

**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](mailto:lwier@abl.com.au)/  
Lucy Kirwan [lkirwan@abl.com.au](mailto:lkirwan@abl.com.au))

This is the exhibit marked 'MAK-33' 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 1999

**Exhibit 'MAK-33'**

**Copy of Limited Fixed and Floating Charge  
(ASIC No 1364242) in favour of the ANZ  
registered 6 October 2006**

ASIC registered agent number 2338  
 lodging party or agent name Deacons  
 office level building name or PO Box no Level 16  
 street number & name 485 Bourke Street  
 suburb/city Melbourne VIC 3000  
 telephone (03) 8888 6000  
 facsimile (03) 8888 6505  
 DX number 445 Melbourne  
 Reference 269353

309 page 1/2 15 July 2001

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION  021687017	
PRVO	ASS. <input type="checkbox"/> REG-A <input type="checkbox"/> CASH <input type="checkbox"/> REG-P <input type="checkbox"/> PROC. <input type="checkbox"/>

Australian Securities &amp; Investments Commission

form 309

Notification of  
details of a chargeCorporations Act 2001  
263, 264

#1366242

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) TIMBERCORP SECURITIES LTD  
 A.C.N. or A.R.B.N. 12 092 311 469

RECEIVED  
 23 OCT 2006

RECEIVED  
 - 6 OCT 2006

## Details of the charge

Date charge was created (d/m/y)

26/9/06

or date property was acquired (d/m/y)

M.S.C.

M.S.C.

How was the charge created?

☐ by resolution☒ by instrument☐ by deposit☐ by other conduct, specify below

Type of charge

☐ fixed☐ floating☒ fixed and floatingIf 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 262): \$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 chargee☐ details of the trustee for the debenture holders

Name (family &amp; given names or corporation name, if a corporation give ACN or ARBN if applicable).

Australia and New Zealand Banking Group Limited ACN or ARBN 11 005 357 522

office, floor, building name

Level 10

street number &amp; name

630 Collins 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

John Stuart Murray

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

Director

Chief Financial Officer

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

TIMBERCORP SECURITIES LTD (ABN 12 092 311 469)

sign here

date 26 '9 '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 (P11/1) of (P12/1) 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 (P13/1) 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 (P14/1) of (P15/1) 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 (P16/1) of (P17/1) 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.

**John Stuart Murray**

Print name of person signing

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

Director **Chief Financial Officer**

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

Timbercorp Securities Ltd (ABN 12 092 311 469)

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

sign here

date 26/9/2001

**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 2336  
 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) 8668 8000  
 facsimile (03) 8668 8505  
 DX number 445 Melbourne  
 Reference 258353

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

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

Australian Securities &amp; Investments Commission

form **350**

Certification of  
**compliance with stamp duties law**

Corporations Act 2001  
 285(4)(b)

corporation name **TIMBERCORP SECURITIES LTD**  
 A.C.N. or A.R.B.N. **12 092 311 469**

**Details of the charge**

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

**26/9/06****AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ACN or ARBN 11 005 357 522****IPC****- 6 OCT 2006****Certification**

*I certify that all the documents accompanying the notification of details of this charge, in accordance with section 263(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

**John Stuart Murray****Director Chief Financial Officer**

If signing on behalf of a corporation, print name of corporation & A.C.N. or A.R.B.N.  
**Timbercorp Securities Ltd (ABN 12 092 311 469)**

sign here

date **26 10 2006**

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  
Fixed and Floating Charge  
from Timbercorp Securities Limited**

**Parties**

**Timbercorp Securities Limited**  
ABN 12 092 311 469

**Australia and New Zealand Banking Group Limited**  
ABN 11 005 357 622

**Contact**

Gillad Dalal  
Partner  
RACV Tower, 485 Bourke Street, Melbourne VIC 3000  
Telephone: +61 (0)3 8686 6368  
Email: [gillad.dalal@deacons.com.au](mailto:gillad.dalal@deacons.com.au)  
Website: [www.deacons.com.au](http://www.deacons.com.au)  
Our ref: 256353

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**Charge** dated

**Parties**     **Timbercorp Securities Limited** ABN 12 092 311 469  
                 c/- Timbercorp Limited, Level 8, 461 Bourke Street, Melbourne,  
                 Victoria, 3000  
                 (the **Chargor**)  
  
                 **Australia and New Zealand Banking Group Limited**  
                 ABN 11 005 357 522  
                 of Level 10, 530 Collins 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:

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

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

**Event of Default** means an event listed in clause 6.1.

**Facility Agreement** means the Facility Agreement dated on or about the  
date of this Deed and made between, amongst others, Almond Land Pty  
Ltd and the Chargee.

**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.

**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 Restriction** means:

- (1) a Restriction existing at the date of this Deed which is:
  - (a) disclosed to the Chargee in writing by the Chargor on or before the date of this Deed; or
  - (b) granted under a Project Document; or
  - (c) noted on a certificate or other document of title to any part of the Secured Property on or before the date of this Deed; and
- (2) a Restriction created after the date of this Deed with the prior written consent of the Chargee.

**Pollutant** means any solid, liquid, gas, odour, radiation, heat, sound, vibration, chemical, chemical waste or other substance:

- (1) declared by a Government Agency to be hazardous, a contaminant, a risk to health or safety of any person or animal or plant or to otherwise cause or to be likely to cause the environment to be degraded; or
- (2) which harms or is likely to harm the environment or any person,

including asbestos, polychlorinated biphenyls and radioactive substances.

**Premises** means:

- (1) in respect of the 2005 Timbercorp Almond Project, the land and improvements known as "Nanadie" 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 "Narcooyia" described in certificates of title volume 10867 folios 473, 462 and 454, part of volume 10867 folio 455 and part of volume 10923 folio 772.

**Priority Amount** means \$100,000,000.

**Project Lease** means the lease between Almond Land Pty Ltd and the Chargor under which Almond Land Pty Ltd 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 in respect of Management Fees and Rent, 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.

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

**Secured Money** means all money, obligations and liabilities of any kind of the Chargor, to or for the account of the Chargee that are now or may in the future become due, owing or payable, whether actually, contingently or prospectively, in relation to the money received or to be received in respect of the Transaction Document, and irrespective of:

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

**Secured Property** means all rights, property and undertaking of the Chargor to and which relates to the Projects including without limitation:

- (1) any Receivables, but excluding the Receivables which are located in every State or Territory in Australia other than Victoria, the Australian Capital Territory or the Northern Territory;
- (2) the Chargor's present and future interests in the Project Documents including the Mortgaged Contracts but excluding any interests located in every State or Territory in Australia other than Victoria, the Australian Capital Territory and the Northern Territory; and
- (3) the Chargor's present and future interests in any chattels relating to the Projects,

irrespective of:

- (1) whether it is real or personal; and
- (2) whether it is tangible or intangible,

**Security Provider** means a person who grants a Security (other than the Chargor).

**Transaction Documents** means:

- (1) this Deed;
- (2) the Facility Agreement;
- (3) each Security.
- (4) each document which the Chargee and the Chargor agree in writing is a "Transaction Document" for the purposes of this Deed including each document defined to be a "Finance Document" in the Facility Agreement; and
- (5) each document entered into or provided under any of the documents described in paragraphs (1) to (5) 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**

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

### **1.3 Terms in the Facility Agreement**

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

### **1.4 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 which is the Chargor's present and future:

- (1) Interests and rights in real property, buildings and fixtures;
- (2) capital, including uncalled and called but unpaid capital and premiums;
- (3) personal property, including plant, equipment and machinery (other than stock-in-trade, work-in-progress and goods acquired for disposal in the ordinary course of the Chargor's business);
- (4) patents, trademarks, copyrights, designs, trade secrets, confidential information and other intellectual property rights;

- (5) books of account, registers, records, vouchers, computer software, computer printouts and other information relating in any way to the business of the Chargor, whether the information is recorded in written form, electronically, magnetically or in any other way;
- (6) interests in, and rights under, bills of exchange, promissory notes and other negotiable instruments, certificates of deposit, bonds and debentures issued by any person;
- (7) Marketable Securities, interests in any managed investment scheme, legal or equitable rights or interests in Marketable Securities or any managed investment scheme, units or other legal or equitable interests in any trust and any options, warrants or other rights to acquire (whether by way of issue or transfer) any property, right or interest referred to in this paragraph;
- (8) interests in, and rights under, instruments of any kind deposited by the Chargor with the Chargee;
- (9) interests in, and rights under, partnerships and joint ventures;
- (10) the benefit of all guarantees and Security Interests to which the Chargor is entitled;
- (11) interests in, and rights under, all insurance policies relating to the Secured Property and the proceeds of those insurance policies;
- (12) interests in, and rights under, any contract to which the Chargor is a party, all things in action due or owing to the Chargor and the benefit of all its rights and remedies relating to those contracts and things in action;
- (13) interests in and rights under any debt or other monetary obligation forming part of the Secured Property whether actual or contingent;
- (14) interests in and rights under any statutory or other licence relating to the Chargor's business or activities or the ownership or use of any part of the Secured Property; and
- (15) documents of title to any property which is the subject of a fixed charge.

## **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) an investigation of the affairs of the Chargor is commenced under any law relating to companies in circumstances which have a Material Adverse Effect;
  - (c) the Chargor reduces or takes steps to reduce its capital or limits or restricts calls on its issued but uncalled capital including by passing a resolution under section 254N of the *Corporations Act*;
  - (d) 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
  - (e) 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; and
- (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).

### **3.2 Partial release of Charge**

- (1) The Chargee may release a part of the Secured Property from the Charge at any time.
- (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 or Restriction exists over the Secured Property except Permitted Security Interests and Permitted Restrictions;
- (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) **no resumption:** the Chargor has no notice of any proposal by any Government Agency to seize, confiscate, requisition, resume or compulsorily acquire any Secured Property whether permanently or temporarily and whether with payment of compensation or not;
- (6) **no Pollutants:** no Pollutant affects the Secured Property the presence of which would have a Material Adverse Effect and the Chargor has not received any notice from any person claiming any loss or nuisance as a result of such Pollutant;
- (7) **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;
- (8) **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;
- (9) **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.
- (10) **compliance with Head Leases:** it has complied with its obligations under the Head Leases to the extent that no termination rights have arisen and there are no events which entitle Almond Land Pty Ltd to terminate the Head Leases;



- (11) **Head Leases binding:** so far as the Chargor is aware the Head Leases constitute the valid and legally binding obligations of the parties; and
- (12) **no party in default:** so far as the Chargor is aware no party to any Head Lease is in default under any Head Lease except as previously disclosed to the Chargee.

#### **4.2 Continuing representations and warranties**

The representations and warranties in this Deed, including those in clause 4.1, survive the execution of each Transaction 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 Chargor acknowledges that the Chargee has entered into each Transaction Document in reliance on the representations and warranties contained in this Deed.

#### **4.4 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 or Restrictions:** not create, agree or attempt to create or permit to exist, any Security Interest other than a Permitted Security Interest or any Restriction other than a Permitted Restriction on any Secured Property;
- (2) **Permitted Security Interests and Restrictions:** promptly comply with the terms of any Permitted Security Interest or Permitted Restriction 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 or Permitted Restriction 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, other than, in the case only of Secured Property subject to a floating charge under this Deed, in the ordinary course of the Chargor's business, on arms length commercial terms;
- (4) **maintain:** maintain and protect the Secured 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 Government Agency in relation to the Secured Property in each case, where failure to do so would have a Material Adverse Effect;
- (5) **repair:** promptly repair every defect in the Secured Property where commercially prudent to do so;
- (6) **protect:** on demand by the Chargee take or defend legal proceedings for the protection of any Secured 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 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,
- and this has a Material Adverse Effect.
- (8) **no alterations:** not pull down, alter, extend or remove any building or other improvements forming part of the Secured Property (other than buildings or improvements which are temporary), where this would have a Material Adverse Effect;
- (9) **access:** provide to or procure for the Chargee or its professional consultants full access to the Secured Property and all premises and employees of the Chargor for the purpose of inspecting Secured Property or exercising a right, power or remedy of the Chargee;
- (10) **damage:** promptly notify the Chargee of any damage, loss, theft, arrest, confiscation, seizure or other event which might have a Material Adverse Effect or involve any loss or reduction in value of any Secured Property in an amount which exceeds \$500,000;
- (11) **pay taxes:** whether or not the Chargee has taken possession of any part of the Secured Property, punctually pay all Taxes for the Secured Property and on demand provide the Chargee with copies of all notices received for those Taxes and copies of receipts for all payments;
- (12) **comply with laws:** comply and observe with all laws and all guidelines, directions, requests or requirements of any Government Agency applicable to any Secured Property or the use, occupation or enjoyment of any Secured Property that, if not complied with, would have a Material Adverse Effect;
- (13) **perform leases:** pay in full and on time all rent and other money and perform all obligations under any lease, sub-lease or licence granted to the Chargor where to not do so would have a Material Adverse Effect and on demand provide to the Chargee the receipt for every such payment;
- (14) **deposit title documents:** deposit with the Chargee all certificates and other documents of title for, and other instruments evidencing, any Secured Property over which the Charge is a fixed charge immediately on:
- (a) execution of this Deed by the Chargor; and
- (b) acquisition of an asset forming part of the Secured Property after the date of this Deed;
- (15) **requisitions:** use its best endeavours to answer and comply with any requisitions or orders made by any Government Agency in relation to the registration of this Deed and do all things that the

Chargee considers necessary or desirable to assist it in registering this Deed with the Australian Securities and Investments Commission or any other Government Agency;

- (16) **Pollutant:** take any action the Chargee requires in respect of any Pollutants and not permit any Pollutant to be released on or from the Secured Property, in each case where failure to do so would have a Material Adverse Effect;
- (17) **comply with obligations:** comply with all of its obligations under the Mortgaged Contracts and the Head Leases;
- (18) **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;
- (19) **Mortgaged Contracts/Head Leases:** not allow a Mortgaged Contract or a Head Lease to be materially varied, repudiated, rescinded or terminated;
- (20) **breaches:** notify the Chargee of any material breach by the Growers under the Mortgaged Contracts; and
- (21) **protect:** on demand by the Chargee take or defend legal proceedings for the protection of any Secured Property where commercially prudent to do so.

### **5.3 Insurance undertakings**

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

- (1) **all risks:** insure all of the Secured Property that is of an insurable nature for amounts and on terms reasonably required by the Chargee with an insurance company acceptable to the Chargee (and in relation to insurance for loss of rent and civil liability for material breaches of Environmental Laws, the parties will co-operate with a view to obtaining insurance which it would be commercially prudent to obtain having regard to the Chargor's business and the Chargee's exposure and which is available at a reasonable cost and on reasonable terms having regard to those matters);
- (2) **other insurances:** maintain workers' compensation, public risk (in an amount reasonably acceptable to the Chargee) and such other insurances that would be commercially prudent to be maintained by a person conducting a business similar to the Chargor's business or as reasonably nominated by the Chargee from time to time.

- (3) **Insurer:** ensure that all insurance policies are issued by a reputable insurer independent of the Chargor reasonably acceptable to the Chargee;
- (4) **content:** ensure that all insurance policies are on terms reasonably acceptable to the Chargee and, without limitation:
  - (a) are taken out in the names of the Chargor and Chargee as insureds for the full value of their respective rights and interests;
  - (b) name the Chargee as loss payee for claims involving the Secured Property (except in the case of a reinstatement policy where payments are to be made directly to the person effecting the reinstatement) or any other claim for which loss funds would, in the absence of this provision, be payable to the Chargor;
  - (c) contain a provision that the policy cannot be cancelled unless the Chargee has received from the insurer 30 days prior written notice of the proposed cancellation and, if there is a default in the payment of premiums or a breach of any other term of the policy, unless that notice specifies the relevant breach and the breach is not remedied, by the Chargee or by any other person, on or before the expiry of that 30 day period;
  - (d) contain a provision that breach of any term of the policy, or any nondisclosure, misrepresentation or fraud or any other act, omission or neglect by an insured will not invalidate the cover or prejudice or reduce the rights of any other insured;
  - (e) contain a waiver of any rights of the insurer to set-off, counterclaim, make any deduction or seek contribution in connection with amounts payable to the Chargee, including where other insurances are effected by the Chargee against the same loss in respect of which those amounts are payable;
  - (f) except as provided in paragraph (e) above, contain a waiver of all claims against the Chargee for insurance premiums, Taxes, commissions or other amounts due;
- (5) **renew insurances:** renew all insurance policies before their expiry and extend insurance policies when further insurable risks arise;
- (6) **pay premiums:** pay all insurance premiums, Taxes, commissions and other amounts necessary for taking out, maintaining, renewing or extending all insurance policies in full and on time;

- (7) **deliver policies:** deliver to the Chargee every insurance policy, every alteration or addition to a policy, and every certificate of currency and related receipts and any other details of the insurance policies which the Chargee requires or requests;
- (8) **no changes:**
  - (a) not cancel any insurance policy unless it is after another insurance policy (which complies with the requirements of this clause) has been obtained in respect of the relevant asset; or
  - (b) vary an insurance policy in a way which makes it inconsistent with the requirements of this clause 5.3;
- (9) **not prejudice:** not do or allow an act or omission to be done or occur (including any non disclosure of any information or any alteration or addition to an improvement forming part of the Secured Property) by which:
  - (a) an insurance policy may be cancelled;
  - (b) the premium may be increased;
  - (c) insurance is or becomes insufficient; or
  - (d) a claim may be prejudiced in any way;
- (10) **notice to Chargee:** promptly notify the Chargee of:
  - (a) the full particulars of any event which does or might give rise to a right to claim under an insurance policy exceeding \$250,000 and provide to the Chargee any further information that comes into the possession of the Chargor relating to that claim or potential claim;
  - (b) the cancellation or proposed cancellation, variation or reduction of an insurance policy;
  - (c) any insurance policy becoming void or voidable; and
  - (d) any other material circumstances or correspondence relating to an insurance policy;
- (11) **notice to Insurer:** promptly notify the relevant insurer, in accordance with the terms of the relevant insurance policy, of any event which does or might give rise to a right to claim under an insurance policy; and
- (12) **settlement of claims:** not make, enforce, settle or compromise any claim in respect of insurance or for compensation but permit

the Chargee alone to do those things and to sue and give discharges for all insurance claims and moneys.

**5.4 Chargee may insure**

if:

- (1) the Chargor fails to take out, maintain, renew or extend an insurance policy in accordance with clause 5.3;
- (2) the Chargee determines that an insurer may become entitled to cancel or avoid an insurance policy effected under clause 5.3; or
- (3) the Chargee determines that an insurer under an insurance policy may not be capable of meeting a claim,

the Chargee may do anything which it determines is advisable or necessary to take out or keep in force that policy or to take out a new policy complying with clause 5.3 at the cost of the Chargor and in the name of the Chargor or the Chargee or both. The Chargee is not obliged to do anything under this clause 5.4.

**5.5 Application of insurance money**

- (1) Subject to clause 5.5(3), 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 Chargor must be held in a separate account for the Chargee and applied, at the option of the Chargor:
  - (a) towards satisfaction of the Secured Money; or
  - (b) 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.
- (2) Subject to clause 5.5(3) if an Event of Default or Potential Event of Default occurs and is subsisting moneys referred to in clause 5.5(1) must be kept in a separate account for the Chargee and will be applied as follows:
  - (a) any such moneys up to the amount of \$2 million in any 12 month period will be applied at the option of the Chargor for any of the purposes referred to in clause 5.5(1)(a) or 5.5(1)(b); and
  - (b) any such moneys over the amount of \$2 million in any 12 month period will be applied at the option of the Chargee for any of the purposes referred to in clause 5.5(1)(a) or 5.5(1)(b) but in exercising its option (and without limiting

the rights of the Chargee in any way) the Chargee will consider the rights of the Growers in making any election pursuant to the clause.

- (3) If required under the terms of a reinstatement policy, the Chargor must apply all proceeds payable under the reinstatement policy to the reinstatement of its Secured Property.
- (4) The Chargor must ensure that:
  - (a) 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
  - (b) 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.

#### **5.6 Consent of Chargee**

If any consent or approval of the Chargee is given, or compliance by the Chargor of any undertaking is waived, subject to compliance by the Chargor with any condition at or before a particular time, the Chargor must comply with that condition.

#### **5.7 Chargee may act**

The Chargee may do or cause to be done all things, including the payment of any money, which must be done by the Chargor under this Deed but which the Chargor fails to do in accordance with this Deed or which the Chargor fails to do to the satisfaction of the Chargee. Any money paid by the Chargee for this purpose forms part of the Secured Money.

### **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 the Facility Agreement or any other Transaction Document;
- (2) **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;



- (3) **use and occupation:** the use or occupation of the Secured Property by the Chargor contravenes a law or a guideline, direction, request or requirement of a Government Agency which contravention has or is likely to have a Material Adverse Effect;
- (4) **litigation:** a proceeding is commenced against the Chargor in relation to any Secured Property which does or is likely to:
  - (a) impeach the Chargor's title to Secured Property; or
  - (b) restrict in a material respect the Chargor's use, occupation or enjoyment of Secured Property,

in a way which is likely to have a Material Adverse Effect and the Chargor is unable to reasonably satisfy the Chargee within 5 Business Days of the proceeding being filed or commenced that the proceeding will be permanently stayed, struck out, withdrawn or defeated;
- (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) **damage:** a substantial part of the Secured Property is destroyed or substantially damaged and the Secured Property is not fully insured in accordance with clause 5.3;
- (7) **Insolvency Event:** an Insolvency Event has occurred in respect of the Chargor;
- (8) **untrue warranty:** a representation, warranty or statement made by the Chargor to the Chargee is untrue or misleading in any material respect;
- (9) **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
- (10) **termination of Project Lease/Head Lease:** the Project Lease or a Head Lease is terminated.

## 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) **make calls:** make calls on capital and premiums of the Chargor and enforce payment of calls;
- (7) **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;
- (8) **lease:** lease or license any part of the Secured Property, and renew, terminate, surrender or accept the surrender of leases or licences, on terms that the Chargee thinks fit;
- (9) **grant options:** grant to any person an option to purchase any Secured Property on terms that the Chargee thinks fit;
- (10) **Restrictions:** grant, release or vary Restrictions;
- (11) **fixtures:** add or sever fixtures;
- (12) **make agreements:** make any agreement or compromise which the Chargee thinks fit;
- (13) **transfer property:** surrender or transfer the Secured Property to any Government Agency (whether or not for fair compensation);
- (14) **exchange property:** exchange with any person any part of the Secured Property for any other property, whether or not of equal value;
- (15) **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;
- (16) **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;
- (17) **give receipts:** give effective receipts for all money and other assets that may come into the hands of the Chargee;
- (18) **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;
- (19) **insure:** insure the Secured Property;
- (20) **proceedings:** institute, conduct, defend, discontinue, settle, arrange or compromise any proceedings (including proceedings relating to insurance of the Secured Property);
- (21) **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 (21)(a) or raised or borrowed under paragraph (21)(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;
- (22) operate bank accounts: operate any bank account forming part of the Secured Property;
- (23) 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
- (24) 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 a Transaction Document must be made:

- (1) not later than 11:00 am on the due date for payment;
  - (2) in Cleared Funds in Dollars; and
  - (3) to the account specified by the 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 a Transaction Document 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 a Transaction Document must be paid unconditionally and in full without:

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

### **8.5 Deductions and withholdings**

- (1) If the Chargor or another person is required by law to make a deduction or withholding for Tax from a payment to the Chargee

under a Transaction Document 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 a Transaction Document, 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 a Transaction Document 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 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 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 a Related Body Corporate of the Chargee) 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 a Transaction Document 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:

- (1) any amount held by the Chargor on its own account; and
- (2) any amount that is equal to the amount held by the Chargor on behalf of Almond Land Pty Ltd or any Security Provider provided that:
  - (a) the amount held by the Chargor is held on behalf of Almond Land Pty Ltd or any of the Security Providers and not on behalf of the Growers; and
  - (b) such amounts relate to the Projects.

## **11.2 Currency conversion**

If the currency of the Chargor's account or the amount owing referred to in clause 11.1 is not Dollars, the Chargee may for the purpose of clause 11.1:

- (1) purchase Dollars with the currency in which the Chargor's account is maintained or the currency of the amount owing in accordance with its usual banking procedures; and
- (2) apply the amount purchased, after deducting any costs of exchange and any other related costs, in accordance with clause 11.1.

## **11.3 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) No Transaction Document merges, discharges, postpones or adversely affects in any other way the rights, remedies or powers of the Chargee under any other Transaction Document.
- (2) Nothing in any Transaction Document merges, discharges, postpones or adversely affects in any other way a Security or any of the rights, remedies or powers of the Chargee against any person.
- (3) If a judgment is made in favour of the Chargee against the Chargor or a Security Provider 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 a Transaction Document; 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 a Transaction Document.

#### **12.3 Waiver and exercise of rights**

- (1) A waiver by the Chargee of a provision of or of a right under a Transaction Document 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 Chorgor 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 Chorgor 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 a Transaction Document; or
- (2) more fully secure the rights, remedies and powers of the Chargee under a Transaction Document; 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 Interests in land**

- (1) Without limiting clause 12.5, the Chargor must, if requested by the Chargee, execute and deliver a mortgage or other Security Interest over:

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

forming part of the Secured Property which is acquired by the Chargor after the date of this Deed.
- (2) The mortgage or other Security Interest referred to in clause 12.6(1) must:

  - (a) be in favour of the Chargee;
  - (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 Chargee.

#### **12.7 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 the Transaction Documents;
  - (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 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 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.

#### **12.8 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.

#### **12.9 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 12.9(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.

#### **12.10 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.

#### **12.11 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.

#### **12.12 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: 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 a Transaction Document 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**

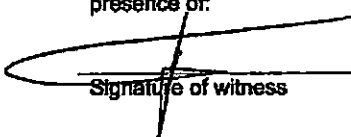
The Chargor irrevocably and unconditionally:

- (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. Deed of Covenant**


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

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)

Mark Pryn

\_\_\_\_\_  
Name of Attorney (BLOCK LETTERS)