

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


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This is the exhibit marked '**MAK-37**' now produced and shown to MARK ANTHONY  
KORDA at the time of swearing this affidavit on 3 March 2010.

Before me:

  
**LUCY HANNAH KIRWAN**  
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An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit 'MAK-37'**  
**Copy of Deed of  
Guarantee**



Deacons

TIMBERCORP

Dated 26 September 2006

672451/3

## Deed of Guarantee and Indemnity

### Parties

The Persons named in Item 1 of Schedule 1

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

### Contact

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## **Deed Of Guarantee and Indemnity**

This document is important. Please read it carefully. You have rights and obligations under it.

You should realise in particular that the Bank can call on all or any of you, instead of the customer, or as well as the customer, to pay the guaranteed money.

If the customer consents, the Bank will give you the following documents:

- a copy or summary of the contract evidencing the obligations to be guaranteed; and
- if you request, a copy of the latest relevant statements of account provided to the customer, if any; and
- a copy of any formal demand that is sent to the customer.

**The Bank recommends that each of you get legal advice from an Independent lawyer before deciding whether to sign this document.**

Deed of Guarantee and Indemnity dated 26 September 2006

**Parties** The Persons named in Item 1 of Schedule 1  
(Guarantor)

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

**It is agreed**

**1. Interpretation**

**1.1 The meaning of certain words and expressions**

In this guarantee these words and expressions have these special meanings, unless the context otherwise requires:

**Bank officer** means a director, secretary or an officer of the Bank whose title is or includes the word **manager**, or who is acting in a position with such a title, or who is authorised by the Bank to act as its attorney.

**company** includes a corporation.

**contractual currency** means the currency in which the customer or any other responsible person is liable to pay the guaranteed money.

**controller** has the meaning given by section 9 of the *Corporations Act 2001* (Cth).

**customer** means any or all of the persons named in Item 2 of Schedule 1 as customer.

**Facility Agreement** means the Facility Agreement between Almond Land Pty Ltd and the Bank dated on or about the date of this Guarantee.

**government agency** includes a government, any government department, a court or an authority or person who administers an applicable law.

**guaranteed money** means at any time all money which:

- (1) the customer owes to the Bank at that time for any reason; or
- (2) has been advanced or paid by the Bank at the express or implied request of the customer or on behalf of the customer; or

- (3) has been advanced or paid by the Bank or which the Bank is liable to pay due to an act or omission of the customer; or
- (4) the Bank pays, whether voluntarily or not, because some payment of, or transaction or arrangement relating to, money previously paid to it by or on account of a customer is or is claimed to be void, voidable or a preference; or
- (5) which is reasonably foreseeable as likely to fall within paragraphs (1) to (4) above after that time,

in each case under or in relation to the Transaction Documents.

Money which is described in each of the above paragraphs will be guaranteed money:

- (1) whether or not the money is due for payment at that time; and
- (2) even if the money is only owing on a guarantee or other contingency; and
- (3) whether a customer or other person owes the money:
  - (a) alone or jointly, or jointly and severally or in common with any other person; or
  - (b) as principal or as surety; and
- (4) whether the money first became owing before or after the Guarantor executed this guarantee.

**Insolvent event** means the happening of any of these events, or anything analogous or having a substantially similar effect to any of these events:

- (1) the appointment of a controller to the whole or part of the assets and undertaking of the corporation;
- (2) the appointment of a liquidator or provisional liquidator in respect of that corporation or that corporation is dissolved;
- (3) the corporation enters into a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration or arrangement involving any of them; or
- (4) the corporation is taken to have failed to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);

and **insolvent** and **insolvency** have a corresponding meaning.

**legislation** means a written law of an Australian State or Territory or of the Commonwealth.

**person** means an individual, a corporation, a partnership, an association or a government agency.

**tax** means a tax or duty, however imposed and by whatever name called, and includes tax or duty imposed as additional tax or duty or penalty tax or duty.

**Transaction Documents** means:

- (1) this Deed;
- (2) the Facility Agreement;
- (3) each Security.
- (4) each document which the Bank and the Guarantor 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 Guarantor, means any of those documents to which the Guarantor or is a party.

## **1.2 Cross Guarantee**

Where persons are named both as a customer and a Guarantor in this guarantee, it will operate as a cross guarantee so that a Guarantor who is a customer guarantees the obligations of each other customer.

## **1.3 Multiple Guarantors**

If there is more than one Guarantor, the obligations and liabilities of each Guarantor are joint and several.

## **1.4 Other references**

A reference in this guarantee to the Guarantor includes:

- (1) if a guarantor is an individual, the personal representatives of that guarantor; and

- (2) if a guarantor is a company, the successors, liquidators or administrators of that guarantor.

A reference in this guarantee to the Bank includes a person to whom the Bank transfers this guarantee and the Guarantor's obligations under it.

A reference in this guarantee to particular legislation or to a particular provision of legislation, is a reference to:

- (3) that legislation or provision, and to regulations and other rules made under it; and
- (4) any legislation, regulation or other rule which replaces any of them, as in force for the time being.

In this guarantee, a word indicating the singular also indicates the plural and vice versa, and a word indicating any gender also indicates each other gender.

Headings are for convenience only and do not affect the interpretation of this guarantee.

#### **1.5 Terms not defined**

Terms used in this guarantee but not defined have the meaning given to them in the Facility Agreement.

#### **1.6 What happens if a provision of this guarantee is invalid**

If a provision of this guarantee is or becomes invalid or unenforceable, the provision is to be read down (if possible) so as to be valid and enforceable. If it cannot, this guarantee takes effect as if it did not include that provision.

### **2. The Guarantee and the Indemnity**

#### **2.1 The Guarantee**

The Guarantor guarantees that the Bank will be paid all the guaranteed money when it should be paid and undertakes to pay the guaranteed money immediately on demand by the Bank if the customer fails to make payment.



## **2.2 The Indemnity**

The Guarantor indemnifies the Bank against any loss that it suffers because:

- (1) the guaranteed money is not paid to the Bank when it should be; or
- (2) the Bank cannot recover the guaranteed money from a customer because:
  - (a) the law prevents it; or
  - (b) of some legal disability or limitation that a customer is subject to; or
  - (c) a customer does not have the legal power to pay it to the Bank; or
  - (d) a customer acted without power, or misused or exceeded its power or someone appearing to act on behalf of the customer acted without authority, or misused or exceeded that person's authority; or
- (3) some payment, transaction or arrangement concerning the guaranteed money is or is claimed to be void or voidable or a preference under the law; or
- (4) a customer is insolvent.

## **2.3 What the Bank will do in return**

The Bank will consider requests to give or to continue providing banking facilities to the customer and provide other valuable consideration to the customer or someone else in return for this guarantee.

## **2.4 Continuing guarantee and continuing indemnity**

The Guarantor agrees that:

- (1) the guarantee set out in clause 2.1 is a continuing guarantee; and
- (2) the indemnity set out in clause 2.2 is a continuing indemnity; and
- (3) each covers the full amount of the guaranteed money.

## **2.5 Guarantor is principal debtor under the indemnity**

The Bank may enforce its rights under the indemnity set out in clause 2.2 against the Guarantor as principal debtor.

## **2.6 The guarantee and the indemnity are separate obligations**

The Guarantor's obligations under the guarantee set out in clause 2.1 are separate from the Guarantor's obligations under the indemnity set out in clause 2.2.

Each obligation is independent of, and in addition to, the other.

The Guarantor's obligations under the indemnity set out in clause 2.2 bind the Guarantor even if the Bank cannot recover the guaranteed money under the guarantee set out in clause 2.1.

## **2.7 Currency Indemnity**

If, for any reason, an amount payable by the Guarantor under or in respect of this guarantee is received by the Bank in a currency which is different from the contractual currency then the Guarantor indemnifies the Bank against, and shall pay the Bank on demand, the amount of any loss suffered as a result of any discrepancy between:

- (1) the amount received (after the Bank in accordance with its usual practice converts the payment from the currency in which it was received); and
- (2) the amount which was payable by the Guarantor,

in the contractual currency.

To avoid any doubt, it is agreed that this subclause applies, amongst other things, to any loss that the Bank suffers as a result of exchange rate changes that occur between the date of a court order and the date of payment.

## **2.8 Costs**

The Guarantor will pay the Bank, on a full indemnity basis, for all expenses:

- (1) that are not included in the definition of guaranteed money, but which the Bank incurs as a result of taking action to recover money owing by the customer; or
- (2) that the Bank incurs in connection with this guarantee, including any expenses the Bank incurs in enforcing it against the Guarantor; or
- (3) that the Bank incurs as a result of court proceedings in which a claim is made that some payment, transaction or arrangement concerning the guaranteed money is void, voidable or a preference.

### **3. Liability Limit**

This guarantee is to be security for all the guaranteed money but if any amount is specified in Item 3 of Schedule 1 as the limit of liability, the total amount for which the Guarantor shall be liable under this guarantee, whether under the guarantee, indemnity or otherwise, shall be limited to a sum equal to the total of:

- (1) that limit of liability;
- (2) a sum not exceeding one year's interest on that limit of liability at the highest rate payable (or which would have been payable but for the customer's insolvency) by the customer to the Bank when demand is made on the Guarantor for payment of the guaranteed moneys;
- (3) all bank charges and other charges, costs and expenses which have become payable up to the date when that demand is made;
- (4) all the Bank's charges, costs and expenses in connection with enforcing the guarantee; and
- (5) all interest payable under clause 5 of this guarantee.

### **4. Payments**

#### **4.1 Payment must be made as soon as the Bank demands it**

An amount that the Guarantor is liable to pay under this guarantee must be paid in cash or by bank cheque or other immediately available funds to the account and in the manner notified from time to time by the Bank to the Guarantor. Any such amount becomes payable as soon as the Bank gives the Guarantor a written demand for payment, and the Guarantor will pay the Bank the amount immediately.

#### **4.2 No deductions or withholding**

The Guarantor will pay whatever it has to pay to the Bank under this guarantee without deduction or withholding for tax and without any set-off or counterclaim.

#### **4.3 Gross up**

If the law requires the Guarantor to make a deduction or withhold money from a payment, the Guarantor will increase the amount of the payment so that the Bank actually receives the amount that it would have received if the Guarantor had not had to make a deduction or withholding.

#### **4.4 Application of payments**

If the Bank receives a payment in reduction of the guaranteed money (no matter who makes the payment), the Bank can apply the payment to any particular part of the guaranteed money that it chooses.

#### **4.5 How payments count**

If the Bank applies a payment that it receives in reduction of the liability of the Guarantor, the amount of the reduction will only be the amount that the Bank actually receives after allowing for the costs and expenses of obtaining the payment.

If the Guarantor (or anyone else) makes a payment to the Bank by cheque, or in any other way that is not cash, the payment is only taken to be made when the Bank actually receives the payment in cash or cleared funds.

#### **4.6 Currency of payments**

Unless the Bank agrees otherwise, the Guarantor will make each payment to be made under this guarantee in the contractual currency.

### **5. Interest**

#### **5.1 The Guarantor will pay interest**

The Guarantor will pay interest on each amount that the Guarantor is liable to pay to the Bank under this guarantee, calculated from the day when the Bank gives the Guarantor a demand for payment of the amount until the Bank is paid the amount in full.

#### **5.2 Interest to be the same as for the customer**

Interest will be calculated at the rate or rates agreed and in the same way that interest is calculated under the agreement or agreements between the Bank and the relevant customer for the guaranteed money. For these purposes, the relationship of banker and customer between the Bank and the relevant customer will be regarded as continuing even if it has ended.

#### **5.3 Particular provisions about rate of interest**

If there is no such agreement, interest will be calculated at the rate or rates the Bank normally charges on overdue amounts on facilities which are similar to the facility concerned.

**5.4 Particular provisions about how interest accrues and is payable**

Interest accrues daily and is payable on the days fixed by written agreement between the Bank and the relevant customer for the guaranteed money but if there is no such agreement or more than one of them it will be payable monthly, on the days specified by the Bank in writing.

**5.5 Interest will be payable on unpaid interest**

If interest under this guarantee is not paid when it is due, interest will accrue on the unpaid interest and the other provisions of this clause apply to that interest on the unpaid interest.

**6. Duration of the Guarantee**

**6.1 Duration**

If the Bank is reasonably satisfied that:

- (1) all of the guaranteed money is paid in full;
- (2) no money, obligation or liability is likely to become owing within a reasonable time; and
- (3) there is no reasonable possibility that:
  - (a) any money received or recovered by the Bank and applied in payment of the guaranteed money; or
  - (b) any settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the guaranteed money,

must be repaid or may be avoided under any law, including a law relating to preferences, bankruptcy, insolvency or the winding up of companies,

the Bank will release the Guarantor from its obligations under this Deed, at the request and the cost of the Guarantor.

**6.2 Bank can still rely on the guarantee even if discharged**

If a transaction in the Bank's favour (such as an assurance, security or payment) concerning the guaranteed money is wholly or partly avoided, set aside, refunded or repaid by the Bank, then:

- (1) the Bank may exercise all its rights (including its right to recover from the Guarantor the full extent of the liability of the Guarantor)

under this guarantee as if the transaction had never taken place;  
and

- (2) if the Bank has given a release of this guarantee on the faith of the transaction, that release will be treated, as between the Bank and the Guarantor, as having no effect.

### **6.3 Stopping this Guarantee**

The Guarantor can stop this guarantee covering money advanced to a customer in the future by giving the Bank a written notice in the form set out in Schedule 2. Any such notice must be signed by the Guarantor and is effective from the date being 14 days after the Bank has received it but does not affect the Bank's rights in respect of:

- (1) money that the Bank has already advanced to a customer;
- (2) money that the Bank must advance to a customer after the notice is given; or
- (3) money that will or may become payable by the Bank to a customer or any other person under transactions or documents current when the notice is given.

## **7. The Bank's Protections**

### **7.1 The obligations of the Guarantor are not affected**

The obligations of the Guarantor under this guarantee are not affected or discharged by any act, omission, matter, thing or circumstance which, apart from this clause might otherwise have affected or discharged the obligations of the Guarantor under this guarantee, including, but not limited to, any of the following circumstances:

- (1) whether banking arrangements with any customer began before or after this guarantee was signed;
- (2) whether some of the guaranteed money is recoverable from any customer, any other guarantor or from someone else;
- (3) whether a guarantee, indemnity or security now or later given to the Bank, or some existing or later agreement or transaction with the Bank concerning the guaranteed money, is:
  - (a) void; or
  - (b) defective; or
  - (c) unenforceable; or

- (d) ranks after or is postponed to some other security or obligation; or
- (4) whether the Bank did or did not do some particular thing under this guarantee or under some other agreement, guarantee or security concerning the guaranteed money; or
- (5) whether the relationship of banker and customer between the Bank and a customer has ended; or
- (6) whether the Bank, without first telling, or getting the consent of, the Guarantor:
  - (a) granted time or some other indulgence to a customer, any other guarantor or to someone else; or
  - (b) compounded, compromised or made an arrangement with a customer, any other guarantor or someone else; or
  - (c) released (wholly or partly) a customer, any other guarantor or someone else from this guarantee or from some other obligation; or
  - (d) received dividends out of the estate or assets of a customer, any other guarantor or someone else; or
  - (e) obtained a court judgment against a customer, any other guarantor or someone else,

In relation to the guaranteed money or to a security, guarantee or indemnity for the guaranteed money; or

- (7) whether the Bank, without first telling, or getting the consent of the Guarantor:
  - (a) gave new banking accommodation or other banking services to;
  - (b) varied or allowed a variation to existing banking accommodation or other banking services given to; or
  - (c) withdrew banking accommodation or other banking services from,

a customer, any other guarantor or someone else;
- (8) whether the Bank, without first telling, or getting the consent of, the Guarantor assigned its rights in connection with this guarantee or any other security or document; or

- (9) whether the death, incapacity or insolvency of a customer, any other guarantor or someone else occurs.

**7.2 No security**

The Guarantor declares that it has not taken any security from any customer or any other guarantor in connection with this guarantee.

A guarantor will not take any such security unless the Bank first agrees in writing.

**7.3 The Guarantor will not claim the Bank's securities**

The Guarantor will not claim the benefit or require the transfer of any security, guarantee or indemnity that the Bank now or later holds in respect of the guaranteed money unless the Bank first agrees in writing.

**7.4 No merging of balances in accounts**

The Guarantor cannot require the Bank to merge or consolidate any of the accounts that a customer has with the Bank.

The Guarantor is not entitled to have any money standing to the credit of any account that a customer has with the Bank applied in reduction of the liability of the Guarantor under this guarantee.

**7.5 This guarantee additional to other securities**

This guarantee is additional to any security, and any other guarantee or indemnity, that the Bank has or may have in the future concerning the guaranteed money.

**7.6 Other securities do not prejudice this guarantee**

Unless expressly agreed in writing to the contrary, nothing in any other security, or in any other guarantee or indemnity, will prejudice the Bank's rights under this guarantee.

**7.7 No merger of securities**

The Bank's rights under this guarantee are not and will not be merged in any other security, or in any other guarantee or indemnity.

**7.8 Bank can continue dealing with a customer**

The Bank may continue existing accounts or open new accounts, or both, with a customer even if:

- (1) the Bank has given the Guarantor a written demand to pay some or all of the guaranteed money; or



- (2) this guarantee ceases to be a continuing guarantee and a continuing indemnity.

After either of those events, any payments made to an account of a customer will not reduce the liability of the Guarantor to the Bank under this guarantee except to the extent that the Bank is satisfied that the payment is not liable to be avoided, set aside, refunded or repaid.

## **8. Bank's Rights**

### **8.1 Suspension of Guarantor's rights**

Until the Bank has received payment of the guaranteed money in full:

- (1) the Guarantor will not try to deprive the Bank of, or hold it accountable to the Guarantor for, dividends or money that the Bank may receive or be entitled to in a customer's insolvency; and
- (2) the Bank may credit any money that the Guarantor has paid or pays to it, or that is paid to it on the behalf of the Guarantor, under this guarantee to a suspense account; and
- (3) the Bank does not have to apply any of that money to reduce the liability of the Guarantor under this guarantee.

### **8.2 Proof by Guarantor**

- (1) Subject to clause 8.2(2), the Guarantor may prove in the insolvency of the customer in competition with the Bank for any distribution, dividend or payment arising from an insolvency event occurring in respect of the customer, provided that the competition does not relate to moneys paid by the Guarantor to the customer to satisfy its obligations in relation to any Finance Document.
- (2) The Guarantor has not given any person a Security Interest in, and has not agreed with represented or undertaken to any person that it will pay any amount to any person from, any distribution, dividend or payment that it receives on exercising any right to prove in respect of the customer, provided that the Guarantor may use any distribution, dividend or payment that it receives on exercising any right to prove in respect of the customer in the ordinary course of its business.

### **8.3 Bank may set-off balances in accounts**

The Bank may, whilst an Event of Default subsists and only after a demand has been made by the Bank under this Deed on the Guarantor, set-off and apply towards satisfaction of the guaranteed money:

- (1) any amount held by the Guarantor on its own account; and
- (2) any amount that is equal to the amount held by the Guarantor on behalf of Almond Land Pty Ltd and any of the Security Providers provided that:
  - (a) the amount held by the Guarantor 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.

#### **8.4 Exercising and not exercising rights**

The fact that the Bank does not exercise, or delays in exercising, a right under this guarantee does not mean that it has given up or waived the right or that it cannot exercise the right later.

The fact that the Bank exercises a right once or partly does not mean that it cannot exercise that right again or other rights later.

If the Bank starts to exercise a right, it can stop exercising it at any time.

The only way in which the Bank can waive any of its rights under this guarantee is by giving the Guarantor a notice in writing waiving those rights.

The Bank will not be liable to the Guarantor or any other person for any loss, liability, cost or expense that is caused (directly or indirectly) by anything that the Bank does or does not do under or for the purposes of this guarantee.

#### **8.5 Who can exercise the Bank's rights**

Any Bank officer can exercise the Bank's rights relating to this guarantee on its behalf.

#### **8.6 Bank may assign this guarantee**

The Bank may assign this guarantee and the Guarantor's obligations under it without telling the Guarantor and without getting the consent of the Guarantor.

The Bank can give information about this guarantee and the Guarantor's obligations under it to anyone who is an assignee from the Bank of this guarantee, or to anyone who is considering becoming an assignee.

## **8.7 Collateral Security**

The Bank need not resort to the customer or to any other collateral security it holds for payment of the guaranteed money before it resorts to this guarantee

## **9. Notices and Certificates**

### **9.1 Notices**

A notice or demand may be given in connection with this guarantee:

- (1) by a Bank officer or a solicitor for the Bank; and
- (2) must be in writing; and
- (3) must be left at or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by telex or facsimile to the telex or facsimile number of the addressee:
  - (a) which is specified in Item 4 of Schedule 1; or
  - (b) in the case of a corporation, its registered office; or
  - (c) the last known address or telex or facsimile number of the addressee.

A notice or demand by the Bank under this guarantee is effectively given to each Guarantor if given to one of the Guarantors.

Unless a later time is specified in it a notice or demand takes effect from the time it is received.

### **9.2 Deemed receipt by Guarantor**

A letter, telex or facsimile is deemed to be in writing and is taken to be received:

- (1) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
- (2) in the case of a telex, on receipt by the sender of the answerback code of the addressee after transmission of the telex; and
- (3) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause.

### **9.3 Service of Process**

If one or more of the Guarantors is not domiciled, ordinarily resident or incorporated in Australia, each such Guarantor appoints the person specified in Item 5 of Schedule 1 as its agent for the time being in Australia to receive service of process in connection with any proceedings and any process served on that person is taken to be served on each and every such Guarantor.

### **9.4 Notices to the Bank**

If a Guarantor wishes to give the Bank a notice regarding this guarantee, the notice will only be effective if that Guarantor gives it in writing to the Bank at its address set out in Item 4 of Schedule 1. It is the responsibility of that Guarantor to make sure that the Bank receives the notice.

### **9.5 Certificates**

A certificate signed by the Bank or its solicitors about a matter or a sum payable to the Bank in connection with this guarantee is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

## **10. Miscellaneous Provisions**

### **10.1 Effect of legislation on this guarantee**

As far as the law allows, legislation or a scheme of arrangement or reconstruction does not apply to this guarantee so as to:

- (1) lessen or otherwise affect the Guarantor's obligations under this guarantee; or
- (2) delay, prevent or prejudicially affect the Bank exercising its rights under this cross guarantee.

### **10.2 Those who sign are bound**

Each person who signs this guarantee as Guarantor is bound by it even if another person described as Guarantor or someone who was intended to give a guarantee or other security for some or all of the guaranteed money:

- (1) does not sign this or any other guarantee or security; or
- (2) does not sign it properly;
- (3) is not or ceases for any reason to be bound by it or a provision of it; or

- (4) has no power to sign it; or
- (5) signs a counterpart of this guarantee.

**10.3 If a customer is a partnership**

The provisions of Part A of Schedule 3 apply if a customer is a partnership.

**10.4 If the Guarantor is a partnership**

The provisions of Part B of Schedule 3 apply if some or all of the persons comprising the Guarantor are a partnership.

**10.5 Governing Law**

This guarantee is governed by the law of the State or Territory specified in Item 6 of Schedule 1 and the Guarantor submits to the jurisdiction of the Courts of that State or Territory but acknowledges that those Courts shall not have exclusive jurisdiction.

The Guarantor waives any rights to object to an action being brought in those Courts because of inconvenience to the Guarantor or lack of jurisdiction.

**10.6 If a Guarantor is a trustee**

The provisions of Schedule 4 apply if a Guarantor is entering into this guarantee as trustee of a trust.

**11. Acknowledgments**

Each Guarantor acknowledges that:

- (1) it was given the opportunity to read this guarantee;
- (2) it had an opportunity to get legal advice from an independent lawyer before agreeing to sign this guarantee;
- (3) in deciding to enter into this guarantee it did not rely on any promise, statement or information made or given by the Bank or its officers or agents;
- (4) it is up to it to find out about the financial position, creditworthiness and honesty of the customer and any other person named as a Guarantor;
- (5) this document contains all the provisions of the guarantee; and

- (6) this guarantee cannot be changed except in writing signed by a Bank officer and each Guarantor.

**12. Deed of Covenant**

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

## Schedule 1

### Item 1

#### Guarantor

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

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

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

Name: Timbercorp Finance Pty Ltd  
ABN: 88 054 581 190  
Address: Level 8, 461 Bourke Street, Melbourne,  
Victoria 3000

Name: Timbercorp Finance (Vic) Pty Ltd  
ABN: 57 091 460 356  
Address: Level 8, 461 Bourke Street, Melbourne,  
Victoria 3000

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

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

### Item 2

#### Customer

Name: Almond Land Pty Ltd  
ABN: 65 091 460 392  
Address: Level 8, 461 Bourke Street, Melbourne,  
Victoria 3000

**Item 3      Limit of Liability (clause 3)**

The liability of the guarantors is unlimited.

**Item 4      Addresses for Notices**

**Guarantor:**                      As in Item 1  
**Bank:**                         Australia and New Zealand Banking  
   Group  
**Address:**                      Level 10  
   530 Collins Street  
   Melbourne, Victoria 3000

**Facsimile No:**                (03) 9273 3161

**Item 5      Agent for Service of Process (clause 9.3)**

**Agent:**                         N/A  
**Address:**                      N/A

**Item 6      Governing Law (clause 10.5)**

**Place:**                         Victoria



## **Schedule 2 Notice of Revocation**

**To:** The Manager  
Australia and New Zealand Banking Group Limited  
Level 53  
530 Collins Street  
Melbourne, Victoria, 3000

**Customer:** Almond Land Pty Ltd

Under clause 6.3 of the guarantee and indemnity dated [Insert Date of Guarantee] covering this customer, I am hereby notifying you that the guarantee and indemnity will not cover any further amounts you advance to this customer after the date being 14 days after the date you receive this notice.

I understand that the guarantee and indemnity will still cover money that the Bank has already advanced and must advance and any current transactions.

**Date:** \_\_\_\_\_

### **Schedule 3 Partnership Provisions**

#### **Part A**

1. If a customer is a partnership, a change in the membership of the partnership (whatever the nature of or the reason for the change) does not affect this guarantee.

In particular, this guarantee continues as a guarantee and indemnity for the obligations of the partnership both as it was before the change and as it is after the change.

2. If a customer is a company, the amalgamation or absorption of the customer with another company does not affect this guarantee.

#### **Part B**

1. If some or all of the persons comprising the Guarantor are a partnership, and there is a change in the membership of the partnership (whatever the nature of or the reason for the change), or the partnership ceases to carry on business:

- (1) the change in membership or ceasing to carry on business does not affect this guarantee; and
- (2) those persons will continue to be bound by this guarantee whether or not any of the them is a member of the new partnership.

## **Schedule 4 Trustee Provisions**

### **1. Liability**

The relevant Guarantor is liable both in its own right and as trustee of the trust named in Item 1 of Schedule 1.

### **2. Assurances by the trustee**

The relevant Guarantor warrants to the Bank that, at the time of signing this guarantee:

- (1) It is the only trustee of the trust, and no step has been taken to remove it or to appoint another trustee;
- (2) it has delivered to the Bank in writing all of the terms of the trust;
- (3) it is entering into this guarantee for a proper purpose of the trust; and
- (4) it has the power and authority under the trust to enter into this guarantee; and
- (5) it has the right to be indemnified fully out of the trust property, before the beneficiaries of the trust, for all liabilities that it incurs under this guarantee.

The relevant Guarantor will make sure that none of these things is or becomes untrue in any way.

### **3. Obligations of the trustee**

The relevant Guarantor will not, unless the Bank agrees first in writing:

- (1) cease to be the sole trustee of the trust;
- (2) allow the trust to be determined in any way;
- (3) allow any part of the capital of the trust to be distributed in any way;
- (4) allow the trust deed to be varied, added to or revoked; or
- (5) if the trust is a unit trust, allow any units to be issued, transferred, charged, redeemed or otherwise dealt with.

If anyone succeeds the relevant Guarantor as trustee of the trust, the relevant guarantor will make sure that its successor executes whatever documents the Bank requires to ensure that this guarantee is binding on its successor.

**4. Rights against the trust assets or the beneficiaries**

The relevant Guarantor will, if the Bank asks it to, exercise any rights that the relevant Guarantor has against the trust assets or the beneficiaries for the purpose of repaying the guaranteed money to the Bank. The Bank may exercise all the rights that the relevant Guarantor may have against the trust assets or the beneficiaries.

The Bank may exercise the same rights and remedies against the trust assets as it could exercise against those assets if they were owned by the relevant Guarantor personally.

The Bank's rights will not be modified or reduced because the Bank is aware (or is treated as being aware) of an interest that anyone else has, or claims, under the trust or against any trust assets.

Executed as a Deed.

Signed for and on behalf of  
**Timbercorp Securities Limited** ABN  
12 092 311 469 by a duly appointed  
attorney in the presence of:

  
\_\_\_\_\_  
Signature of Witness

**Chris O'Bryne**

\_\_\_\_\_  
Name of Witness (please print)

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

**Robert Hance**

\_\_\_\_\_  
Name of Attorney (please print)

Signed for and on behalf of **Almond  
Management Pty Ltd** ABN 71 094 468  
845 by a duly appointed attorney in the  
presence of:

  
\_\_\_\_\_  
Signature of Witness

**Chris O'Bryne**

\_\_\_\_\_  
Name of Witness (please print)

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

**Robert Hance**


\_\_\_\_\_  
Name of Attorney (please print)

Signed for and on behalf of  
**Timbercorp Lands Pty Ltd** ABN 54  
085 886 835 by a duly appointed  
attorney in the presence of:

  
\_\_\_\_\_  
Signature of Witness

**Chris O'Bryne**


\_\_\_\_\_  
Name of Witness (please print)

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

**Robert Hance**


\_\_\_\_\_  
Name of Attorney (please print)

Signed for and on behalf of  
**Timbercorp Finance Pty Ltd** ABN 88  
054 581 190 by a duly appointed  
attorney in the presence of:

  
Signature of Witness

Chris O'Bryne


Name of Witness (please print)

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

Robert Hance


Name of Attorney (please print)

Signed for and on behalf of  
**Timbercorp Finance (Vic) Pty Ltd**  
ABN 57 091 460 356 by a duly  
appointed attorney in the presence of:

  
Signature of Witness

Chris O'Bryne

Name of Witness (please print)

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

Robert Hance


Name of Attorney (please print)

Signed for and on behalf of  
**Timbercorp Forestry Pty Ltd** ABN 47  
070 952 742 by a duly appointed  
attorney in the presence of:

  
Signature of Witness

Chris O'Bryne


Name of Witness (please print)

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

Robert Hance


Name of Attorney (please print)

Signed for and on behalf of Almond  
Australia Pty Ltd ABN 48 094 429  
419 by a duly appointed attorney in the  
presence of:

  
\_\_\_\_\_  
Signature of Witness

**Chris O'Bryne**

\_\_\_\_\_  
Name of Witness (please print)

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

**Robert Hance**

\_\_\_\_\_  
Name of Attorney (please print)