

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

LIST E

SCI 2009 10699

BETWEEN:

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

Plaintiff

and

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

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

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

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900

Ref: []
(Leon Zwier lwier@abl.com.au/
Lucy Kirwan lkirwan@abl.com.au)

This is the exhibit marked 'MAK-27' now produced and shown to MARK ANTHONY KORDA at the time of swearing this affidavit on 3 March 2010.

Before me:



LUCY HANNAH KIRWAN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Practitioners Act 1994

Exhibit 'MAK-27'

**Copy of Registered Land Mortgage (No:
AG290139V) dated 24 December 2008
in favour of ANZ**

MORTGAGE OF LAND
Section 74 Transfer of Land Act 1958

This document was lodged
by Deacons at the
Land Titles Office Victoria
Under Dealing Number

AG 290139V

Privacy Collection Statement
The information from this form is
collected under statutory authority
and is used for the purpose of
maintaining publicly searchable
registers and indexes in the
Victorian Land Registry.

Lodged by:

Name: Deacons

Phone: 03 8686 6000

Address: Level 15, RACV Tower
485 Bourke Street

Ref.: GXD/2666783

Customer Code:

MADE AVAILABLE / CHANGE CONTROL

Office Use Only

The mortgagor mortgages to the mortgagee the estate and interest specified in the land described subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this mortgage. This mortgage is given in consideration of and to better secure loans, advances or financial accommodation provided by the mortgagee to the mortgagor or at the request of the mortgagor to the debtor (if specified) or to such other person as the mortgagor shall direct.

Land: (volume and folio reference)

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 464, Volume 10867 Folio 465, Volume 10867 Folio 466 and Volume 10867 Folio 467

Estate and Interest being mortgaged: (e.g. "all my estate in fee simple")

All the estate and interest in fee simple

Mortgagor: (full name)

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

Mortgagee: (full name and address including postcode)

Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) of Level 3, 100 Queen Street, Melbourne, Victoria 3000

Debtor:

Not applicable

Date of this Mortgage:

24 DECEMBER 2008

The provisions contained in Annexure A to the cover sheet are incorporated into this mortgage.

COVENANTS

The mortgagor covenants with the mortgagee as follows:-

To pay the moneys secured to the mortgagee as and when demanded in writing.

2. Further covenants set out in the approved Annexure Page A1 (if attached) form part of this mortgage.

Execution and attestation:

Approval No. 1478085A

ORDER TO REGISTER

Please register and issue title to

STAMP DUTY USE ONLY

M1B



Signed

Cust. Code:

THE BACK OF THIS FORM MUST NOT BE USED

Land Registry, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

Executed by Almond Land Pty Ltd
ABN 65 091 480 392 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 Rabinowitz

Name of director
(BLOCK LETTERS)

Approval No: _____

M1A Page 2



THE BACK OF THIS FORM MUST NOT BE USED



Deacons

This and the next 44 pages is the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

Dated 24 DECEMBER 2008

Mortgage

Parties

Almond Land Pty Ltd
ABN 65 091 460 392

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

Contact

Gillad Dalal
Partner
385 Bourke Street, Melbourne VIC 3000
Telephone: 03 8686 6368
Email: gillad.dalal@deacons.com.au
Website: www.deacons.com.au
Our ref: 2666783

This is page 1 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed:

Mortgage dated 24 DECEMBER 2008

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

Australia and New Zealand Banking Group Limited
ABN 11 005 357 522
of Level 3, 100 Queen Street, Melbourne, Victoria 3000
(Mortgagee)

It is agreed

1. Definitions and interpretation

1.1 Definitions

Terms defined in the Facility Agreement will have the same meaning when used herein as if references to "Lender" were references to "Mortgagee" and references to "Borrower" were references to "Mortgagor".

Also, in this Deed, if the context allows:

Carbon Credits means any legal or beneficial rights, credits, interests, entitlements or benefits (present or future) arising from any action in relation to the land which results in the verified reduction, displacement, absorption, offsetting, removal or sequestration of emission levels of greenhouse gases, including but not limited to any such rights which are validly registered as carbon sequestration rights under the *Forestry Rights Act 1996 (Vic)* as amended by the *Forestry Rights (Amendment) Act 2001 (Vic)* which are an acceptable instrument of value to offset any carbon liability in the international or national market to which they will be applied.

Contract means any contract or agreement between the Mortgagor and any other person in connection with any Works.

Crown Land means land which is subject to the Crown Land Acts.

Crown Land Acts means any present or future legislation under which a Governmental Agency may dispose of an estate or interest in land or rights to occupy or use land vested in that Governmental Agency.

Environmental Requirement means a law, guideline, direction, request or requirement (whether or not having the force of law) about the

This is page 2 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

environment, planning, building or local government, including, without limitation, any of those things about:

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

Event of Default means an event listed in Clause 6.1 or in a Schedule to this Deed.

Facility Agreement means Facility Agreement dated on or about the date of this Deed and made between the Mortgagee and the Mortgagor and others.

Lease means a lease, sub-lease or licence in respect of the Mortgaged Property or an agreement to grant any of those things.

Mortgage means the mortgage over the Mortgaged Property created by this Deed.

Mortgaged Property means, at any time:

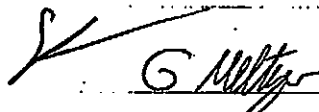
- (1) the estate or interest in land described in this Deed;
- (2) any structures, buildings; and other Improvements, fixtures and fittings on or affixed to that land;
- (3) any rights, benefits, licences and appurtenances attaching to or associated with that estate or interest in land (including, without limitation, easements, paths, mines, minerals, water rights and watercourses);
- (4) any Produce; and
- (5) any rights to Carbon Credits.

Noxious Animals means rabbits, mice, rats and other vermin and other pests or similar noxious animals and insects.

Noxious Plants means thistles, weeds and other similar poisonous, prohibited or similar noxious growths or plants.

This is page 3 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed:



Permitted Restriction means:

- (1) a Restriction existing at the date of this Deed which is:
 - (a) disclosed to the Mortgagee in writing by the Mortgagor on or before the date of this Deed; or
 - (b) noted on a certificate or other document of title to any part of the Mortgaged Property on or before the date of this Deed; or
- (2) a Restriction created after the date of this Deed with the written consent of the Mortgagee.

Plans means any plans, drawings, consultant's reports, specifications, bills of quantities or similar documents relating to a Contract or Works.

Plan of Subdivision means a plan showing the Subdivision of land as defined in the Subdivisions Act.

Produce means, at any time:

- (1) natural or planted vegetation belonging to the Mortgagor growing on any Mortgaged Property, including, without limitation, each present and future crop of agricultural or horticultural produce of the Mortgaged Land; and
- (2) any stock of the Mortgagor on the Mortgaged Property including without limitation, their progeny and descendants and any present or future clip of wool.

Property Law Act means the Property Law Act 1958 (Vic).

Receiver means a person or persons appointed under clause 9.

Restriction means a caveat, easement, covenant, reservation, restriction as to user, lease, licence, profit a prendre, garnishee order or other restriction of any nature whatsoever (whether on use or otherwise) arising under an agreement, by law or otherwise.

Secured Money means all money, obligations and liabilities of any nature whatsoever that may now be, or might at any time in the future become, due, owing or payable, whether actually or contingently, by the Mortgagor to the Mortgagee under or in relation to a Transaction Document including, without limitation, on account of principal, interest, fees, expenses, indemnity payments, losses or damages and irrespective of:

- (1) the capacity (whether as principal, agent, trustee, beneficiary, partner or otherwise) of the Mortgagor or the Mortgagee;
- (2) whether the Mortgagor is liable as principal debtor or as surety;

This is page 4 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

- (3) whether the Mortgagor is liable alone or jointly or jointly and severally with another person;
- (4) whether the money, obligation or liability is owed directly to the Mortgagee, or to its account, or as a result of an assignment, transfer or other dealing with or without the consent of the Mortgagor; and
- (5) whether the money, obligation or liability is owed or secured before or after the date of:
 - (a) this Deed; or
 - (b) any assignment of this Deed or any Transaction Document; "Security Provider" means a person who grants a Security, other than the Mortgagor; "Subdivisions Act" means the Subdivisions Act 1988 (Vic).

Transaction Document means:

- (1) this Deed;
- (2) the Facility Agreement;
- (3) a Security;
- (4) a document or agreement which the parties agree in writing is a "Transaction Document" for the purposes of this Deed; or
- (5) a document or agreement entered into or provided under any of the above,

and, when used in relation to the Mortgagor, means any of those documents to which the Mortgagor is a party.

Transfer of Land Act means the Transfer of Land Act 1958 (Vic).

Works means construction or demolition works or earthworks or related activities including internal or external refurbishments relating to the Mortgaged Property at any time the cost of which in aggregate in any 12 month period exceeds \$1,000,000.

1.2 Interpretation

The provisions of clause 1.2 of the Facility Agreement are deemed to apply to this Mortgage as if set out in full in this Mortgage with references to "this Agreement" being construed as references to this Mortgage.

This is page 5 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

1.3 Terms in the Facility Agreement

In this Mortgage, if the context allows, capitalised terms and expressions not otherwise defined in this Mortgage have the same meaning as in the Facility Agreement.

1.4 Protection of Financier

Each party to this Mortgage acknowledges and agrees that this Mortgage protects the interests of the Financiers.

2. Mortgage

2.1 Mortgage

The Mortgagor as beneficial owner mortgages the Mortgaged Property as security for the due and punctual payment and satisfaction of the Secured Money.

2.2 Ranking

The Mortgage ranks ahead of all other Security Interests of the Mortgagor subject to the Permitted Security Interests.

2.3 Consideration

The Mortgagor has entered into this Deed for valuable consideration from the Mortgagee and receipt of that consideration is acknowledged.

3. Release of Mortgage

3.1 Release of deed

The Mortgagee is not obliged to discharge the Mortgage unless the Mortgagee is satisfied that:

- (1) all of the Secured Money is paid or satisfied in full;
- (2) no money, obligation or liability is likely to become Secured Money within a reasonable time; and
- (3) there is no reasonable possibility that money received or recovered by the Mortgagee and applied in payment or satisfaction of the Secured Money must be repaid or refunded under any law, including, without limitation, a law relating to preferences, bankruptcy, insolvency or the winding up of companies.

This is page 6 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

3.2 Partial release of mortgage

- (1) The Mortgagee may release a part of the Mortgaged Property from the Mortgage at any time.
- (2) A release under paragraph 3.2(1) does not adversely affect:
 - (a) the Mortgage over other Mortgaged Property; or
 - (b) any Transaction Document.

3.3 Reinstatement of mortgage

- (1) If, after the Mortgage is discharged, a claim is made by any person that money applied in payment or satisfaction of the Secured Money must be repaid or refunded under any law, including, without limitation, under any law relating to preferences, bankruptcy, insolvency or the winding-up of companies:
 - (a) the Mortgagor must, at its own expense, promptly do or cause to be done anything which the Mortgagee requires to reinstate the Mortgage (including but not limited to executing documents); and
 - (b) if the claim is upheld or admitted, the Mortgagee is entitled to the same rights, powers and remedies against the Mortgagor and the Mortgaged Property as it would have had if the relevant money had never been applied in payment or satisfaction of the Secured Money and the Mortgage had never been discharged.
- (2) This clause survives the discharge of the Mortgage.

3.4 Continuing security

This Deed is a continuing security despite any settlement of account or any other matter or thing until a final discharge is given to the Mortgagor.

4. Representations and Warranties

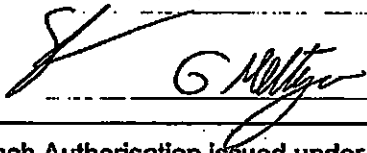
4.1 Representations and warranties

The Mortgagor represents and warrants to the Mortgagee that:

- (1) **no security interest or restriction:** no Security Interest or Restriction exists over the Mortgaged Property except Permitted Security Interests and Permitted Restrictions;
- (2) **environmental requirements:** the Mortgagor has complied with all Environmental Requirements and the terms and conditions of

This is page 7 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed:


each Authorisation issued under an Environmental Requirement where the failure to do so would cause a Material Adverse Effect;

- (3) **ownership:** the Mortgagor has an absolute and indefeasible title to an estate in fee simple in the Mortgaged Property including, where appropriate, as registered proprietor under the provisions of the Transfer of Land Act, the Subdivisions Act or under the common law, as the case may be;
- (4) **no immunity:** neither the Mortgagor nor any of its assets or revenues has any immunity from jurisdiction or execution;
- (5) **priority:** the Mortgage is a first ranking Security Interest and the obligations of the Mortgagor under this Deed rank ahead of all other obligations of the Mortgagor in relation to the Mortgaged Property (other than those which must be preferred by law);
- (6) **no resumption:** the Mortgagor has no notice of any proposal by any Governmental Agency to seize, confiscate, requisition, resume or compulsorily acquire any Mortgaged Property, whether permanently or temporarily and whether with payment of compensation or not; and
- (7) **compliance with laws:** the Mortgagor has complied with all laws and all guidelines, directions, requests or requirements of any Governmental Agency applicable to the Mortgaged Property or the use, occupation or enjoyment of the Mortgaged Property where not to do so would cause a Material Adverse Effect.

4.2 Continuing representations and warranties

The representations and warranties in this Deed, including in clause 4.1, survive the execution of each Finance Document and are repeated on each date on which representations and warranties are made or taken to be repeated under the Facility Agreement.

4.3 Acknowledgment of reliance

The Mortgagor acknowledges that the Mortgagee has entered into this Deed in reliance on the representations and warranties contained in this Deed.

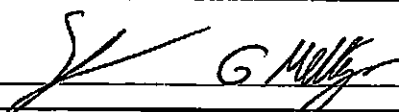
5. Undertakings

5.1 Payment of secured money

- (1) The Mortgagor must perform its obligations under the Transaction Documents and the Permitted Security Interests in full and on time.

This is page 8 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: _____



- (2) Without limiting paragraph 5.1(1), the Mortgagor must pay the Secured Money to the Mortgagee:
- (a) In accordance with the Transaction Documents; or
 - (b) on demand, if payment of the Secured Money is not expressly provided for in a Transaction Document.

5.2 Undertakings relating to mortgaged property

Unless the Mortgagee otherwise agrees in writing, the Mortgagor must:

- (1) **no Security Interests or Restrictions:** not create, agree or attempt to create or permit to exist, any Security Interest (other than Permitted Security Interest) or Restriction (other than a Permitted Restriction) on any Mortgaged Property;
- (2) **Permitted Security Interests and Restrictions:** promptly comply with the terms of any Permitted Security Interest or Permitted Restriction and not do, omit to do or permit to occur anything by which the obligations of another person under a Permitted Security Interest or Permitted Restriction would be lessened;
- (3) **disposals:** except as permitted or contemplated by the Project Documents, not sell any Mortgaged Property or dispose of it, part with possession of it or otherwise deal with it except as permitted under a Transaction Document whether by a single transaction or by a number of transactions whether related or not;
- (4) **maintain:** maintain and protect the Mortgaged Property and keep it in good order and condition and in good and substantial repair and promptly carry out all work that may be required by a Governmental Agency in relation to the Mortgaged Property, in each case where failure to do so would have a Material Adverse Effect;
- (5) **repair:** promptly repair every defect in the Mortgaged Property where commercially prudent to do so;
- (6) **protect:** take or defend legal proceedings for the protection of the Mortgaged Property where commercially prudent to do so;
- (7) **not prejudice:** not do, omit to do or permit to occur, anything which adversely affects a right, power or remedy of the Mortgagee under this Deed or which does or might result in any Mortgaged Property being:
 - (a) subject to a Security Interest in favour of a Governmental Agency;

This is page 9 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

- (b) surrendered, forfeited, exchanged, cancelled or adversely affected in any manner;
- (c) subject to protection under the Crown Lands Acts or any other law which provides for the curtailment, postponement, defeat, extinguishment or suspension of the rights, powers or remedies of the Mortgagee in relation to the Mortgaged Property; or
- (d) reduced in value,

where any of these would have a Material Adverse Effect.

- (8) **no alterations:** not pull down, alter, extend or remove any building or other improvements forming part of the Mortgaged Property, where failure to do so would have a Material Adverse Effect;
- (9) **access:** provide to or procure for the Mortgagee or its professional consultants full access to the Mortgaged Property and all premises and employees of the Mortgagor for the purpose of inspecting Mortgaged Property or exercising a right, power or remedy of the Mortgagee;
- (10) **damage:** promptly notify the Mortgagee of any damage, loss, theft, arrest, confiscation, or other event which affects or might affect the rights of the Mortgagee under this Deed or involve a loss or reduction in value of any Mortgaged Property exceeding \$500,000;
- (11) **pay taxes:** whether or not the Mortgagee has taken possession of any part of the Mortgaged Property, punctually pay all Taxes for any Mortgaged Property and on request provide the Mortgagee with copies of all notices received for those Taxes and copies of receipts for all payments;
- (12) **comply with laws:** comply with all laws and all guidelines, directions, requests or requirements of any Governmental Agency applicable to any Mortgaged Property or the use, occupation or enjoyment of any Mortgaged Property where not to do so would cause a Material Adverse Effect;
- (13) **title documents:** deposit with the Mortgagee all certificates and other documents of title for Mortgaged Property and other instruments evidencing Mortgaged Property immediately on:
 - (a) execution of this Deed by the Mortgagor; and
 - (b) on acquisition of an asset forming part of the Mortgaged Property after the date of this Deed;
- (14) **copies of notices:** immediately on receipt provide to the Mortgagee copies of all notices, orders, legal process and other

This is page 10 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

documents received by it from a Governmental Agency or other person under an Environment Requirement or other law affecting the Mortgaged Property;

- (15) **seek consents:** if directed by the Mortgagee, seek consent of relevant Governmental Agencies in relation to any matter including, but not limited to consent to use the Mortgaged Property for a purpose approved by the Mortgagee whether or not that use is subject to:
- (a) the consent or approval of any other Governmental Agency being obtained; or
 - (b) existing rights to use the Mortgaged Property;
- (16) **leases:**
- (a) except pursuant to a Project Document not grant or permit to exist a Lease, unless it:
 - (i) is first notified to the Mortgagee and approved by it in writing; and
 - (ii) is for a market rent or licence fee, and does not include a premium payable in advance;
 - (b) not terminate, rescind or vary a Lease unless:
 - (i) it is in the ordinary course of business;
 - (ii) it is for a bona fide commercial reason; and
 - (iii) it does not have a material adverse effect on the market value of the Mortgaged Property;
 - (c) not grant a waiver, release or other indulgence under a Lease; or
 - (d) not grant or permit to exist any arrangement under which a person may do anything described in paragraph (a), (b) or (c); and
- (17) **noxious plants:** clear from the Mortgaged Property all Noxious Plants which the Mortgagee considers do or might reduce the utility or value of the Mortgaged Property where not to do so would have a Material Adverse Effect;
- (18) **environmental audit:** provide to the Mortgagee an environmental audit report in respect of any part of the Mortgaged Property prepared by an environmental consultant acceptable to the Mortgagee and covering the matters required by the Mortgagee if

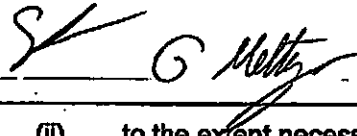
This is page 12 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: _____

- (7) **no changes:** not vary or terminate an insurance policy;
- (8) **not prejudice:** not do, permit or allow an act, omission or thing to be done or occur (including, without limitation, an alteration or addition to a building, fixture or other improvement forming part of the Mortgaged Property) by which:
 - (a) an insurance policy may be or become liable to be vitiated or cancelled;
 - (b) the premium may be increased;
 - (c) insurance is or becomes insufficient; or
 - (d) a claim may be prejudiced in any way;
- (9) **notice to Mortgagee:** promptly notify the Mortgagee of:
 - (a) the full particulars of an act, omission, matter or thing which does or might give rise to a right to claim under a policy and provide to the Mortgagee any further information that comes into the possession of the Mortgagor relating to that claim; and
 - (b) the cancellation or proposed cancellation of a policy of insurance;
- (10) **settlement of claims:** not make, enforce, settle or compromise any claim in respect of insurance or for compensation but permit the Mortgagee alone to do those things and sue and give discharges for all insurance money; and
- (11) **hold as security:** hold every insurance policy (whether or not it also covers any property not forming part of the Mortgaged Property) as further security for the due payment and satisfaction of the Secured Money until the Secured Money is paid or satisfied in full;
- (12) **application of insurance money:**
 - (a) Subject to clause 5.3(12)(b), if no Event of Default or Potential Event of Default has occurred and is subsisting, any money received or recovered under a claim involving the Secured Property, or any other claim for which the loss funds are payable to the Mortgagor must be held in a separate account for the Mortgagee and applied, at the option of the Mortgagor:
 - (i) towards satisfaction of the Secured Money; or

This is page 13 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed:



- (ii) to the extent necessary, to repair, replace or reinstate the Secured Property or otherwise for the purpose for which the relevant insurance policy was maintained.
- (b) Subject to clause 5.3(12)(c), if an Event of Default or Potential Event of Default occurs and is subsisting moneys referred to in clause 5.3(12)(a) must be kept in a separate account for the Mortgagee and will be applied as follows:
 - (i) any such moneys up to the amount of \$2 million in any 12 month period will be applied at the option of the Mortgagor for any of the purposes referred to in clause 5.3(12)(a)(i) or 5.3(12)(b)(ii); and
 - (ii) any such moneys over the amount of \$2 million in any 12 month period will be applied at the option of the Mortgagee for any of the purposes referred to in clause 5.3(12)(a)(i) or 5.3(12)(a)(ii) but in exercising its option (and without limiting the rights of the Mortgagee in any way) the Mortgagee will consider the rights of the Growers in making any election pursuant to this clause.
- (c) If required under the terms of a reinstatement policy, the Mortgagor must apply all proceeds payable under the reinstatement policy to the reinstatement of its Secured Property.
- (d) The Mortgagor must ensure that:
 - (i) any money received or recovered under a claim for workers compensation or public risk and products liability is paid to the person entitled to be compensated under the relevant policy; and
 - (ii) any money received or recovered under a reinstatement policy is paid, if required under the terms of the policy, to the person entitled to payment under the contract for reinstatement of the Secured Property.

5.4 Undertakings relating to particular property

If at any time the Mortgaged Property or any part of it:

- (1) **Registered Plan of Subdivision:** is a lot in a registered plan of Subdivision, the provisions of Schedule 1 apply;

This is page 14 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

- (2) **Rural Land:** is agricultural, horticultural or pastoral land, the provisions of Schedule 2 apply;
- (3) **Works:** is subject to any Works or a proposal to effect any Works, the provisions of Schedule 3 apply;
- (4) **crown Land:** comprises Crown Land, the provisions of Schedule 4 apply.

6. Default

6.1 Events of default

It is an Event of Default if:

- (1) **Facility Agreement:** an event of default (however described) has occurred under the Facility Agreement or any other Transaction Document.
- (2) **ownership of Mortgaged Property:** the Mortgagor ceases for any reason to be the legal land beneficial owner of any part of the Mortgaged Property other than as permitted under a Transaction Document;
- (3) **environmental requirement:** under an Environmental Requirement:
 - (a) a Governmental Agency takes action against the Mortgagor or a Security Provider;
 - (b) there is a claim against the Mortgagor or a Security Provider;
 - (c) the Mortgagor 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 described in clause 4.1 is not granted or ceases to be fully effective for any reason or is varied in a manner,

which has a Material Adverse Effect;

- (4) **other security interests:** a Security Interest over any of the Mortgaged Property is enforced or becomes capable of being enforced;
- (5) **resumption:** a Governmental Agency seizes, confiscates, requisitions, resumes or compulsorily acquires any Mortgaged

This is page 15 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

Property whether permanently or temporarily and whether with payment of compensation or not;

- (6) **use and occupation:** the use or occupation of the Mortgaged Property by the Mortgagor contravenes a law or a guideline, direction, request or requirement of a Governmental Agency;
- (7) **litigation:** a proceeding is commenced against the Mortgagor or in relation to any Mortgaged Property which does or may:
 - (a) Impeach the Mortgagor's title to Secured Property; or
 - (b) restrict the Mortgagor's use, occupation or enjoyment of Mortgaged Property; and such proceedings would cause a Material Adverse Effect;
- (8) **priority:** the Mortgage ceases for any reason to be a first ranking mortgage or an obligation of the Mortgagor other than a Permitted Security Interest ranks ahead of or equally with the Secured Money;
- (9) **damage:** a substantial part of the Mortgaged Property is destroyed or substantially damaged and is not insured in accordance with clause 5.3;
- (10) **alteration:** except where the Mortgagee otherwise agrees in writing, a building is altered in a manner which does or may affect a boundary on any part of the Mortgaged Property; or
- (11) **improvements affected:** except where the Mortgagee otherwise agrees in writing (such agreement not to be unreasonably withheld), the Mortgaged Property is affected by:
 - (a) a change or proposal to change an Environmental Requirement;
 - (b) a proposal for re-alignment, widening or siting of a road or a railway or other structure or building by a Governmental Authority;
 - (c) a change or proposal to change the position of mains or pipes of a water, sewerage or drainage authority;
 - (d) a Security Interest or Restriction ranking in priority to this Deed arising under any law,

other than as disclosed at the date of this Mortgage, and the relevant matter would have a Material Adverse Effect.

This is page 16 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

6.2 Consequences of default

Whilst an Event of Default subsists:

- (1) the Mortgagor must immediately pay the Secured Money in full to the Mortgagee on demand by the Mortgagee and in the manner notified by the Mortgagee;
- (2) the Mortgagee may do or cause to be done all things and pay or procure the payment of all money necessary to remedy that Event of Default; and
- (3) the Mortgagee may still enforce this Deed even if the Mortgagee accepts payment of any part of the Secured Money.

7. Default Interest

7.1 Default Interest

The Mortgagor must pay interest to the Mortgagee on any part of the Secured Money which is due and payable but unpaid (including interest payable under this clause but unpaid) from and including the due date for payment to the date of actual payment (after as well as before judgments) pursuant to the Facility Agreement.

8. Powers of Mortgagee on Default

8.1 Powers of mortgagee

At any time whilst an Event of Default subsists, in addition to any rights, powers or remedies conferred by law, the Mortgagee has the power to do all acts and things and exercise all rights, powers and remedies that the Mortgagor could do or exercise in relation to the Mortgaged Property including, without limitation, the power to:

- (1) **take possession:** enter, take possession and assume control of the Mortgaged Property;
- (2) **receive rents:** receive rents and profits of the Mortgaged Property;
- (3) **manage:** manage the Mortgaged Property;
- (4) **carry on business:** carry on any business of the Mortgagor conducted on the Mortgaged Property or relating to it;
- (5) **maintain or improve:** do anything to maintain, protect or improve the Mortgaged Property including but not limited to pulling down, rebuilding, repairing, altering, completing or erecting a new

This is page 17 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

improvement on the Mortgaged Property in any manner the Mortgagee thinks fit;

- (6) **subdivide or consolidate:** subdivide the whole or any part of the Mortgaged Property into two or more lots or consolidate the Mortgaged Property into one lot;
- (7) **apply to Governmental Agency:** apply to any Governmental Agency for approval in connection with the exercise of any power under this Deed and do anything necessary to comply with a condition of that approval including, without limitation:
 - (a) dedicating part of the Mortgaged Property for public purposes (or making contributions instead);
 - (b) creating easements in favour of a Governmental Agency in respect of any part of the Mortgaged Property; or
 - (c) lodging any plans or other documents with a Governmental Agency;
- (8) **sell:** sell or agree to sell the Mortgaged Property on terms that the Mortgagee thinks fit and irrespective of:
 - (a) whether or not the Mortgagee has taken possession;
 - (b) whether by public auction, private treaty or by tender;
 - (c) whether for cash or on deferred purchase terms or a combination of those and whether or not deferred purchase terms provide for the charging of interest or the giving of security;
 - (d) whether in one lot or in parcels;
 - (e) whether or not other property is sold by the Mortgagee or another person; and
 - (f) whether with or without special provisions including, without limitation, provisions relating to title and payment of the purchase money;
- (9) **lease:** lease or license any part of the Mortgaged Property, or renew, terminate, surrender or accept leases or licences, on terms that the Mortgagee thinks fit;
- (10) **grant options:** grant to any person an option (exercisable not more than six months after the date of grant) to purchase the Mortgaged Property on terms that the Mortgagee thinks fit;
- (11) **restrictions:** grant, release or vary Restrictions;

This is page 18 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

- (12) **fixtures:** add or sever fixtures;
- (13) **make agreements:** make any agreement or compromise which the Mortgagee thinks fit;
- (14) **transfer property:** surrender or transfer the Mortgaged Property to any Governmental Agency (whether or not for fair compensation);
- (15) **exchange property:** exchange with any person any part of the Mortgaged Property for any other property, whether or not of equal value;
- (16) **employ:** employ or engage any person on terms the Mortgagee thinks fit for the purpose of exercising any of the Mortgagee's rights or powers under this Deed;
- (17) **delegate:** delegate to any person for any time as the Mortgagee approves any or all of the powers of the Mortgagee on terms that the Mortgagee thinks fit;
- (18) **give receipts:** give effective receipts for all money and other assets which may come into the hands of the Mortgagee;
- (19) **perform and enforce:** carry out and enforce or refrain from carrying out or enforcing, contracts entered into or held by the Mortgagor in relation to the Mortgaged Property or entered into in exercise of the rights, powers or remedies of the Mortgagee under this Deed;
- (20) **insure:** insure the Mortgaged Property;
- (21) **proceedings:** institute, conduct, defend, discontinue, settle, arrange or compromise any proceedings (including but not limited to proceedings relating to insurance of the Mortgaged Property);
- (22) **borrow:**
 - (a) advance money for the account of the Mortgagor; or
 - (b) raise or borrow any money in its name or in the name of or on behalf of the Mortgagor, from any person approved by the Mortgagee; and
 - (c) secure money advanced under paragraph (a) or raised or borrowed under paragraph (b) by a Security Interest over any part of the Mortgaged Property whether ranking in priority to, equal with or after this Deed or any other Transaction Document;
- (23) **execute documents:** execute and deliver documents on behalf of the Mortgagor under seal or under hand; and

This is page 19 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed:



- (24) other acts: do or cause to be done any other act or thing which the Mortgagee considers necessary or incidental to the exercise of any right, power or remedy of the Mortgagee.

8.2 Statutory powers

- (1) The Mortgagee and any Controller appointed by the Mortgagee may, to the extent that an applicable law permits, exercise a right, power or remedy under a Transaction Document without first giving any notice or allowing the lapse of any period of time or the fulfilment of any other condition precedent.
- (2) If an applicable law provides that a right, power or remedy under a Transaction Document may only be exercised by the Mortgagee after a period of notice is given or a lapse of time occurs then:
 - (a) if a period of notice or lapse of time is mandatory, that period of notice must be given or lapse of time must occur or be permitted by the Mortgagee;
 - (b) if the law provides that a period of notice or lapse of time may be fixed by this Deed, one Business Day is fixed as the period of notice or lapse of time during which:
 - (i) default must continue before a notice is given demanding repayment or satisfaction of the Secured Money; and
 - (ii) a notice for payment or satisfaction of the Secured Money must remain not complied with before the Mortgagee may exercise the relevant right, power or remedy.
- (3) Sub-sections (3),(5)(6),(7) and (9) of section 99 of the Property Law Act 1958 (Vic) do not apply to any lease granted by the Mortgagee under this Deed.
- (4) A restriction on the exercise by the Mortgagee of the statutory power of sale under section 103 of the Property Law Act 1958 (Vic) does not apply to this Deed.
- (5) Section 77(3) of the Transfer of Land Act does not apply to this Deed.
- (6) Section 198 of the Property Law Act does not apply to this Deed.

8.3 Not mortgagee in possession

If the Mortgagee, or a Controller appointed by the Mortgagee takes possession of any Mortgaged Property neither the Mortgagee, nor the Controller is liable as a mortgagee in possession.

This is page 20 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: _____

8.4 Give up possession

The Mortgagee may give up possession of the Mortgaged Property or any part of it at any time and may discontinue a receivership.

8.5 Exclusion of liability

The Mortgagee is not responsible for losses of any kind which may occur in relation to the exercise, attempted or purported, exercise or non-exercise of a right, power or remedy of the Mortgagee or a Controller appointed by the Mortgagee, including, without limitation, the negligence or default of any person.

8.6 Protection of third parties

- (1) A person dealing with the Mortgagee, or a Controller appointed by the Mortgagee in connection with the exercise of any of the Mortgagee's rights, power or remedies:
 - (a) is not bound to inquire whether an Event of Default has occurred, if the appointment of a Controller is duly made or otherwise as to the propriety or regularity of a dealing with any of them; and
 - (b) is not affected by express notice that a dealing is unnecessary or improper.
- (2) A dealing is deemed to be valid and effective despite an irregularity or impropriety as described in this clause.

9. Appointment of Receiver

9.1 Appointment

At any time whilst an Event of Default subsists the Mortgagee may:

- (1) appoint in writing:
 - (a) any one or more persons to be a receiver or receiver and manager of the Mortgaged Property; or
 - (b) different receivers or receivers and managers for different parts of the Mortgaged Property.

on terms which the Mortgagee thinks fit and irrespective of:

- (c) whether the Mortgagor has taken possession of the Mortgaged Property; or

This is page 21 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

- (d) whether an order has been made or a resolution passed to wind-up the Mortgagor;
- (2) remove a Receiver and in the case of removal, retirement or death of a Receiver, appoint a replacement;
- (3) fix the remuneration of the Receiver at an amount or rate of commission agreed between the Mortgagee and the Receiver and, in the absence of agreement, at the rate determined by the Mortgagee; and
- (4) if two or more persons are appointed as Receiver appoint them jointly or severally or jointly and severally.

9.2 Agent of mortgagor

- (1) A Receiver is the agent of the Mortgagor unless and until:
 - (a) the Mortgagee by notice in writing to the Mortgagor and the Receiver requires that the Receiver act as agent of the Mortgagee; or
 - (b) an order is made or resolution is passed for the winding-up of the Mortgagor (except to the extent that approval is given under section 420C(1) of the Corporations Law).
- (2) If for any reason a Receiver ceases to be the agent of the Mortgagor, the Receiver immediately becomes the agent of the Mortgagee.
- (3) Whilst the Receiver is the agent of the Mortgagor, the Mortgagor alone is responsible for the acts and defaults of the Receiver, but in exercising any powers of the Mortgagee, the Receiver has the authority of both the Mortgagor and the Mortgagee.

9.3 Powers of receiver

- (1) A Receiver may do any act, matter or thing and exercise any right, power or remedy that may be done or exercised by the Mortgagee in relation to the Mortgaged Property.
- (2) The Power conferred on a Receiver under paragraph 9.3(1) is in addition to any right, power or remedy conferred on the Receiver by law, but is subject to any specific limitations placed on a Receiver by the terms of the appointment of that Receiver.

This is page 22 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

10. Receipt and Application of Moneys

10.1 Order of application

- (1) The Mortgagee or a Controller appointed by the Mortgagee may appropriate and apply money which it receives or recovers toward any amount and in any order it may determine in its absolute discretion.
- (2) If no determination as described in clause 10.1(1) is made, the Mortgagee or Controller must apply any money received or recovered in the following order:
 - (a) first, in payment of all amounts which, to the extent required by law, have priority over the payments specified in the remaining paragraphs of this clause;
 - (b) secondly, in payment of all costs, charges, expenses or other money incurred or payable by the Mortgagee, or a Controller appointed by the Mortgagee, in connection with the exercise or attempted exercise or purported exercise of a right, power or remedy under a Transaction Document;
 - (c) thirdly, in payment of the Controller's remuneration;
 - (d) fourthly, in payment or satisfaction of any Security Interest of which the Mortgagee has notice having priority over this Deed, in order of, and to the extent of, their priority;
 - (e) fifthly, in payment of the Secured Money and applied against interest, principal or other amount the Mortgagee or Controller things fit;
 - (f) sixthly, to the extent required by law, in payment of other Security Interests in respect of the Mortgaged Property of which the Mortgagee or Controller has notice, and which are due and payable in accordance with their terms, in the order of their priority; and
 - (g) seventhly, in payment of the surplus, if any to the Mortgagor in accordance with clause 10.4.

10.2 Credit actual receipts

In applying any money toward satisfaction of the Secured Money, the Mortgagee will credit the Mortgagor only with that money actually received by the Mortgagee in Cleared Funds, and that credit dates from the time of actual receipt.

This is page 23 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

10.3 Amounts contingently due

If money available for distribution to the Mortgagee relates to that part of the Secured Money which is contingently due to the Mortgagee:

- (1) that money may be placed in a short term interest bearing suspense account with any person (including the Mortgagee or a Related Body Corporate of the Mortgagee) selected by the Mortgagee on terms selected by the Mortgagee until that Secured Money becomes actually due and payable or otherwise ceases to be contingently due; and
- (2) at that time, the amount actually owing may be paid to the Mortgagee and the balance distributed in accordance with clause 10.1.

10.4 Surplus moneys

- (1) If, at any time after satisfaction of the Secured Money, the Mortgagee holds surplus money payable to the Mortgagor, that money:
 - (a) does not carry interest; and
 - (b) must be promptly paid into an account in the name of the Mortgagor with a Bank.
- (2) The Mortgagee has no further liability in respect of money dealt with in accordance with paragraph (1).

10.5 Receipts by the mortgagee

The receipt of an Authorised Officer of the Mortgagee or a Controller appointed by the Mortgagee for money or another asset payable to the Mortgagee or received by or for the account of the Mortgagee under a Transaction Document exonerates the paying person from all liability to enquire as to:

- (1) the application of that money or other asset;
- (2) whether the Secured Money is due or payable; or
- (3) the propriety or regularity of the appointment of a Controller appointed by the Mortgagee.

This is page 24 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

11. Payments

11.1 Payments by mortgagor

All payments by the Mortgagor to the Mortgagee under a Transaction Document must be made:

- (1) not later than 11:00 am on the due date for payment;
 - (2) in Cleared Funds in the Required Currency; and
 - (3) to the account specified by the Mortgagee,
- or in any other manner as the Mortgagee may notify the Mortgagor.

11.2 Business days

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

11.3 Payments in gross

Subject to clause 11.4, all money payable by the Mortgagor under a Transaction Document must be paid 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.

11.4 Deductions and withholdings

If the Mortgagor or another person is required by law to make a deduction or withholding from a payment to the Mortgagee, the Mortgagor:

- (1) indemnifies the Mortgagee against the amount of the deduction or withholding;
- (2) must pay an additional amount so that, after all applicable deductions or withholdings, the Mortgagee actually receives for its own benefit the full amount which it would have received if no such deductions or withholdings had been required; and
- (3) must pay the full amount of the deduction or withholding to the appropriate Governmental Agency in accordance with applicable law and deliver the original receipts to the Mortgagee.

This is page 25 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

12. Expenses, Costs and Tax

12.1 Expenses

The Mortgagor must pay or reimburse the Mortgagee for all costs, charges and expenses of the Mortgagee, its Authorised Officers and agents and any person employed or engaged by the Mortgagee (including, without limitation, administration costs and internal and external legal fees and disbursements on a full indemnity basis) incurred or payable by the Mortgagee in relation to:

- (1) the negotiation, preparation, execution, stamping and registration of the Transaction Documents;
- (2) any attendance, inspection, calculation, approval, consent, waiver, variation, release or discharge, to be made or given by the Mortgagee in relation to the Transaction Documents; and
- (3) the contemplated or actual enforcement of, or preservation of rights, powers and remedies under a Transaction Document including but not limited to a fee for time spent by the Mortgagee's employees calculated by reference to the hourly rates recommended by the Insolvency Practitioners Association of Australia for practitioners of a standard which the Mortgagee considers is equivalent to the standard of its employees

12.2 costs

The Mortgagor 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 Transaction Document.

12.3 Tax

- (1) The Mortgagor must pay all Tax in relation to the execution, delivery, registration, release, discharge, variation, enforcement or attempted enforcement or otherwise in respect of the Transaction Documents.
- (2) The Mortgagor must indemnify the Mortgagee against any Claim in respect of an amount payable under paragraph (1).

This is page 26 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

13. Indemnities

13.1 General Indemnity

The Mortgagor unconditionally and irrevocably indemnifies the Mortgagee from and against any Claim arising directly or indirectly from, and any costs, charges and expenses incurred by the Mortgagee arising out of or in connection with:

- (1) an Event of Default or Potential Event of Default or the exercise by the Mortgagee of a right or power arising from an Event of Default or Potential Event of Default;
- (2) a failure by the Mortgagor to make a payment or perform an obligation in accordance with a Transaction Document; or
- (3) the Mortgaged Property or the use or occupation of the Mortgaged Property by any person.

13.2 currency Indemnity

- (1) If an amount payable by the Mortgagor or a Security Provider is received or recovered by the Mortgagee or a Controller in a currency other than the Required Currency (whether under a judgment, in the winding up of the Mortgagor or a Security Provider or otherwise) the Mortgagee or Controller may purchase the Required Currency with that other currency in accordance with its usual banking procedures.
- (2) If the amount in the Required Currency which may be purchased under paragraph (1) is, after deducting any costs of exchange and any other related costs, less than the relevant sum payable under the Transaction Documents, the Mortgagor indemnifies the Mortgagee or Controller in respect of the shortfall.

13.3 Survival of Indemnities

- (1) The Indemnities in this Deed are continuing obligations of the Mortgagor, separate and independent from the other obligations of the Mortgagor and survive the termination of this Deed.
- (2) It is not necessary for the Mortgagee to incur expense or make a payment before enforcing a right of indemnity conferred by this Deed.

This is page 27 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

14. Assignment

14.1 Assignment by mortgagor

The Mortgagor must not assign or otherwise transfer the benefit of a Transaction Document or a right, remedy, power, duty or obligation under a Transaction Document without the prior written consent of the Mortgagee.

14.2 Assignment by mortgagee

The Mortgagee may assign or otherwise transfer a right, remedy, duty, power or obligation under a Transaction Document or grant a participation or sub-participation in the benefit of a Transaction Document pursuant to the Facility Agreement.

14.3 Disclosure

The Mortgagee may disclose to a potential assignee, transferee, participant or sub-participant any information about the Mortgagor, this Deed and the transactions contemplated by this Deed that the Mortgagee considers appropriate.

15. General Security Provisions

15.1 No merger

- (1) No Security or Transaction Document merges, discharges, postpones or otherwise adversely affects the Mortgagee's rights, remedies or powers under this Deed.
- (2) Nothing in this Deed merges, discharges, postpones or otherwise adversely affects a Security in favour of the Mortgagee at any time or any of the Mortgagee's rights, remedies or powers against any person at any time.
- (3) if a judgment is made in favour of the Mortgagee against the Mortgagor in respect of the Secured Money, the Mortgagee holds the judgment collaterally with the Transaction Documents as security for the due payment and satisfaction of the Secured Money and no Transaction Document merges in the judgment.

15.2 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 otherwise vary the Mortgagor's obligations under a Transaction Document; or

Signed:

Signed: S. G. Melton

- Mortgage 28

This is page 29 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

15.6 Mortgagee's rights cumulative

The rights, remedies and powers under a Transaction Document of the Mortgagee or a Controller appointed by the Mortgagee are cumulative and not exclusive of any rights, remedies or powers provided to the Mortgagee or Controller by law.

15.7 Further assurances

The Mortgagor must, whenever requested by the Mortgagee to do so, promptly do or cause to be done anything which the Mortgagee reasonably considers necessary or desirable to give full effect to this Deed or to more satisfactorily secure the Mortgagee's rights, powers and remedies under a Transaction Document including, but not limited to, executing and delivering documents.

15.8 Interests in land

- (1) Without limiting clause 15.7, the Mortgagor must, at its own expense and when requested by the Mortgagee, execute and deliver a mortgage or other Security Interest over:

- (a) any real property; and
- (b) any other property in respect of which it is possible to register a specific Security Interest,

forming part of the Mortgaged Property which is acquired by the Mortgagor, or into which any Mortgaged Property is converted after the date of this Deed.

- (2) The mortgage or other Security Interest referred to in paragraph (1) must:

- (a) be in favour of the Mortgagee;
- (b) be in registrable form;
- (c) secure the Secured Money; and
- (d) be on terms no more onerous than this Deed but otherwise acceptable to the Mortgagee.

This is page 30 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

15.9 Attorney

- (1) The Mortgagor irrevocably appoints the Mortgagee, a Controller appointed by the Mortgagee and each of their respective Authorised Officers, severally as its attorney to do any of the following:
 - (a) if an Event of Default subsists perform the obligations of the Mortgagor under the Transaction Documents;
 - (b) if an Event of Default subsists in the name of the Mortgagor or the attorney, do everything the attorney considers necessary or desirable to give full effect to a right, remedy or power of the Mortgagee or the Controller under a Transaction Document (including signing and lodging proofs of debt and similar claims in legal proceedings);
 - (c) appoint substitutes or delegate its powers (including this power of delegation) to any person for any period and revoke any substitution or delegation; and
 - (d) if an Event of Default subsists do everything that the Mortgagor may lawfully authorise an agent to do in respect of the Mortgaged Property.
- (2) An attorney of the Mortgagor may exercise its powers even if the exercise of the power constitutes a conflict of interest or duty.
- (3) If required by the Mortgagee, the Mortgagor must ratify anything an attorney or its delegate does in exercising its powers under this clause.

15.10 Completion of blanks

The Mortgagee and each Authorised Officer of the Mortgagee is authorised to fill in any blanks and otherwise complete any instruments executed by the Mortgagor and deposited with the Mortgagee in connection with this Deed.

15.11 Priority of future advances

Despite any rule of law or equity to the contrary, all money which is expressed to be secured by this Deed and which is advanced, paid, provided or otherwise arises after the receipt of notice by the Mortgagee of the creation of any other Security Interest is, despite receipt of that notice, secured by this Deed in priority to any money secured by that other Security Interest, unless the Mortgagee specifically agrees otherwise in writing.

This is page 31 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

15.12 Rights regarding prior security interests

The Mortgagee may pay or discharge any money, obligation or liability secured by a Security Interest having priority over this Deed and take a transfer of that Security Interest for the benefit of the Mortgagee and:

- (1) the Mortgagor authorises, directs and consents to a person having the benefit of the prior Security Interest providing the Mortgagee from time to time with all information it may require in relation to the prior Security Interest, including as to amounts secured by the prior Security Interest, despite the terms of that prior Security Interest; and
- (2) any money paid by the Mortgagor to the Mortgagee after the date of transfer is available to be applied by the Mortgagee in its absolute discretion to either that part of the Secured Money comprising the moneys secured by the prior Security Interest or to any other Secured Money.

15.13 No marshalling

The Mortgagee is not required before it enforces this Deed or any other Security to:

- (1) give notice of this Deed to any person;
- (2) enforce payment of or appropriate any Secured Money or other money or assets which it at any time holds or is entitled to receive;
- (3) marshal, enforce, realise or otherwise resort to any Security; or
- (4) take steps or proceedings for any purpose, unless the Mortgagee thinks fit.

16. Miscellaneous

16.1 Notices

- (1) A notice given under a Transaction Document (including, but not limited to a consent, approval, nomination, request, demand or other communication):
 - (a) must be in legible writing and in English;
 - (b) must be addressed to the recipient at the address or facsimile number set out in paragraph (i) or (ii) (as applicable) or to any other address or facsimile number as a party may notify to the other;

This is page 32 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

(i) to the Mortgagor:

Address: Level 8, 461 Bourke Street
Melbourne Vic 3000
Attention: General Manager, Corporate Finance
Facsimile No: (03) 9670 4271

(ii) to the Mortgagee:

Address: Level 10, 530 Collins Street
Melbourne Vic 3000
Attention: Senior Manager
Facsimile No: (03) 9273 3161

- (c) may be sent to the recipient by hand, telegram, prepaid post (airmail if outside Australia) or facsimile;
- (d) must be signed by an Authorised Officer or under the common seal of a sender which is a company; and
- (e) is deemed to be received by the recipient in accordance with clause 16.1(2).

(2) Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice is deemed to be received:

- (a) if sent by hand or telegram, when left at the address of the recipient;
- (b) if sent by pre-paid post, five days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or
- (c) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the whole facsimile was sent to the recipient's facsimile number,

but if a notice is served by hand or by telegram, or is received by the recipient's facsimile on a day which is not a Business Day, or after 5.00 pm on a Business Day, that notice is deemed to be duly received by the recipient at 9.00 am on the first Business Day after that day.

16.2 Governing law

This Deed is governed by and is construed in accordance with the laws of Victoria.

This is page 33 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

16.3 Jurisdiction

The Mortgagor irrevocably and unconditionally:

- (1) submits to the non-exclusive jurisdiction of the courts of Victoria;
- (2) waives any claim or objection based on absence of jurisdiction or Inconvenient forum.

16.4 Invalidity

- (1) If in a particular jurisdiction, a provision of a Transaction Document is invalid or unenforceable:
 - (a) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
 - (b) it does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions in another jurisdiction or in that jurisdiction, if they are capable of separate enforcement without regard to the read down or severed portions.
- (2) Without limitation to paragraph (1), if a law requires an Authorisation before the creation of any Security Interest over an item of Mortgaged Property and the absence of the Authorisation does or might render this Deed invalid or unenforceable in whole or in part unless and until the Authorisation is obtained:
 - (a) the Mortgaged Property is deemed not to include that item unless and until the Authorisation is obtained; and
 - (b) immediately on the Authorisation being obtained, the Mortgaged Property includes that item and, if permitted by the relevant law, is deemed to have included that item from the date of this Deed.

16.5 Waiver and exercise of rights

- (1) A waiver of a provision of a Transaction Document or a right arising under a Transaction Document (including this clause) is effective only if it is in writing signed by the Mortgagee.
- (2) A waiver is effective only in the specific instance and for the specific purpose for which it is given.

This is page 34 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

- (3) A single or partial exercise of a right by the Mortgagee does not preclude another or further exercise of that right or the exercise of another right.
- (4) Failure by the Mortgagee to exercise a right or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (5) The Mortgagee is not liable for any loss, cost or expense of the Mortgagor caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

16.6 Amendments

This Deed may be amended only by a written document signed by the parties.

16.7 Counterparts

This Deed may be executed in two or more counterparts and all counterparts taken together constitute one document.

17. Deed of Covenant

The rights of the Mortgagee under this Deed are subject to the Terms of a Deed of Covenant dated on or about the date of this Deed, from the Mortgagee in favour of the Growers, Timbercorp Securities Limited and Almond Management Pty Ltd.

This is page 35 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

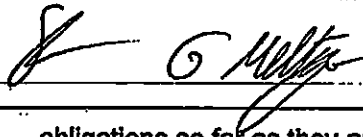
Schedule 1

Provisions Relating to Registered Plan of Subdivision

1. If, at any time, the Mortgaged Property or any part of it comprises a lot in a registered plan of subdivision, the provisions of this Schedule apply.
2. The Mortgagor:
 - (1) **comply with Act:** must observe and perform its obligations as proprietor under the Subdivision Act and applicable by-laws and lawful requirements of the Subdivision (Body Corporate) Regulations 2001 (including without limitation, as to payment of contributions);
 - (2) **voting rights:** must ensure the Mortgagee is entitled in its absolute discretion to exercise the voting rights conferred on it by the Subdivision Act, but the Mortgagee is not responsible for any act or omission or delay in relation to the exercise of voting rights or for any losses or irregularities relating to the exercise or non-exercise of those rights;
 - (3) **ratification:** must ratify and confirm anything which the Mortgagee does under paragraph (2);
 - (4) **additional insurance:** must insure that part of the Mortgaged Property:
 - (a) to the full extent permitted by the Subdivision Act (including effecting insurance under section 30 of the Subdivision Act);
 - (b) with an Insurer reasonably acceptable to the Mortgagee;
 - (c) in the name of the Mortgagor as owner and the Mortgagee as mortgagee; and
 - (d) for the full insurable value of the Mortgaged Property;
 - (5) **payment of premiums:** must pay in full and on time all premiums and sums necessary to maintain that insurance and immediately on demand deliver to the Mortgagee each policy (whether or not it covers any other property of the Mortgagor) as a further security for the payment of the Secured Money;
 - (6) **remedy default:** must if requested by the Mortgagee (in circumstances where the Mortgagee considers that the body corporate has failed to observe and perform its duties under the Subdivision Act or under the By-laws) observe and perform those

This is page 36 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed:



obligations so far as they are capable of being observed and performed by the Mortgagor;

- (7) **meetings of body corporate:** must notify the Mortgagee of each meeting of the body corporate by written notice not less than 7 days prior to the date of the meeting, and forward to the Mortgagee a copy of all notices and other documents received from the body corporate or council of the body corporate;
- (8) **attorney's powers:** authorises any attorney of the Mortgagee appointed under this Deed whilst an Event of Default subsists to:
 - (a) take necessary action to call a meeting of the body corporate or the council;
 - (b) move a motion on behalf of the Mortgagor or the Mortgagee at a meeting of the body corporate or the council;
 - (c) vote on a motion moved at a meeting of the body corporate or the council;
 - (d) apply for information from the body corporate or the council; and
 - (e) perform any duties of the body corporate or the council capable of being performed by the Mortgagor;
- (9) **ratification:** must ratify and confirm an act or thing done by an attorney under paragraph (7);
- (10) **applications:** must not, without the prior written consent of the Mortgagee, apply to the Registrar of Titles or to a Land Titles Office or to a court in relation to the Mortgaged Property; and
- (11) **surplus money:** must:
 - (a) on request by the Mortgagee from time to time; and
 - (b) on receipt of a notice of a proposed resolution of a meeting of the body corporate by which it is proposed that surplus money in any fund or account of the body corporate be paid or distributed under the Subdivision Act,

promptly execute and procure the execution by any enrolled mortgagee (other than the Mortgagee) of any of the Mortgaged Property of a consent in writing to the payment to the Mortgagee of so much of that money as would otherwise be payable to the Mortgagor.

This is page 37 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

3. It is an Event of Default if the occurrence of any of the following is likely to have a Material Adverse Effect:
- (1) the body corporate passes a resolution under the provisions of section 32(1)(i) (easements and restrictions over common property) or section 32(1)(m) (dedication of common property to public) of the Subdivision Act; or
 - (2) the body corporate or a proprietor makes an application under the provisions of section 32 (alteration of subdivision) of the Subdivision Act;
 - (3) the body corporate institutes proceedings against the Mortgagor under the provisions of Regulations 208 and 209 (failure to carry out work) of the Subdivision (Body Corporate) Regulations 2001;
 - (4) the By-Laws of the register are amended without the consent of the Mortgagee;
 - (5) the body corporate resolves to transfer, lease or re-enter any of the common property under Regulation 218 of the Subdivision (Body Corporate) Regulations 1989 and as a result the Mortgagee considers that its Security Interest in the Mortgaged Property has been materially and adversely affected;
 - (6) an application is made by the body corporate under section 32(1) or 33- of the Subdivision Act reallocating unit entitlements and as a result the Mortgagee considers that its Security Interest in the Mortgaged Property has been materially and adversely affected; or
 - (7) the body corporate carries out work in respect of the Mortgaged Property under Regulations 207 and/or 208 of the Subdivision (Body Corporate) Regulations 2001.

This is page 38 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

Schedule 2 Provisions Relating to Rural Land

1. If, at any time, the Mortgaged Property or any part of it is agricultural, horticultural or pastoral land, the provisions of this Schedule apply.
2. The Mortgagor must:
 - (1) noxious plants, animals: at all times:
 - (a) take all reasonable steps to suppress and destroy Noxious Animals and Noxious Plants on the Mortgaged Property;
 - (b) use all reasonable measures and erect and keep in repair all rabbit-proof and other fencing necessary to keep the Mortgaged Property free from Noxious Animals;
 - (c) comply with the requirements of law for the time being in force relating to Noxious Animals or Noxious Plants on the Mortgaged Property or any adjacent land; and
 - (d) comply with the lawful requirements of the local council, the Pastures Protection Board and every other Governmental Agency with regard to the destruction of Noxious Animals or Noxious Plants;where not to do so would have a Material Adverse Effect;
 - (2) cultivate mortgaged property:
 - (a) cultivate, maintain and manage the Mortgaged Property in accordance with the best methods and practices appropriate to those lands;
 - (b) not, without the prior written consent of the Mortgagee, cut or destroy dead or alive standing timber or carry any timber away or allow any of those things where that action does or may in the opinion of the Mortgagee lessen the value or utility of the Mortgaged Property, (but the Mortgagor may prune or lop in a reasonable way any green timber standing on the Mortgaged Property);where not to do so may have a Material Adverse Effect;
 - (3) further assurances:
 - (a) whenever required by the Mortgagee, execute in favour of the Mortgagee by way of further security for the Secured

This is page 39 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

Money a preferred lien or other Security Interest over Produce in a form and containing the powers, provisions and agreements as the Mortgagee may require; and

- (b) not without the prior written consent of the Mortgagee, give any Security Interest over that Produce to any other person;
- (4) **not dispose:** not dispose of, deal with or part with possession of (or agree to any of those things) any Produce without the Mortgagee's prior written consent except in accordance with the Project Documents;
- (5) **water irrigation rights:** whenever required by the Mortgagee, execute, or procure the execution, in favour of the Mortgagee by way of further security for the Secured Money a charge over or an assurance of any rights, licences and authorities relating to water or irrigation or both relating to the Mortgaged Property or its ownership or occupation; and
- (6) **comply with licences:**
 - (a) comply with the conditions of any licence or quota affecting or regulating production on or from the Mortgaged Property or the sale of any Produce; and
 - (b) not do or permit to be done anything which may adversely affect that licence or quota or which does or may cause that licence or quota liable to be forfeited, surrendered or reduced.

This is page 40 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

Schedule 3 Provisions Relating to Works

1. If, at any time, the Mortgaged Property or any part of it is subject to any Works or a proposal to effect any Works, the provisions of this Schedule apply.
2. The Mortgagor:
 - (1) consent / notice: must, in the case of all Works carried out after 30 September 2006, notify the Mortgagee before it carries out those Works but excluding those Works required to be carried out under the terms of the Project Documents;
 - (2) complete works: must:
 - (a) complete the Works in a workmanlike manner in accordance with all Authorisations;
 - (b) comply with all laws, official directives, easements and restrictive covenants which affect Works; and
 - (c) not allow any Works to encroach on property adjoining the Mortgaged Property;
 - (3) insure works: while any Works continue, must:
 - (a) keep the Works insured at an insurable value agreed with the Mortgagee and with insurers approved by the Mortgagee (which agreement and approval must not be unreasonably withheld) against the risks that a prudent owner would insure if it were carrying out the Works and any other risks as may from time to time be specified by the Mortgagee;
 - (b) deposit with the Mortgagee all insurance policies and certificates of insurance in connection with the Works;
 - (c) pay every insurance premium not later than the due date and, on request from the Mortgagee, produce receipts for the payment;
 - (d) not do or permit anything to be done which prejudices insurance in respect of the Works;
 - (e) immediately rectify anything which might adversely affect an insurance policy in respect of the Works and reinstate that insurance if it lapses;

This is page 41 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed:  

- (f) not, without the prior consent of the Mortgagee:
 - (i) insure any Works in the name of the Mortgagor alone; or
 - (ii) vary, cancel or allow to lapse any insurance in connection with Works; and
- (g) notify the Mortgagee immediately if:
 - (i) an event occurs which does or may give rise to a claim which could adversely affect an insurance policy required by this clause; or
 - (ii) an insurance policy required by this clause is cancelled;
- (4) **Inspection of mortgaged property:** must allow the Mortgagee, or a person authorised by the Mortgagee, to enter the Mortgaged Property at all reasonable times and upon reasonable notice to inspect any Works. The Mortgagee must take reasonable steps, to minimise disruption to Works and to comply with site safety requirements (including, without limitation, prior liaison with the architect, site foreman or other representative of the Mortgagor or its builder in charge of the site);
- (5) **obtain certificates:** must on completion of Works:
 - (a) use its best endeavours to obtain immediately where the certificate can be issued an unqualified certificate of occupancy from the Responsible Authority -(Vic) or a building certificate under the relevant - legislation from the applicable authority along with all other certificates of satisfactory completion and occupancy from all relevant authorities; and
 - (b) immediately deliver a copy of the certificates to the Mortgagee;
- (6) **Indemnity:** Indemnifies the Mortgagee and its employees, officers, agents and contractors against any Claim and all costs, charges and expenses arising out of any inspection, approval or acceptance of any authorities, permits or approvals for or in respect of Works, Plans, construction of Works or exercise of a right, power or remedy under a Transaction Document in connection with Works;
- (7) **mortgagee not liable:** agrees that the Mortgagee is not responsible or liable to the Mortgagor for anything in connection with:

This is page 42 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

- (a) Plans;
 - (b) Works or the construction of Works; or
 - (c) any error or omission in or from Works;
- (8) **plans and specifications:** agrees that the Mortgagee is not responsible for anything in Plans and even if the Mortgagee approves Plans or a variation of them or inspects and approves or accepts any aspect of the construction of Works, according to those Plans, the approval or acceptance:
- (a) does not imply the exercise by or on behalf of the Mortgagee of any care or skill; and
 - (b) does not relieve the Mortgagor from its warranties, covenants and obligations to ensure good design and workmanship and proper construction of Works;
- (9) **accounting:** must:
- (a) keep proper books of account and make correct entries in them of all transactions in connection with Works; and
 - (b) keep the books of account open for inspection at all reasonable times by the Mortgagee, any Authorised Officer of the Mortgagee or any other person appointed by the Mortgagee for that purpose;
- (10) **Contracts:** must:
- (a) comply with its obligations under each Contract and promptly inform the Mortgagee of anything which occurs which might adversely affect its ability to perform any of those obligations;
 - (b) obtain and renew on time each Authorisation necessary to enter into a Contract or complete Works under that Contract; observe obligations under each Contract and allow each Contract to be enforced, and comply with the terms;
 - (c) notify the Mortgagee promptly of full details of an event of default (however described) under a Contract or an event which with the giving of notice, lapse of time or fulfilment of any condition would be likely to become an event of default under a Contract, and the steps taken to remedy it;
 - (d) enforce every Contract against another person in the manner directed by the Mortgagee;

This is page 43 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated:

Signed: 

- (e) not agree to vary a Contract without the Mortgagee's consent;
- (f) pay on time all amounts payable now or in the future in connection with a Contract; and
- (g) upon request by the Mortgagee, immediately give the Mortgagee a copy of a notice received from another party to a Contract.

This is page 44 of 44 of the Annexure "A" referred to in the Mortgage between Almond Land Pty Ltd (ABN 65 091 460 392) as Mortgagor and Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) as Mortgagee dated: _____

Signed: _____

Schedule 4

Provisions Relating to Crown Land

1. If, at any time the Mortgaged Property or any part of it comprises Crown Land, the provisions of this Schedule apply:
2. The Mortgagor must:
 - (1) **no curtailment:** not apply under the Crown Land Acts or another law which provides for the protection, curtailment, postponement, defeat, extinguishment or suspension of rights in respect of the Mortgaged Property;
 - (2) **comply with Crown Land Acts:** comply in full and on time with the applicable requirements of the Crown Land Acts including, without limitation, conditions and requirements which relate to improvements;
 - (3) **not to prejudice ownership:** not do or allow anything to be done which does or may result in the holding, tenure or licence in respect of the Mortgaged Property being surrendered, cancelled, forfeited or otherwise adversely affected;
 - (4) **no conversion of tenure:** not apply to convert any existing tenure or right to occupy the Mortgaged Property without the consent of the Mortgagee; and
 - (5) **further assurance:** at the Mortgagee's request, execute in favour of the Mortgagee a mortgage of any holding into which the Mortgaged Property is converted or which is acquired because of the Mortgagor's holding of the Mortgaged Property as security for the payment of the Secured Money (on the same terms as this Deed or on similar terms acceptable to the Mortgagee).