, reversing or varying arrangements to fund the Facility or any part of it, or any interest rate or currency hedge, related trading position or other derivatives trading arrangement as a result of a prepayment by the Borrower, the Lender will pay the amount of that net benefit to the Borrower.

15.2 Currency Indemnity

- (1) If an amount payable by the Borrower or a Security Provider under the Finance Documents is received or recovered by the Lender or a Controller in a currency other than Dollars (whether under a judgment, in the winding up of the Borrower or a Security Provider or otherwise) the obligations of the Borrower or the Security Provider are discharged only to the extent that the Lender or Controller may purchase Dollars with that other currency in accordance with its usual banking procedures on receipt of that amount.
- (2) If the amount in Dollars which may be purchased under clause 15.2(1) is, after deducting any costs of exchange and any other related costs and Taxes, less than the relevant sum payable under the Finance Documents, the Borrower indemnifies the Lender or Controller in respect of, and will immediately pay to the Lender or to the Controller, the amount of the shortfall.

15.3 Survival of Indemnities

- (1) The indemnities in this Agreement are continuing obligations of the Borrower, separate and independent from the other obligations of the Borrower and survive the termination of this Agreement or any other Finance Document.

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- (2) It is not necessary for the Lender to incur expense or make payment before enforcing a right of indemnity under this Agreement.
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16. Assignment

- (1) The Borrower may not, without the prior written consent of ANZ, transfer all or any part of its rights or obligations under the Finance Documents.
- (2) Subject to clause 16(3), ANZ may assign, novate, transfer, sub-participate or otherwise dispose of or deal with all or any part of its rights or obligations under the Finance Documents without being required to obtain the consent of the Borrower or to provide any prior notice to the Borrower.
- (3) Whilst no event of default is subsisting ANZ may only assign, novate, transfer, sub-participate or otherwise dispose of or deal with all or any part of its rights or obligations under the Finance Documents to Almond Competitors (or any subsidiaries of any of the Almond Competitors) with the prior written consent of the Borrower (such consent not to be unreasonably withheld).
- (4) ANZ may disclose to any ratings agency or government agency or to any party with whom it is proposing to enter into or has entered into, any kind of arrangement under this clause or securitisation (or similar) arrangement, such information in relation to this Agreement or in relation to the Borrower as that party reasonably requires without being required to obtain the Borrower's consent or to provide any prior notice to the Borrower.
- (5) Where ANZ exercises its rights under paragraph (2) or (4), the Borrower will execute such documents and do such acts as may reasonably be required by ANZ so long as the Borrower's rights or obligations under this Agreement are not adversely affected.

17. Set-off

17.1 Set-off

The Lender may, whilst an Event of Default subsists, and only after demand has been made by the Lender on the Borrower under this Agreement, set-off and apply towards satisfaction of the Secured Money:

- (1) any amount held by the Borrower on its own account; and
- (2) any amount that is equal to the amount held by the Borrower on behalf any Security Provider provided that:
- (a) the amount held by the Borrower is held on behalf the Security Providers and not on behalf of the Growers; and

(b) such amounts relate to the Projects.

17.2 Currency conversion

If the currency of the Borrower's account or the amount owing referred to in clause 17.1 is not Dollars, the Lender may for the purpose of clause 17.1:

- (1) purchase Dollars with the currency in which the Borrower's account is maintained or the currency of the amount owing in accordance with its usual banking procedures; and
- (2) apply the amount purchased, after deducting any costs of exchange and any other related costs and Taxes, in accordance with clause 17.1.

17.3 Additional right

The right of set-off contained in clause 17.1 is in addition to any general or banker's lien, right of set-off, right to combine accounts or other right to which the Lender is entitled.

18. Preservation of rights

18.1 No merger

- (1) No Finance Document merges, discharges, postpones or adversely affects in any other way the rights, remedies or powers of the Lender under any other Finance Document.
- (2) Nothing in any Finance Document merges, discharges, postpones or adversely affects in any other way a Security or any of the rights, remedies or powers of the Lender against any person.
- (3) If a judgment is made in favour of the Lender against the Borrower or a Security Provider in respect of the Amount Owing or any part of it, the Lender holds the judgment collaterally with the Finance Documents as security for payment of the Amount Owing and no Finance Document merges in the judgment.

18.2 Moratorium legislation

To the extent permitted by law, a provision of a law is excluded if it does or may, directly or indirectly:

- (1) lessen or vary in any other way the Borrower's obligations under a Finance Document; or
- (2) delay, curtail or prevent or adversely affect in any other way the exercise by the Lender or a Controller appointed by the Lender of any of its rights, remedies or powers under a Finance Document.

18.3 Waiver and exercise of rights

- (1) A waiver by the Lender of a provision of or of a right under a Finance Document is binding on the Lender only if it is given in writing and is signed by the Lender or an Authorised Officer of the Lender.
- (2) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (3) A single or partial exercise of a right by the Lender does not prevent another exercise or attempted exercise of that right or the exercise of another right.
- (4) Failure by the Lender to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (5) The Lender is not liable for any loss, cost or expense of the Borrower caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

18.4 Rights cumulative

The rights, remedies and powers under the Finance Documents of the Lender, or a Controller appointed by the Lender, are cumulative and do not exclude any other rights, remedies or powers.

18.5 Further assurances

The Borrower must, at its own expense, whenever requested by the Lender, promptly do or cause to be done, and cause each Security Provider to do or cause to be done, anything which the Lender reasonably considers necessary or desirable to:

- (1) give full effect to a Finance Document; or
- (2) more fully secure the rights, remedies and powers of the Lender under a Finance Document or to enable the Lender to exercise those rights, remedies and powers; or
- (3) perfect or complete any transfer or assignment referred to in clause 16 and the benefit of any Security in relation to any transfer or assignment,

including signing and delivering documents.

18.6 Time of the essence

Time is of the essence of the performance of each of the Borrower's obligations to pay money under each Finance Document.

19. Notices

19.1 Requirements

All notices must be:

- (1) in legible writing and in English;
- (2) addressed to the recipient at the address or facsimile number set out below or to any other address or facsimile number that a party may notify to the other:

to the Borrower:

Address: Level 6, 461 Bourke Street
Melbourne Vic 3000
Attention: General Manager, Corporate Finance
Facsimile No: (03) 9670 4271

to the Lender:

Address: Australia and New Zealand Banking Group Limited
Level 10, 530 Collins St, 100 Queen Street
Melbourne VIC 3000
Attention: Manager, Feed, Beverages and Agribusiness,
Institutional Banking/Mr Mark Phoon
Facsimile No: (03) 9273 3484/9273 4978

- (3) signed by the party or, where the sender is a company, by an Authorised Officer or under the common seal of the sender; and
- (4) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or facsimile.

19.2 Receipt

Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received:

- (1) if sent by hand, when left at the address of the recipient;
- (2) if sent by pre-paid post, 3 days (if posted within Australia to an address in Australia) or 7 days (if posted from one country to another) after the date of posting; or
- (3) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number,

but if a notice is served by hand, or is received by the recipient's facsimile on a day that is not a Business Day, or after 5:00 pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9:00 am on the next Business Day.

20. General provisions

20.1 Invalid or unenforceable provisions

If a provision of a Finance Document is invalid or unenforceable in a jurisdiction:

- (1) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (2) that fact does not affect the validity or enforceability of:
 - (a) that provision in another jurisdiction; or
 - (b) the remaining provisions.

20.2 Consents and approvals

- (1) The Lender may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless a Finance Document expressly provides otherwise.
- (2) If, under a Finance Document, the Lender must or may form an opinion or hold a considered view, that opinion may be formed or view held in its absolute discretion on its behalf by its board of directors or an Authorised Officer of the Lender.
- (3) The Lender may give reasons in respect of a matter described in clause 20.2(1) or (2) but is not obliged to do so.

20.3 Lender's certificate

A certificate signed by an Authorised Officer of the Lender stating an amount due, owing or payable or a rate or any other matter for the purpose of a Finance Document is sufficient evidence of the matter stated unless the contrary is proved.

20.4 Certifications

Any document or thing required to be certified by the Borrower or a Security Provider must be certified by an Authorised Officer of the Borrower or the Security Provider, as the case requires, or in any other manner that the Lender approves.

20.5 Amendment

This Agreement may be amended only by a document signed by all parties.

20.6 Counterparts

This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

20.7 Successors and assigns

This Agreement is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

21. Governing law and jurisdiction

21.1 Governing law

This Agreement is governed by the laws of Victoria.

21.2 Jurisdiction

The Borrower irrevocably and unconditionally:

- (1) submits to the non-exclusive jurisdiction of the courts of Victoria; and
- (2) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

21.3 Service of process

The Borrower agrees that a document required to be served in proceedings about a Finance Document may be served:

- (1) by being delivered to or left at its address for service of notices under clause 19.1; or
- (2) in any other way permitted by law.

Each attorney executing this Agreement states that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this Agreement.

22. Anti Money Laundering

- (1) The parties agree that the Lender may delay, block, or refuse to make any payment if the Lender believes on reasonable grounds that making that payment may breach any law in Australia or any other country, and the Lender will incur no liability to the parties if it does so.
- (2) The parties must provide all information to the Lender which the Lender reasonably requires to comply with any law in Australia or any other country. Each party agrees the Lender may disclose information which it provides to the Lender where required by any law in Australia or any other country.
- (3) Unless the parties have disclosed that it is acting in a trustee or on behalf of another party, each party warrants that it is acting on its

own behalf in applying for and using any the Lender products or services.

- (4) Each party declares and undertakes to the Lender that the payment of monies by the Lender in accordance with any instructions given by a party will not breach any law in Australia or any other country.

Schedule 1 - Form of Drawdown Notice

To: Australia and New Zealand Banking Group Limited
Level 403
530 Collins 100 Queen Street
MELBOURNE VIC 3000

[date]

Dear Sirs,

\$45,000,000 Facility Agreement dated []

We refer to the Facility Agreement and give notice that we intend to draw down an Advance on [specify date]. Terms defined in the Facility Agreement have the same meaning in this Drawdown Notice.

The proposed Drawdown Date is [specify date].

The amount of the Advance to be drawn down is \$[specify amount]. The proceeds of the Advance should be [paid by bank cheque payable to [] in the amount of \$[] and the balance] paid into the following bank account: [specify account details].

Subject to clause 6.2 and clause 6.3 of the Facility Agreement, the Interest Period for the Advance will be 30, 60 or 180 days. In respect of Advance greater than 180 days we accept the Interest rate quoted to us by the Lender in respect of this Advance.

We represent and warrant that:

- (a) the proceeds of the Advance will be used only for the Approved Purposes;
- (b) each representation and warranty made by the Borrower or a Security Provider in, or in connection with, a Finance Document, including, without limitation, those set out in clause 11.1 of the Facility Agreement, repeated as at the date of this Drawdown Notice and the Drawdown Date, are true and not misleading, by omission or in any other way; and
- (c) no Event of Default except as disclosed to the Lender has occurred which remains unremedied or which has not been waived in writing or will occur as a result of the drawdown.

For and on behalf of
Almond Land Pty Ltd
by its Authorised Officer

Signature of Authorised Officer

Name of Authorised Officer

Schedule 2 – Securities

1. First ranking real property mortgage from the Borrower over the Nenandie Property including security over any rights to carbon credits and any water rights attached to the Nenandie Property.
2. Fixed and Floating Charge over all the property of the Borrower which relates to the Projects including rights to the Internal Security from Timbercorp Securities Limited.
3. Fixed and Floating Charge over the property of TSL, which relates to the Nenandie Property and located in Victoria, the Australian Capital Territory or the Northern Territory.
4. Fixed and Floating Charge from Almond Management Pty Ltd over its rights in connection with the Projects.
5. Deed of Guarantee from Timbercorp Securities Ltd, Almond Management Pty Ltd, Almonds Australia Pty Ltd, Timbercorp Finance Pty Ltd, Timbercorp Finance (Vic) Pty Ltd, Timbercorp Lands Pty Ltd, Timbercorp Forestry Pty Ltd.
6. Deed of Limited Guarantee from Timbercorp Limited.
7. Deed of Covenant by the Lender in favour of the Growers, Timbercorp Securities Limited and Almond Management Pty Ltd.
8. Tripartite Deed between ANZ, the Manager, TSL and the Borrower relating to the Internal Security.
9. First ranking mortgage of water shares from the Borrower in respect of the Nenandie Property

*Almond Land -
but not scheme property.*

Schedule 3--Condition Precedent Certificate

To: Australia and New Zealand Banking Group Limited
Level 403
530 Collins-100 Queen Street
MELBOURNE VIC 3000

This condition precedent certificate is given on [insert date] under clause 3.1(1) of the Facility Agreement dated on or about [date] between Almond Land Pty Ltd and the Lender. Terms defined in the Facility Agreement have the same meaning in this condition precedent certificate.

I, [], being [a director/secretary] of [name of Borrower or Security Provider] (the "Company"), certify as follows:

1. Documents

True, complete and up to date copies of each of the following are attached to this Certificate:

- (1) the certificate of registration of the Company (marked "A");
- (2) an extract of minutes (marked "B") of a duly convened meeting of the directors of the Company:
 - (a) approving execution of each Finance Document to which it is a party [and the granting of the power of attorney referred to in paragraph (3) below];
 - (b) authorising the appointment of its Authorised Officers; and
 - (c) acknowledging that each Finance Document to which it is a party will benefit the Company,

which minutes are in full force and effect and have not been varied or revoked;

- (3) a signed power of attorney (marked "C") under which the Company validly signs the Finance Documents to which it is a party, which power of attorney is in full force and effect and has not been varied or revoked;

2. Specimen Signatures

The following signatures are the true and usual signatures of the
Authorised Officers of the Company:

Name	Title	Signature
(a)		
(b)		
(c)		

[Certified constitutions already supplied]

Schedule 4 – Project Documents

1. Timbercorp 2005 Almond Project

- (1) The Constitution for the 2005 Timbercorp Almond Project between Timbercorp Securities Limited and each Grower;
- (2) Compliance Plan for the 2005 Timbercorp Almond Project;
- (3) Custody Agreement between Trust Company of Australia Ltd and Timbercorp Securities Limited;
- (4) Almond Orchard Management Agreement between Almond Management Pty Ltd and Select Harvests Limited;
- (5) Tree Supply & Capital Works Agreement between Almond Land Pty Ltd and Select Harvests Limited and others;
- (6) Management Agreement between Timbercorp Securities Limited and Almond Management Pty Ltd;
- (7) Almondlot Management Agreement between each Grower and Timbercorp Securities Limited;
- (8) Head Lease between Almond Land Pty Ltd and Timbercorp Securities Limited relating to the Nenandie Property relevant to the 2005 Project; and
- (9) Sub-lease between Timbercorp Securities Limited and the Grower relating to the Nenandie Property relevant to the 2005 Project.

2. Timbercorp 2006 Almond Project

- (1) The Constitution for the 2006 Timbercorp Almond Project between the Timbercorp Securities Limited and each Grower;
- (2) Compliance Plan for the 2006 Timbercorp Almond Project;
- (3) Custody Agreement between Trust Company of Australia Ltd and Timbercorp Securities Limited;
- (4) Head Lease between Almond Land Pty Ltd and Timbercorp Securities Limited relating to the Nenandie Property relevant to the 2006 Project;
- (5) Sub-lease between Almond Land Pty Ltd, Timbercorp Securities Limited and each Grower relating to the Nenandie Property relevant to the 2006 Project;
- (6) Almondlot Management Agreement between each Grower and Timbercorp Securities Limited;

(7) Management Agreement between Timbercorp Securities Limited and Almond Management Pty Ltd; and

(8) Almond Orchard Management Agreement between Almond Management Pty Ltd and Select Harvests Limited and others.

3. Property Description

Title details of the Nenandie Property in the State of Victoria and of which the Borrower is sole beneficial owner and registered proprietor are as follows:

Property	Volume/Folio
Nenandie and Narcooyia	V 10867 F 468
	V 10867 F 472
	V 10867 F 473
	V 10867 F 482
	V 10867 F 454
	V 10867 F 455
	V 10923 10923 F 772
	V 10923 F 773
	V 10867 F 452
	V 10867 F 456
	V 10867 F 457
	V 10867 F 458
	V 10867 F 463
	V 10867 F 484
	V 10867 F 465
	V 10867 F 466
	V 10867 F 467

5. Tax Ruling

- (1) Product Ruling in connection with the Timbercorp 2005 Almond Project.
- (2) Product Ruling in connection with the Timbercorp 2006 Almond Project.

Executed as an agreement.

Signed by Almond Land Pty Ltd by a
duly appointed attorney in the
presence of:

Signature of witness

Signature of Attorney (I have no
notice of revocation of the power of
attorney under which I sign this
document)

Name of witness (please print)

Name of Attorney (please print)

Signed by Timberscorp Securities
Limited by a duly appointed attorney
in the presence of:

Signature of witness

Signature of Attorney (I have no
notice of revocation of the power of
attorney under which I sign this
document)

Name of witness (please print)

Name of Attorney (please print)

Signed by Australia and New
Zealand Banking Group Limited by
a duly appointed attorney in the
presence of:

Signature of witness

Signature of Attorney (I have no
notice of revocation of the power of
attorney under which I sign this
document)

Name of witness (please print)

Name of Attorney (please print)