

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
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Ref: []

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

This is the exhibit marked '**MAK-32**' 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 1971

Exhibit 'MAK-32'

**Copy of Limited Fixed and Floating Charge
(ASIC No 1364219) in favour of Almond Land
registered 6 October 2006**

ASIC registered agent number 2336
lodging party or agent name Deacons
office level building name or PO Box no Level 18
street number & name 483 Bourke Street
suburb/city Melbourne VIC 3000
telephone (03) 8688 8000
facsimile (03) 8688 8503
DX number 445 Melbourne
Reference 258353

RECEIVED
23 OCT 2006
M.S.C.

509 page 1/2 15 July 2001

AUSTRALIAN SECURITIES
& INVESTMENTS COMMISSION

021687018

PRUO

ACC. ☐ RES-A ☐
CASH. ☐ RES-P ☐
PROC. ☐

Australian Securities & Investments Commission

form 309

Notification of
details of a charge # 1364219

Corporations Act 2001
263, 264

This form must be lodged where any Australian company or registered body creates a charge or acquires property subject to a charge (lodge within 45 days after the charge was created or the property was acquired)
or any foreign company or registrable Australian body has an existing charge on its property and is applying for registration (lodge with appropriate registration form)

Corporation name (charger)
A.C.N. or A.R.B.N.

TIMBERCORP SECURITIES LIMITED ABN 65 091 460 392

092 311 469

RECEIVED
- 6 OCT 2006

Details of the charge

* Date charge was created (d/m/y) 26/10/06 or date property was acquired (d/m/y)

How was the charge created? ☐ by resolution ☒ by instrument ☐ by deposit ☐ by other conduct, specify below

Type of charge ☐ fixed ☐ floating ☒ fixed and floating

If the charge is a floating charge or a fixed and floating charge, is the creation of subsequent charges restricted or prohibited? yes ☒ no ☐

Briefly describe the liability (whether present or prospective) secured by the charge:
The Secured Money (as defined in the Charge).

Maximum prospective liability (if applicable, see section 282): \$100,000,000.00

Briefly describe the property charged: The Secured Property (as defined in the Charge). All present and future property and assets owned or held by the Corporation and the whole of the Corporation's undertaking as set out in the Charge.

☒ details of the charges ☐ details of the trustee for the debenture holders
Name (family & given names or corporation name, if a corporation give ACN or ARBN if applicable).
Almond Land Pty Ltd ACN or ARBN 65 091 460 392

office, floor, building name Level 8
street number & name 481 Bourke Street
suburb/city Melbourne, Victoria, 3000
country (if not Australia)
financial benefit Nil

Nominate any financial benefit (such as an amount or rate percent of commission, allowance or discount) given to someone who, absolutely or conditionally, subscribes to or agrees to subscribe to, or procures or agrees to procure, subscriptions for any debentures included in this notice.

Signature

This form must be signed by, or on behalf of, the Australian company, the registrable Australian body or the foreign company or by an interested person.

Print name of person signing

Sol Rabinowicz

Capacity or nature of interest of person signing (including details of the authority you have, if signing on behalf of a corporation)

Director

If signing on behalf of a corporation, print name of corporation & ACN or ARBN

TIMBERCORP SECURITIES LIMITED ABN 65 091 460 392

sign here

date 26 10 2006

• Complete and sign the verification on page 2.

page 1

Documents

I declare that the statements ticked below are correct. (tick the boxes which apply)

charge created by issue of debentures

- I verify ☐ the annexure marked (1/11/2) of (1/12/2) pages is a true copy of the resolution(s) passed by the corporation authorising the issue of a series of debentures constituting the charge.
- and ☐ I witnessed the execution of the first debenture in the series.
- and ☐ The annexure marked (1/13/2) is a true copy of the first debenture in the series.

charge created by an instrument

- ☒ The original of the instrument(s) creating or evidencing the charge is attached.
- OR

- I verify ☐ the annexure marked (1/14/2) of (1/15/2) pages is a true copy of the instrument(s) creating or evidencing the charge and I witnessed the execution by the chargor of the instrument(s).

charge existing on the property acquired

- I verify ☐ the annexure marked (1/16/2) of (1/17/2) pages is a true copy of the instrument(s) creating or evidencing the charge.

- Annexures must conform to the requirements shown at the end of this form.

Signature

This form must be signed by, or on behalf of, the Australian company, the registrable Australian body or the foreign company or by an interested person.

Print name of person signing

Sol Rabinowicz

Capacity or nature of interest of person signing (including details of the authority you have, if signing on behalf of a corporation)

Director

If signing on behalf of a corporation, print name of corporation & ACN or ARBN

Timbercorp Securities Limited ABN 63 091 468 982

sign here

date 26 10 9 106

Small business (less than 20 employees), please provide an estimate of the time taken to complete this form

Include

The time actually spent reading the instructions, working on the question and obtaining the information

The time spent by all employees in collecting and providing this information

hrs mins

Compliance with stamp duty law

A duly completed certification of compliance with stamp duties law (form 350)

- ☒ accompanies this form.
- ☐ does not accompany this form.

If all the documents accompanying this form required by section 263(1) have been stamped in accordance with the law relating to stamp duty, complete and attach the form 350 'Certification of compliance with stamp duties law'.

Provisional registration
If any document accompanying this form has not been stamped as required by any law relating to stamp duty,
or
if this form contains the company name and the name of the trustee or chargor but not all other details,

the Commission will mark the entry in the Register as 'provisional' and ask you to complete the requirements.

If the requirements have not been completed by a specified time, the Commission will delete all particulars of the charge from the register.

Send to
Australian Securities and Investments
Commission
PO Box 4000
Gippsland Mail Centre VIC 3841

Annexures

To make any annexure conform to the regulations, you must

- 1 use A4 size paper of white or light pastel colour with a margin of at least 10mm on all sides
- 2 show the corporation name and A.C.N. or A.R.B.N.
- 3 number the pages consecutively
- 4 print or type in dark blue or black ink, so that the document is clearly legible when photocopied

- 5 Identify the annexure with a mark such as A, B, C, etc

- 6 endorse the annexure with the words:
This is annexure (mark) of (number) pages referred to in form (form number and title)

- 7 sign and date the annexure
The annexure must be signed by the same person(s) who signed the form.

page 2

ASIC registered agent number 2338
lodging party or agent name Deacons
office level building name or PO Box no Level 15
street number & name 485 Bourke Street
suburb/city Melbourne VIC 3000
telephone (03) 8688 6000
facsimile (03) 8688 6505
DX number 445 Melbourne
Reference 256353

**A BARCODE IS NOT
REQUIRED ON THIS
DOCUMENT**

ASS. ☐ REG-A ☐
CASH. ☐ REG-P ☐
PROC. ☐

Australian Securities & Investments Commission

form **350**

Certification of
compliance with stamp duties law

Corporations Act 2001
285(4)(b)

corporation name
A.C.N. or A.R.B.N.

TIMBERCORP SECURITIES LIMITED ABN 65 091 460 392

092 311 469

Details of the charge

date charge was created (d/m/y)
name of chargee(s) or trustee(s)

26/9/06
ALMOND LAND PTY LTD ABN 65 091 460 392

IPC

- 6 OCT 2006

Certification

I certify that all the documents accompanying the notification of details of this charge, in accordance with section 283(1), have been duly stamped if so required and as required by any law of the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia relating to stamp duty on any such document.

print name of person signing
capacity or nature of interest

Sol Rabinowicz

Director

if signing on behalf of a corporation, print name of corporation & A.C.N. or A.R.B.N.
TIMBERCORP SECURITIES LIMITED ABN 65 091 460 392

092 311 469

sign here

date 26/09/06

Small business (less than 20 employees), please provide an estimate of the time taken to complete this form

Include

The time actually spent reading the instructions, working on the question and obtaining the information

The time spent by all employees in collecting and providing this information

hrs

mins



Dated 26 September 2006

Almonds Internal Security

Parties

Timbercorp Securities Limited
ABN 12 092 311 469

Almond Land Pty Ltd
ABN 65 091 460 392

Contact

Gillad Dalal
Partner
RACV Tower, 485 Bourke Street, Melbourne VIC 3000
Telephone: +61 (0)3 8688 6368
Email: gillad.dalal@deacons.com.au
Website: www.deacons.com.au
Our ref: 256353

Charge dated

Parties **Timbercorp Securities Limited** ABN 12 092 311 469
 c/- Timbercorp Limited, Level 8, 461 Bourke Street, Melbourne,
 Victoria, 3000
 (the **Chargor**)

Almond Land Pty Ltd ABN 65 091 460 392
 c/- Timbercorp Limited, Level 8, 461 Bourke Street, Melbourne,
 Victoria, 3000
 (the **Chargee**)

It is agreed

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context requires another meaning:

ANZ means Australia and New Zealand Banking Group Limited (ABN 11 005 357 522).

Almondlot Management Agreement has the meaning given in the Grower Occupancy Agreements.

Charge means the charge over the Secured Property created by this Deed.

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

Event of Default means an event listed in clause 6.1.

Growers' Rights means all of the rights and interests of the Growers under the Project Documents.

Grower Occupancy Agreement means any sub-lease agreement or management agreement between the Chargor and a Grower in relation to the 2005 Timbercorp Almond Project and the 2006 Timbercorp Almond Project to the extent that those Projects are undertaken on the Premises.

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;
- (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.

Management Fees has the meaning given in the Almondlot Management Agreement.

Marketable Securities has the same meaning as in the *Corporations Act*.

Mortgaged Contracts means the Grower Occupancy Agreements, to the extent that they relate to a Project undertaken or to be undertaken on the Premises.

Permitted Security Interest means a Security Interest existing at the date of this Deed, which is disclosed to the Chargee and ANZ in writing by the Chargor.

Premises means:

- (1) in respect of the 2005 Timbercorp Almond Project, the land and improvements known as "Nanadle" described in certificates of title volume 10867 folios 468 and 472, part of volume 10867 folio 455 and part of volume 10923 folio 772; and
- (2) the 2006 Timbercorp Almond Project, the land and improvements known as "Narcooya" described in certificates of title volume 10867 folios 473, 482 and 454, part of volume 10867 folio 455 and part of volume 10923 folio 772.

Priority Amount means \$100,000,000.

Project means each managed investment scheme conducted on the Premises.

Project Documents means the documents constituting a Project, to the extent that they relate to a Project undertaken or to be undertaken on the Premises including, without limitation, the Grower Occupancy Agreements.

Project Lease means the lease between the Chargee and the Chargor under which the Chargee leases the Premises to the Chargor for use in

the 2005 Timbercorp Almond Project and the 2006 Timbercorp Almond Project.

Receivables means all right title and interest of the Chargor in and to, and the benefit of:

- (1) 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
- (2) all proceeds paid or collected, received or recovered in respect of, or in connection with, the debts and liabilities referred to in paragraph (1).

Receiver means the person or persons appointed to be a receiver or receiver and manager under clause 9.

Secured Money means all money which the Chargor is or may become actually or contingently liable to pay to the Chargee under or in relation to the Project Lease. For the avoidance of doubt, if the Project Lease is terminated the Secured Moneys include any moneys that would have become payable to the Chargee under the Project Lease had the Project Lease not been terminated.

Secured Property means:

- (1) all rights, property and undertaking of the Chargor to any Receivables, but excluding the Receivables which are located in Victoria, the Australian Capital Territory or the Northern Territory;
- (2) the Chargor's present and future interests in the Project Documents but excluding the interests which are located in Victoria, the Australian Capital Territory or the Northern Territory.

Transaction Documents means:

- (1) this Deed;
- (2) the Project Lease;
- (3) each document which the Chargee and the Chargor agree in writing is a "Transaction Document" for the purposes of this Deed; and
- (4) each document entered into or provided under any of the documents described in paragraphs (1) to (4) 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 Chargor, means any of those documents to which the Chargor is a party.

1.2 Interpretation

Unless expressed to the contrary:

- (1) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (2) no rule of construction will apply to a clause to the disadvantage of a party merely because it put forward the clause or benefits from it; and
- (3) a reference to:
 - (a) a person includes the person's legal personal representatives, successors, assigns, persons substituted by novation and in respect of the Chargee includes ANZ, where ANZ has taken possession of the rights of the Chargee under this Deed;
 - (b) "including" means including, without limitation;
 - (c) this or any other document includes the document as novated or varied and despite any change in the identity of the parties; and
 - (d) an obligation includes any warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

1.3 Protection of Chargee

Each party to this Deed acknowledges and agrees that this Deed protects the interests of the Chargee.

2. Charge

2.1 Grant of Charge

The Chargor charges the Secured Property to the Chargee as security for the due and punctual payment and satisfaction of the Secured Money.

2.2 Ranking

The Charge ranks ahead of all other Security Interests, including any Permitted Security Interests, over the Secured Property except any Permitted Security Interest.

- (1) which must be preferred by law; or
- (2) to the extent provided in any priority arrangement to which the Chargee agrees in respect of any Permitted Security Interest.

2.3 Consideration

The Chargor enters into this Deed for valuable consideration from the Chargee and acknowledges receipt of that consideration.

2.4 Fixed charge

The Charge is a fixed charge on all the Secured Property.

2.5 Floating charge

- (1) The Charge is a floating charge on all the Secured Property that is not subject to a fixed charge under clause 2.4.
- (2) The Chargor may deal with any Secured Property for the time being subject to a floating charge only in the ordinary course of the Chargor's business.

2.6 Crystallisation

The floating charge created under clause 2.1 and clause 2.5 automatically becomes a fixed charge:

- (1) on all Secured Property not already subject to a fixed charge if:
 - (a) an Insolvency Event occurs in respect of the Chargor or a Security Provider;
 - (b) the Chargee makes a demand that the Chargor pay the Secured Money under clause 6.2(1) or the Charge is enforced in any other way; or
 - (c) the Commissioner of Taxation issues a notice under section 218 or section 255 of the Income Tax Assessment Act 1936 (Cth) or section 260-5 of Schedule 1 to the Taxation Administration Act 1953 (Cth) relating to the Chargor; and
- (2) on any particular asset forming part of the Secured Property and not already subject to a fixed charge if:
 - (a) distress, attachment, execution or other court process is levied on or against that asset;
 - (b) the Chargor deals, or attempts, purports or proposes to deal, with that asset in breach of a Transaction Document;

- (c) a person proposes to take action or action is taken to obtain a writ, order, notice or other thing relating to distress, attachment or other execution over that asset;
- (d) a Security Interest (other than this Charge) over that asset becomes capable of being enforced or a person enforces or attempts, purports or proposes to enforce, a Security Interest over that asset; or
- (e) the Chargee gives a notice in writing to the Chargor to that effect in relation to that asset.

Nothing in any paragraph of clause 2.6 prevents the floating charge from becoming fixed as to any asset under another provision of the Charge (including another paragraph of clause 2.6), or by operation of law.

2.7 De-crystallisation

- (1) If the floating charge over an asset becomes fixed under clause 2.6, the Chargee may release that asset from the fixed charge at any time by notice to the Chargor.
- (2) If the Chargee gives a notice under clause 2.7(1), the asset specified in the notice will, with effect from the date specified in the notice, be subject to a floating charge under clause 2.1 and clause 2.5 and subject to the further operation of clause 2.6.

2.8 Priority Amount

- (1) The maximum prospective liability (as defined in the Corporations Act) secured by this document for the purpose of fixing priorities under section 282 of the Corporations Act but for no other purpose is the Priority Amount.
- (2) The Chargee may at any time lodge a notice under section 268(2) of the Corporations Act specifying an increase in the maximum amount of the prospective liability referred to in clause 2.8(1) and from the date of lodgement the amount of the Priority Amount will be varied to the amount specified in the notice.
- (3) The prospective liabilities secured by this Deed include all liabilities which may become payable by way of principal, interest, fees, expenses, indemnity payments, losses or damages owing by the Chargor to the Chargee. This Deed secures the payment of all prospective liabilities of the Chargor to the Chargee and the Secured Money is not limited to the Priority Amount.

3. Release of Charge

3.1 Release of Charge

The Chargee will at the written request of the Chargor, discharge the Charge if the Chargee 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;
- (3) there is no reasonable possibility that money received or recovered by the Chargee and applied in payment or satisfaction of the Secured Money must be repaid or refunded under any law (including any law relating to preferences, bankruptcy, insolvency or the winding-up of companies); and
- (4) ANZ has provided a written consent to the Chargee releasing the Charge.

3.2 Partial release of Charge

- (1) The Chargee may release a part of the Secured Property from the Charge at any time provided that ANZ has provided a written consent to the Chargee releasing the Charge.
- (2) A release of part of the Secured Property from the Charge does not adversely affect the Charge over any other Secured Property, or any Transaction Document.

3.3 Reinstatement of Charge

- (1) If:
 - (a) any payment, settlement, conveyance, transfer or other transaction made in satisfaction or in connection with the Secured Money is void or voidable under any law; or
 - (b) any claim is made that any payment, settlement, conveyance, transfer or other transaction made in satisfaction or in connection with the Secured Money is void or voidable under any law and the claim is upheld, conceded or compromised,

the Chargee is immediately entitled to the same rights, powers and remedies against the Chargor and the Secured Property as it would have had if the relevant payment, settlement, conveyance, transfer or transaction had never taken place. If requested to do so by the Chargee, the Chargor must, at its own expense, sign all

documents and do all things necessary to restore the Charge to the Chargee.

- (2) This clause 3.3 survives the discharge of the Charge.

3.4 Continuing security

- (1) This Deed is a continuing security and remains in full force and effect, despite any settlement of account or any other matter or thing, until a final discharge is given to the Chargor.
- (2) The obligations of the Chargor under this Deed extend to any increase in the Secured Money as a result of any amendment of, supplement to or replacement of any Transaction Document or any other act, matter or thing, whether or not the Chargor gave its consent to or had knowledge of the relevant act, matter or thing.

4. Representations and warranties

4.1 Representations and warranties

The Chargor represents and warrants to the Chargee that:

- (1) **no Security Interests or Restrictions:** no Security Interest exists over the Secured Property except Permitted Security Interests;
- (2) **ownership:** the Chargor is the legal and beneficial owner of the Secured Property;
- (3) **trustee:** it is not the trustee of any trust;
- (4) **priority:** subject to Permitted Security Interests, the Charge is a first ranking Security Interest and the obligations of the Chargor under this Deed rank ahead of all other obligations of the Chargor (other than those which must be preferred by law);
- (5) **compliance with Mortgaged Contracts:** it has complied with its obligations under the Mortgaged Contracts to the extent that no termination rights have arisen and there are no events which entitle the Growers to terminate the Grower Occupancy Agreements;
- (6) **Mortgaged Contracts binding:** so far as the Chargor is aware the Mortgaged Contracts constitute the valid and legally binding obligations of the Growers and are enforceable against the Growers by the Chargor in accordance with their terms; and
- (7) **no party in default:** so far as the Chargor is aware no party to any Mortgaged Contract is in default under any Mortgaged Contract except as previously disclosed to the Chargee.

4.2 Continuing representations and warranties

The Chargor acknowledges that the Chargee enters into this document in reliance on the representations and warranties in clause 4.1. These representations are repeated on 30 June, 30 September, 31 December and 31 March in each year.

4.3 Additional representations and warranties

The representations and warranties in this Deed are in addition to any other representations and warranties in any other Transaction Document.

5. Undertakings

5.1 Payment of Secured Money

- (1) The Chargor must perform its obligations under the Transaction Documents and the Permitted Security Interests in full and on time.
- (2) Without limiting clause 5.1(1), the Chargor must pay the Secured Money to the Chargee:
 - (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.
- (3) The Chargee is not:
 - (a) required to first notify, make a demand on or proceed against any person; or
 - (b) exhaust any remedies it may have against any person; or
 - (c) enforce any other Transaction Document,but is entitled to demand and receive payment and satisfaction of the Secured Money from the Chargor when due under this Deed.

5.2 Undertakings relating to Secured Property

Unless the Chargee otherwise agrees in writing, the Chargor must:

- (1) **no Security Interests:** not create, agree or attempt to create or permit to exist, any Security Interest other than a Permitted Security Interest on any Secured Property;
- (2) **Permitted Security Interests:** promptly comply with the terms of any Permitted Security Interest affecting the Secured Property and not do, omit to do or permit to occur anything by which the

obligations of another person under a Permitted Security interest would be lessened;

- (3) **disposals:** except as permitted or contemplated by the Project Documents, not sell any Secured Property or transfer, lease or otherwise dispose of it, part with possession of it or otherwise deal with it, whether by a single transaction or by a number of transactions, whether related or not;
- (4) **comply with obligations:** comply with all of its obligations under the Mortgaged Contracts;
- (5) **take action:** if any Grower does not comply with its obligations in connection with a Mortgaged Contract, promptly take all action that a prudent, diligent and reasonable person would take to ensure the Grower complies with its obligations under the Mortgaged Contract;
- (6) **Mortgaged Contracts:** not allow a Mortgaged Contract to be materially varied, repudiated, rescinded or terminated;
- (7) **breaches:** notify the Chargee of any material breach by the Growers under the Mortgaged Contracts;
- (8) **protect:** on demand by the Chargee take or defend legal proceedings for the protection of any Secured Property where commercially prudent to do so; and
- (9) **not prejudice:** not do, omit to do or permit to occur anything which adversely affects a right, power or remedy of the Chargee under this Deed or which does or might result in any Secured Property being:
 - (a) subject to a Security interest in favour of a government agency;
 - (b) surrendered, forfeited, exchanged, cancelled or adversely affected in any way; or
 - (c) reduced in value.

6. Events of Default

6.1 Events of Default

It is an Event of Default if:

- (1) **event of default:** an event of default (however described) occurs under or any Transaction Document or the Chargor does not pay any money due for payment by it under the Project Lease;

- (2) **other non-compliance:** the Chargor does not comply with any other material obligation under the Project Lease and fails to remedy the breach or make reasonable compensation in money within 10 days after the Chargee has served a written notice on the Chargor under the Project Lease requiring the Chargor to remedy the breach or make reasonable compensation in money, except where the Chargor:
 - (a) has within the period of 10 days after receipt of the written notice from the Chargee:
 - (i) advised the Chargee of a plan of remedial action to rectify any such default; and
 - (ii) taken all reasonable steps to implement such plan of remedial action; and
 - (b) the Chargor implements the whole plan of remedial action as soon as reasonably practicable;
- (3) **ownership of secured property:** the Chargor ceases for any reason to be the legal owner of any part of the Secured Property (other than as permitted under a Transaction Document) or with the prior written consent of the Chargee and ANZ;
- (4) **Insolvency Event:** an Insolvency Event has occurred in respect of the Chargor;
- (5) **priority:** the Charge ceases for any reason to be a first ranking charge or an obligation of the Chargor other than a Permitted Security Interest ranks ahead of or equally with the Secured Money;
- (6) **untrue warranty:** a representation, warranty or statement made by the Chargor to the Chargee is untrue or misleading in any material respect;
- (7) **enforcement of other security:** a person who holds a security over the Chargor's interest in any Mortgaged Contract takes any step to enforce that security; or
- (8) **cessation of business:** the Chargor ceases or threatens to cease to carry on its business or a substantial part of its business;
- (9) **termination of Project Lease:** the Project Lease is terminated; or
- (10) **default under this deed:** the Chargor does not comply with any other material obligation under this deed.

6.2 Consequences of default

- (1) Whilst an Event of Default subsists the Chargor must immediately pay the Secured Money in full to the Chargee on demand by the Chargee and in the manner notified by the Chargee.
- (2) The Chargee may do or cause to be done all things, including the payment of any money, necessary to remedy any Event of Default and any money paid by the Chargee for that purpose forms part of the Secured Money.
- (3) The Chargee may enforce this Deed even if the Chargee accepts payment of any part of the Secured Money after an Event of Default has occurred.

7. Powers of Chargee on default

7.1 Powers of Chargee

Immediately on or at any time whilst an Event of Default subsists, in addition to any rights, powers or remedies conferred by law, the Chargee has the power to do all acts and things and exercise all rights, powers and remedies that the Chargor could do or exercise in relation to the Secured Property including the power to:

- (1) **take possession:** enter, take possession and assume control of the Secured Property;
- (2) **receive rents:** receive rents and profits of the Secured Property;
- (3) **manage:** manage the Secured Property;
- (4) **carry on business:** carry on any business of the Chargor forming part of the Secured Property, or relating to it;
- (5) **maintain or improve:** do anything to maintain, protect or improve the Secured Property;
- (6) **sell:** sell or agree to sell Secured Property on terms that the Chargee thinks fit and irrespective of:
 - (a) whether or not the Chargee 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 Chargee or another person; and
 - (f) whether with or without special provisions including, without limitation, provisions relating to title and payment of the purchase money;
- (7) **grant options:** grant to any person an option to purchase any Secured Property on terms that the Chargee thinks fit;
- (8) **make agreements:** make any agreement or compromise which the Chargee thinks fit;
- (9) **exchange property:** exchange with any person any part of the Secured Property for any other property, whether or not of equal value;
- (10) **employ:** employ or engage any person on terms that the Chargee thinks fit for the purpose of exercising any of the Chargee's rights or powers or remedies under this Deed;
- (11) **delegate:** delegate to any person for any time as the Chargee approves any or all of the powers of the Chargee on terms that the Chargee thinks fit;
- (12) **give receipts:** give effective receipts for all money and other assets that may come into the hands of the Chargee;
- (13) **perform and enforce:** carry out and enforce, or refrain from carrying out or enforcing, contracts entered into or held by the Chargor in relation to the Secured Property in the exercise of the rights, powers and remedies of the Chargee under this Deed;
- (14) **insure:** insure the Secured Property;
- (15) **proceedings:** institute, conduct, defend, discontinue, settle, arrange or compromise any proceedings (including proceedings relating to insurance of the Secured Property);
- (16) **borrow:**
 - (a) advance money for the account of the Chargor; or
 - (b) raise or borrow any money in its name or in the name of or on behalf of the Chargor, from any person approved by the Chargee; and
 - (c) secure money advanced under paragraph (16)(a) or raised or borrowed under paragraph (16)(b) by a Security Interest

over any part of the Secured Property whether ranking in priority to, equal with or after the Charge or any Security;

- (d) **execute documents:** execute and deliver documents on behalf of the Chargor under seal or under hand;
- (17) **operate bank accounts:** operate any bank account forming part of the Secured Property;
- (18) **other acts:** do or cause to be done any other act or thing which the Chargee considers necessary or incidental to the exercise of any right, power or remedy of the Chargee; and
- (19) **Mortgaged Contracts:** take any action to enforce the Mortgaged Contracts including:
 - (a) commence, maintain, terminate or settle any proceedings against any Grower;
 - (b) serve notices and demands on any Grower or another person, including demands under the Corporations Act 2001 or any demand under any similar legislation on any person;
 - (c) take any action against the Growers permitted under the Mortgaged Contracts; and
 - (d) prove in the insolvency of any Grower for any debt.

7.2 Statutory powers

- (1) The Chargee and any Controller appointed by the Chargee may at any time whilst an Event of Default subsists, 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 fulfilling 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 Chargee 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 Chargee; or
 - (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 unsatisfied before the Chargee may exercise the relevant right, power or remedy.

7.3 Not mortgagee in possession

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

7.4 Give up possession

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

7.5 Exclusion of liability

The Chargee is not responsible for losses of any kind which may occur as a result of the exercise, or attempted or purported exercise or non-exercise of a right, power or remedy of the Chargee or a Controller appointed by the Chargee, including as a result of the negligence or default of any person.

7.6 Protection of third parties

- (1) A person dealing with the Chargee or a Controller appointed by the Chargee in connection with the exercise of any of the Chargee's rights, powers or remedies:
 - (a) is not bound to enquire 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 dealings 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 in a dealing as described in this clause.
- (3) A dealing referred to in clause 7.6(1) is not affected by express or constructive notice on the part of any person dealing with the Chargee or a Controller appointed by the Chargee of any matter referred to in clause 7.6(1).
- (4) The receipt of the Chargee, a Controller appointed by the Chargee or any Authorised Officer of the Chargee for any money or other

property paid or delivered to them in connection with this Deed releases the person making the payment or delivery from any obligation to see to the application of that money or property.

8. Payments

8.1 Payment by the Chargor

All payments by the Chargor to the Chargee under this Deed 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 Chargee,

or in any other manner that the Chargee notifies to the Chargor.

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 this Deed that is not payable on a specified date is payable on demand by the Chargee.

8.4 Payments in gross

Subject to clause 8.5 all money payable by the Chargor under this Deed 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 Chargor or another person is required by law to make a deduction or withholding for Tax from a payment to the Chargee under this Deed or the Chargee is required to make a payment for Tax on any payment received or receivable by it from the Chargor, the Chargor:

- (a) indemnifies the Chargee against any Claim in respect of the Tax; and
 - (b) must immediately pay an additional amount to the Chargee so that, after all applicable deductions, withholdings or payments for Tax, the Chargee 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 Chargor is required by law to make a deduction or withholding for Tax from a payment to the Chargee under this Deed, the Chargor 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 Chargee.

8.6 Allocation of receipts

- (1) The Chargee may allocate payments made by or for the account of the Chargor towards any principal, interest or other money owing under this Deed as it considers appropriate.
- (2) The Chargee may apply any amounts received or money recovered by it under any Security which secures the Secured Money and other obligations in the manner it determines in its absolute discretion. The Chargee may apply those amounts in or towards satisfaction of the Secured Money but is not under any obligation to do so.

8.7 Goods and Services Tax

- (1) The Chargor must pay to the Chargee 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 Chargee 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 Chargor 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 Chargor must pay the GST Amount within 7 days of receipt of a written demand by or on behalf of the Chargee.
- (4) If an adjustment is made or required to be made between the Chargee 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 Chargee, a corresponding adjustment must be made as between the Chargor and the Chargee and any payment necessary to give effect to the adjustment must be made.

- (5) The Chargor must pay any amount it is required to pay under this clause 8.7 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 Chargee must provide to the Chargor a tax invoice complying with any legislation under which GST is imposed.

9. Appointment of Receiver

9.1 Appointment

Whilst an Event of Default subsists the Chargee may:

- (1) appoint in writing:
 - (a) any one or more persons to be a receiver or receiver and manager of the Secured Property or part if it; or
 - (b) different receivers or receivers and managers for different parts of the Secured Property,on terms that the Chargee thinks fit and irrespective of:
 - (c) whether the Chargee has taken possession of the Secured Property; or
 - (d) whether an order has been made or a resolution passed to wind-up the Chargor;
- (2) remove a Receiver and, in the case of removal, retirement or death of the Receiver, appoint a replacement;
- (3) fix the remuneration of the Receiver at an amount or rate of commission agreed between the Chargee and the Receiver and, in the absence of agreement, at the rate determined by the Chargee; and
- (4) if two or more persons are appointed as Receiver appoint them jointly or severally or jointly and severally.

9.2 Agent of Chargor

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

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 Chargee in relation to the Secured Property.
- (2) The power conferred on a Receiver under paragraph (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.

10. Receipt and application of money

10.1 Order of application

- (1) The Chargee or a Controller appointed by the Chargee may appropriate and apply money which it receives or recovers under this Deed toward any part of the Secured Money and in any order it determines in its absolute discretion.
- (2) If no determination as described in clause 10.1(1) is made, the Chargee or Controller must apply any money received or recovered under this Deed 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 Chargee, or a

Controller appointed by the Chargee, in connection with the exercise or attempted or purported exercise of a right, power or remedy under this Deed;

- (c) thirdly, in payment of the Controller's remuneration;
- (d) fourthly, in payment or satisfaction of any Security Interest of which the Chargee has notice having priority over the Charge, 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 Chargee or Controller thinks fit;
- (f) sixthly, to the extent required by law, in payment of other Security Interests in respect of the Secured Property of which the Chargee 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 Chargor in accordance with clause 10.4.

10.2 Credit actual receipts

In applying any money toward satisfaction of the Secured Money, the Chargee will credit the Chargor only with that money actually received by the Chargee in cleared funds, and that credit will date from the time of actual receipt.

10.3 Amounts contingently due

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

- (1) that money may be placed in a short-term interest bearing deposit account with any person (including the Chargee or ANZ) selected by the Chargee on terms determined by the Chargee until that part of the 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 Chargee and the balance distributed in accordance with clause 10.1.

10.4 Surplus money

- (1) If at any time after satisfaction of the Secured Money the Chargee holds surplus money payable to the Chargor, that money:
 - (a) does not carry interest; and

(b) will promptly be deposited by the Chargee into an account in the name of the Chargor with a Bank.

(2) The Chargee has no further liability in respect of money dealt with in accordance with paragraph (1).

10.5 Receipts by the Chargee

The receipt of an Authorised Officer of the Chargee or a Controller appointed by the Chargee for money or another asset payable to the Chargee or received by or for the account of the Chargee under this Deed relieves the person making the payment or delivery 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; and
- (3) the propriety or regularity of the appointment of a Controller appointed by the Chargee.

11. Set-off

11.1 Set-off

The Chargee may, whilst an Event of Default subsists, and only after demand has been made by the Chargee under this Deed on the Chargor, set-off and apply towards satisfaction of the Secured Money any amount held by the Chargor on its own account.

11.2 Additional right

The right of set-off contained in this clause 11 is in addition to any general or banker's lien, right of set-off, right to combine accounts or other right to which the Chargee is entitled.

12. Preservation of rights

12.1 No merger

- (1) This Deed does not merge, discharge, postpone or adversely affect in any other way the rights, remedies or powers of the Chargee under any other Transaction Document.
- (2) If a judgment is made in favour of the Chargee against the Chargor in respect of the Secured Money or any part of it, the Chargee holds the judgment collaterally with the Transaction Documents as security for payment of the Secured Money and no Transaction Document merges in the judgment.

12.2 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 Chargor's obligations under this Deed; or
- (2) delay, curtail or prevent or adversely affect in any other way the exercise by the Chargee or a Controller appointed by the Chargee of any of its rights, remedies or powers under this Deed.

12.3 Waiver and exercise of rights

- (1) A waiver by the Chargee of a provision of or of a right under this Deed is binding on the Chargee only if it is given in writing and is signed by the Chargee or an authorised officer of the Chargee.
- (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 Chargee does not prevent another exercise or attempted exercise of that right or the exercise of another right.
- (4) Failure by the Chargee to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (5) The Chargee is not liable for any loss, cost or expense of the Chargor caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

12.4 Chargee's rights cumulative

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

12.5 Further assurances

The Chargor must, at its own expense, whenever requested by the Chargee, promptly do or cause to be done anything which the Chargee reasonably considers necessary or desirable to:

- (1) give full effect to this Deed; or
- (2) more fully secure the rights, remedies and powers of the Chargee under this Deed; or

- (3) perfect or complete any transfer or assignment of this Deed and the benefit of this Deed in relation to any transfer or assignment,

including signing and delivering documents.

12.6 Attorney

- (1) The Chargor irrevocably appoints the Chargee, a Controller appointed by the Chargee, 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 Chargor under this Deed;
 - (b) if an Event of Default subsists in the name of the Chargor or the attorney, do everything the attorney considers necessary or desirable to give full effect to a right, remedy or power of the Chargee or the Controller under this Deed (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 Chargor may lawfully authorise an agent to do in respect of the Secured Property.
- (2) An attorney of the Chargor may exercise its powers even if the exercise of the power constitutes a conflict of interest or duty.
- (3) If required by the Chargee, the Chargor must ratify anything an attorney or its delegate does in exercising its powers under this clause.

12.7 Completion of blanks

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

12.8 Priority of future advances

- (1) All Secured Money which is advanced, paid, provided or otherwise arises after the receipt of notice by the Chargee of the creation of any other Security Interest is secured by this Deed in priority to any money secured by that other Security Interest, unless the Chargee specifically agrees otherwise in writing.
- (2) Clause 12.8(1) has effect despite:

- (a) any rule of law to the contrary; and
- (b) the Chargee having notice of the creation of another Security Interest.

12.9 Rights regarding prior Security Interests

The Chargee 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 Chargee and:

- (1) the Chargor authorises, directs and consents to a person having the benefit of the prior Security Interest providing the Chargee 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 Chargor to the Chargee after the date of transfer is available to be applied by the Chargee in its absolute discretion to either that part of the Secured Money comprising the money secured by the prior Security Interest or to any other Secured Money.

12.10 No marshalling

The Chargee is not required before it enforces the Charge 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 other Security; or
- (4) commence proceedings or enforce any right against the Chargor or any other person,

unless the Chargee thinks fit.

12.11 Time of the essence

Time is of the essence of the performance of each of the Chargor's obligations under this Deed.

13. Notices

13.1 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 Chargor:

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

to the Chargee:

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

with a copy to ANZ:

Address: Australia and New Zealand Banking Group Limited
Level 10, 530 Collins Street
Melbourne Victoria 3000
Attention: Senior Manager
Facsimile No: (03) 9273 3161

- (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.

13.2 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 10 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.

14. General provisions

14.1 Invalid or unenforceable provisions

- (1) If a provision of this Deed is invalid or unenforceable in a jurisdiction:
 - (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (b) that fact does not affect the validity or enforceability of:
 - (i) that provision in another jurisdiction; or
 - (ii) the remaining provisions.
- (2) Without limitation to clause 12.1(1), if a law requires an Authorisation before the creation of any Security Interest over an item of Secured Property and the absence of the Authorisation does nor might render this Deed invalid or unenforceable in whole or in part unless and until the Authorisation is obtained:
 - (a) the Secured Property is deemed not to include that item unless and until the Authorisation is obtained; and
 - (b) immediately on the Authorisation being obtained, the Secured Property includes that item and, if permitted by the relevant law, is deemed to have included that item from the date of this Deed.

14.2 Chargee's certificate

A certificate signed by an Authorised Officer of the Chargee stating an amount due, owing or payable or a rate or any other matter for the purpose of this Deed will be sufficient evidence of the matter stated unless the contrary is proved.

14.3 Certifications

Any document or thing required to be certified by the Chargor must be certified by an authorised officer of the Chargor or in any other manner that the Chargee approves.

14.4 Amendment

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

14.5 Counterparts

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

14.6 Successors and assigns

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

15. Governing law and jurisdiction

15.1 Governing law

This Deed is governed by the laws applying in Victoria.

15.2 Jurisdiction

The Chargor 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.

16. The Chargee's covenant


- (1) The Chargee acknowledges and agrees that:
 - (a) it will be only entitled to exercise its rights under this document subject to the Growers' Rights;
 - (b) if the Chargee or a Receiver enforces this document in respect of any Mortgaged Contracts, the Chargee must ensure that it (or the Receiver) complies with, observes and performs the obligations of the Chargor under the Mortgaged Contracts;


- (c) If the Chargee or a Receiver receives any Management Fees in the enforcement of this document, then the Chargee must ensure that it (or the Receiver) pays the Management Fees it receives (at its option) to either:
 - (i) the relevant Group Company or any replacement manager to the extent required to satisfy or perform (or procure the satisfaction or performance of) that manager's obligations under the relevant Almondlot Management Agreement (after which any surplus may be applied towards payment of the Secured Money); or
 - (ii) to Growers who paid them.
 - (d) If the Chargee or a Receiver receives any Management Fees other than in the enforcement of this document, then the Chargee must ensure that it (or the Receiver) pays those Management Fees to Growers who paid them.
- (2) Nothing in this document requires the Chargee or a Receiver to pay money to any Grower, except to the extent required under in clause 16(1)(c) or 16(1)(d).
 - (3) the Chargor holds the benefit of this clause 16 on trust for the Growers.

Signed for and on behalf of
Timbercorp Securities Limited by a
duly appointed attorney in the
presence of:

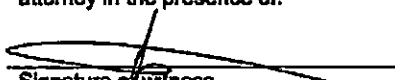

Signature of witness
John Stuart Murray

Name of witness (BLOCK LETTERS)



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


Name of Attorney (BLOCK LETTERS)

Signed for and on behalf of **Almond
Land Pty Ltd** by a duly appointed
attorney in the presence of:


Signature of witness
John Stuart Murray

Name of witness (BLOCK LETTERS)


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


Name of Attorney (BLOCK LETTERS)