

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

LIST E

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)
ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND ORS ACCORDING TO THE SCHEDULE
Plaintiffs**

CERTIFICATE OF EXHIBIT

Date of document: 5 October 2009
Filed on behalf of: the Plaintiffs

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This is the exhibit marked "**MAK-15**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 5 October 2009.

Before me:



Exhibit "MAK-15"

Private Offer Scheme 2002 LJVA and PMA

BRIDGET ELLEN SLOCUM
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Private 2002 007
private

Licence and Joint Venture Agreement

**2002 TIMBERCORP ALMOND PROJECT
(PRIVATE OFFER NO. 1)**

Almond Land Pty Ltd

Each several Grower

Almond Management Pty Ltd

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Licence and Joint Venture Agreement

Date of the Agreement:

In respect of each several Grower means the date on which the Project Manager has accepted the Grower's application for interests being offered under the Information Memorandum and Application and Documents Package as specified in Schedule 1 to this Agreement.

Parties to the Agreement:

1. ALMOND LAND PTY LTD

ACN 091 460 392
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Land Owner)

2. Each several Grower named in Schedule 1 to this Agreement

(Grower)

3. ALMOND MANAGEMENT PTY LTD

ACN 094 468 845
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Project Manager)

Background to the Agreement

- A.** The Project Manager intends to establish a project for the management of an almond orchard, the cultivation of almond trees and harvesting and processing of almonds for commercial gain. The Land Owner and the Grower will participate in that project and associate themselves as joint venturers.
- B.** The Land Owner is or is entitled to become the registered proprietor of the Land, the owner of the Water Licences and the Capital Works and any other capital works that may be established on the Land from time to time.
- C.** The Land Owner has agreed to grant a licence to the Grower to use and occupy the JV Almondlots in association with itself as joint venturers, for the cultivation of Almond Trees and harvesting of Almonds, subject to the terms and conditions of this Agreement.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires or implies, the following expressions have the meanings set out opposite each of them:

Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Almondlot:	each separate identifiable area of the Land comprising approximately 0.25 hectares on which a Grower will carry on the business of primary production in a joint venture with the Land Owner and includes the Capital Works and the Water Licences attributed to the Project;
Almond Trees:	the almond trees planted on the Orchard;
Almonds:	the almonds grown or growing on the Grower's Almondlots or the Orchard, whichever is applicable, and whether or not harvested;
Application and Documents Package	means the application and documents package which comprise the application form for the Project, instructions on how to complete the application form and a pro forma copy of the Project Agreements;
Business Day:	any day other than a Saturday, Sunday or a public holiday on which banks are open for business with the public in Melbourne;
Capital Works:	the infrastructure and capital works, including the Almond Trees, that the Land Owner has carried out, at its cost, on the Land;
Commencement Date:	the date of this Agreement;
Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and terminating on 30 June 2002 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	the same as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (as amended);
GST Rate:	the rate of GST under the GST Law;
Growers:	all the Growers in the Project;
Indexed:	adjusted on the date on which a relevant payment is due, or the date upon which a relevant calculation is made, whichever is

	applicable (the Date), by the aggregate percentage change in the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) for the previous four (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date (or if in the relevant clause a date is provided from which the adjustment is to be made then prior to that date);
Information Memorandum	the document (together with the Application and Documents Package) making an excluded offer, under section 708 of the Corporations Act, for interests in the Project to potential Growers;
JV Almondlots:	the number of Almondlots allotted to the Joint Venture as set out in Schedule 1;
Joint Venture:	the joint venture between the Land Owner and the Grower constituted by this Agreement in respect of the Joint Venture Operations;
Joint Venturers:	the Land Owner and the Grower;
Joint Venture Assets:	the Participating Interest of the Joint Venturers in the Project Assets under the Project and Management Agreement;
Joint Venture Operations:	the growing and cultivation of Almond Trees on, and management of, the JV Almondlots for the production of Almonds for commercial gain;
Land:	the land on which the Project will be conducted as described in the Information Memorandum or such other land that is used for the Project;
Orchard:	means the almond orchard established on that specified and identifiable part of the Land on which the Project will be conducted and on which Growers will each carry on the business of primary production.
Participating Interest:	the entitlement of the Grower to the Project Assets, the Almonds and the Proceeds, as defined in the Project and Management Agreement;
Prescribed Proportion:	the proportionate interest of the Grower and the Land Owner respectively in the Joint Venture Assets as set out in clause 11.4 ;
Proceeds:	<ul style="list-style-type: none"> (a) any moneys payable to the Joint Venture under any policy of insurance in relation to the JV Almondlots, the Almonds or the Project; (b) proceeds from the sale of a Joint Venturer's entitlement to the Almonds produced by the Project; and (c) any other moneys payable to the Joint Venture from the Project;
Project:	the 2002 Timbercorp Almond Project (Private Offer No. 1) promoted by the Project Manager and relating to the management of an almond orchard, the cultivation and harvesting of Almond Trees and the processing of Almonds for commercial gain;
Project and Management Agreement:	an agreement for the establishment of the Project and the management of the business of the Joint Venturers conducted on the JV Almondlots between the Project Manager and the Joint Venturers;

Project Manager	means Almond Management Pty Ltd (ACN 094 468 845) or such other person who holds the office from time to time
Term:	the term set out in clause 4.1;
Water Licences:	the water licences owned or acquired by the Land Owner and attributed to the Project;

1.2 Interpretation

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
- (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally;
- (j) if any of the persons comprising the Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
- (k) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be read as if the expression "(but not limited to)" immediately followed such word.

1.3 Headings

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

1.4 Delegation

The Land Owner is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement, through

its employees, agents and contractors but any delegation by the Land Owner does not release the Land Owner from liability under this Agreement.

2. ESTABLISHED ORCHARD

2.1 Warranty

The Land Owner warrants that it has, at its own cost, established, or procured the

establishment of, the Almondlots on the Land in accordance with good horticultural and environmental practices and constructed necessary infrastructure and carried out capital works. Without limiting the generality of this clause, it has:

- (a) identified the relevant parts of the Land which are suitable for growing almonds based on soil types, soil depths and contours;
- (b) organised various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
- (c) organised block layout in relation to the Almondlots and pegged those blocks;
- (d) caused the preparation of an irrigation and drainage plan and has constructed and installed the internal irrigation equipment, the internal irrigation system and the irrigation infrastructure;
- (e) carried out drainage work and work to help prevent soil erosion on all Land;
- (f) cleared any vegetation or trees from the Orchard, performed broadacre weed spraying, disc ploughing and ripping and mounding of tree rows, applied preplant fertiliser spreading and discing, x-planning tree rows and marking out tree location;
- (g) planted almond trees on the Orchard during June 2001; and
- (h) provided such other capital works, services or things which, in the reasonable opinion of the Land Owner, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs (a)-(g) above.

2.2 Capital Works and Water Licences

The Grower acknowledges that the Capital Works on the Grower's Almondlot, and the Water Licences attributed to the Project, are, and will at all times remain, the property of the Land Owner.

3. GRANT

3.1 Grant of Licence

The Land Owner grants to the Grower and the Grower takes from the Land Owner a licence, effective from the Commencement Date, to use and occupy the JV Almondlots in joint venture with the Land Owner for the purpose only of conducting the Joint Venture Operations.

3.2 No right of exclusive occupation

The right granted to the Grower under clause 3.1 confers no right of exclusive occupation of the JV Almondlots.

3.3 Water Licences

The Land Owner must:

- (a) do all things necessary to ensure that its rights under the Water Licences are fully exploited to maximise the use and enjoyment of them by the Grower;
- (b) take all steps to avoid interfering with the supply of water to the Grower's Almondlots and to avoid any actions that would prejudice the Grower's rights under this Agreement; and
- (c) purchase and maintain the Water Licences during the Project and purchase any additional water rights on a temporary or permanent basis that may be

required from time to time in order to irrigate the Almondlots.

4 TERM

4.1 Term of Agreement

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to **clauses 10.1 to 10.3** and **clause 12**, this Agreement will continue until the earlier of:
 - (i) termination of the Joint Venturers' Participating Interest in the Project;
 - (ii) 30 June 2022; and
 - (iii) termination of the Project.

4.2 Grower's Obligations Upon Termination

- (a) At the end of this Agreement, the Grower must return the JV Almondlots to the Land Owner in good condition, but the Grower is not required to remove Almond Trees or restore the JV Almondlots to their original condition.
- (b) Any structures or plant and equipment of any description, which belong to the Joint Venture, must be removed from the JV Almondlots within 30 days after the end of this Agreement. If the parties do not comply with this requirement then, as between the Land Owner and the Grower, all structures and plant and equipment remaining on the JV Almondlots at the time will become the absolute property of the Land Owner.
- (c) The Land Owner has no obligation to pay the Grower any compensation.

5. GOVERNMENT APPROVALS

The Project Manager must maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Almondlots.

6. CONDITION PRECEDENT

This Agreement is subject to and conditional on the Joint Venturers entering into the Project and Management Agreement with the Project Manager prior to or on the Commencement Date.

7. LICENCE FEE

7.1 Fee

- (a) The Grower must pay to the Land Owner a licence fee of \$774.55 per JV Almondlot for the period from the Commencement Date until 30 June 2002. In respect of each of the Financial Years ended 30 June 2003 and 30 June 2004, the licence fee will be \$774.55 per JV Almondlot and will be payable on 31 October 2002 and 31 October 2003 respectively. Thereafter, on 31 October of each subsequent year during the life of the project, the Grower must pay an

annual licence fee in accordance with **clause 7.2**.

- (b) All licence fees under this agreement are payable solely by the Grower and the Land Owner will not be required to pay or contribute to any licence fees at any time during the term of this Agreement.

7.2 Adjustments to licence fee

The licence fee will be Indexed on 31 October 2004 and each anniversary thereafter during the Term.

7.3 Discontinuance or suspension of CPI

If the Consumer Price Index (All Groups) Weighted average of eight capital cities is discontinued or suspended, the method of review set out in **clause 7.2** will cease to apply and will be replaced with such alternative method as is adopted for the purposes of the Project and Management Agreement in accordance with the definition of "Indexed" in that agreement.

8. GROWER'S OBLIGATIONS

8.1 Grower's duties

The Grower must, at its expense:-

- (a) use the JV Almondlots solely for the purpose of Joint Venture Operations;
- (b) comply with good horticultural and environmental practices;
- (c) comply with all laws and regulations relating to the use and occupancy of the JV Almondlots;
- (d) maintain the JV Almondlots in accordance with good horticultural practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) permit the Land Owner and its employees, agents and contractors to enter upon the JV Almondlots from time to time with or without equipment for the purposes of observing the state of the JV Almondlots, and provide to the Land Owner sufficient rights of access to the Almond Trees in order for it to perform its duties and obligations under this Agreement;
- (f) permit the Project Manager and its employees, agents and contractors to enter upon the JV Almondlots from time to time with or without equipment for the purpose of performing its obligations under the Project and Management Agreement;
- (g) comply or procure compliance with the provisions of the Project and Management Agreement; and
- (h) give such rights of way and free access to the occupiers of any other Almondlots adjoining the JV Almondlots as are necessary for their proper use and enjoyment of their Almondlots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the JV Almondlots.

8.2 Delegation by Grower

The Grower may, for the better performance of its obligations under this Agreement, engage any person as an agent and all rights granted and the Grower's agent may enjoy obligations imposed on the Grower under this Agreement.

8.3 Delegation does not limit Grower's liability

Any delegation by the Grower under clause 8.2 does not release the Grower from liability under this Agreement.

9. LAND OWNER'S OBLIGATIONS

The Land Owner must:

- (a) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent authority in respect of all Almondlots; and
 - (b) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Land Owner or other persons.
-

10. TERMINATION OF AGREEMENT

10.1 Termination of Agreement by Grower

The Grower may terminate this Agreement by notice in writing to the Land Owner immediately, if either the Land Owner or the Project Manager:

- (i) goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Land Owner or the Project Manager or any part of its undertaking;
- (ii) ceases to carry on business; or
- (iii) fails or neglects to pay any monies due to any Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by the Land Owner or the Project Manager, as appropriate, of written notice from the Growers or a Grower specifying the default and requesting that the default be remedied, except where the Land Owner or the Project Manager, as appropriate, has advised the Growers or the Grower, whichever is the case, of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination of Agreement by Land Owner

- (a) Subject to **paragraph 10.2(b)** and without prejudice to the Land Owner's rights under **clause 12**, the Land Owner may terminate this Agreement, with immediate effect, if the Grower fails to make a payment within the time required under this Agreement or commits a material breach of this Agreement, and fails to remedy the breach or make reasonable compensation in money within 30 days after the Land Owner has served a written notice on the Grower requiring the Grower to remedy the breach.
- (b) The written notice referred to in **paragraph 10.2(a)** must specify the breach.
- (c) The Agreement will terminate if the Land Owner exercises its rights under **clause 12**.

10.3 Damage to Almondlots

If, in respect of the JV Almondlots:

- (i) the whole or a substantial part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (ii) an independent horticultural consultant commissioned by the Grower reasonably

determines that the whole or a substantial part of the JV Almondlots is no longer commercially viable,

the Grower may terminate this Agreement in respect of all the JV Almondlots by giving not less than 4 months' prior written notice of such termination to the Land Owner. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.4 Reduction of JV Almondlots

If in respect of the JV Almondlots:

- (i) part of the JV Almondlots is damaged or destroyed whether by fire or any other cause whatsoever; or
- (ii) an independent horticultural consultant commissioned by the Grower reasonably determines that part of the JV Almondlots is no longer commercially viable,

the Grower may terminate this Agreement in respect of the JV Almondlots on which the affected part of the Almond Trees is or was growing, by giving not less than 4 months' prior written notice of such termination to the Land Owner. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.5 Termination of Project and Management Agreement

This Agreement terminates in respect of the Grower immediately if the Project and Management Agreement in respect of the Grower is terminated by the Grower for any reason.

10.6 Effect of Termination

- (a) Termination of this Agreement under **clauses 10.1, 10.2 or 10.3** or reduction of the JV Almondlots under **clause 10.4** is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Agreement in respect of any number of all of the JV Almondlots or part of a JV Almondlot under this **clause 10** does not affect the rights or obligations of the parties in respect of any other JV Almondlots or other part of the reduced JV Almondlots.
- (c) If this Agreement is terminated under **clause 10.2**, the Grower loses all rights and interest as a participant in the Project and the procedures for the consequences of termination as set out in the Project and Management Agreement and this Agreement may be followed.
- (d) The termination of this Agreement will terminate the rights and obligations of the Parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.

11 JOINT VENTURE

11.1 Acknowledgement

The Land Owner and the Grower acknowledge that they have entered into the Project and Management Agreement as joint venturers on the terms and conditions which follow for the purpose of engaging in a primary production business of developing and cultivating an almond orchard and producing and processing Almonds for commercial gain.

11.2 Constitution of Joint Venture

The Land Owner and the Grower constitute a joint venture for the purposes of carrying on the Joint Venture Operations in accordance with this Agreement.

11.3 Name

The joint venture will be known as the 2002 Timbercorp Almond Project (Private Offer No. 1) Joint Venture.

11.4 Joint Venturer's Prescribed Proportion

The Grower is entitled to a Prescribed Proportion of the Joint Venture Assets of 90% and the Land Owner is entitled to a Prescribed Proportion of the Joint Venture Assets of 10%.

11.5 Entitlements and Obligations

Subject to the terms and conditions of the Project and Management Agreement, each of the Grower and the Land Owner:

- (a) is entitled to its Prescribed Proportion of the Almonds and the Proceeds;
- (b) must contribute to the Project Manager in proportion to its Prescribed Proportion of the management expenses and tree supply and planting expenses; and
- (c) indemnifies the other against any losses or liability exceeding its Prescribed Proportion by reason of any joint liability incurred, or joint loss sustained, in connection with any contract or arrangement entered into by the Joint Venture.

11.6 Commencement and Term of this Joint Venture

The Joint Venture commences on the date of this Agreement and unless terminated under **clause 10**, terminates on the termination of this Agreement.

11.7 Disposition of Joint Venture Assets on Termination

- (a) On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Growers in their Prescribed Proportions, or be sold.
- (b) If the Joint Venture Assets are sold under **paragraph 11.7(a)**, the net proceeds of sale must be divided amongst the Growers on a pro rata basis in accordance with their Prescribed Proportions.

12 LICENCE FEES AND EXPENSES

12.1 Failure to Pay

If the Grower fails or neglects to pay the licence fee or its Prescribed Proportion of any amount due by the Joint Venturers under the Project and Management Agreement by the due date, the Land Owner may, after giving the Grower 30 days' prior written notice, terminate this Agreement under **clause 10.2** and exercise either of the remedies set out in **clauses 12.2** and **12.3** (in addition to and without prejudice to any other rights of the Land Owner).

12.2 Land Owner may pay on Behalf of Defaulting Grower

If the Grower fails or neglects to make payment of any amount under **clause 12.1**, the Land Owner may pay on behalf of the Grower, from its own funds, any such expense owing by the Grower and the Land Owner will be entitled to be reimbursed out of any Proceeds of the Grower the amount of such payment together with interest at a rate of 3% above the Commonwealth Bank's prime overdraft lending rate, calculated from the date that the payment fell due until the Land Owner has been reimbursed in full.

12.3 Land Owner may Sell Defaulting Grower's Interest

If a Grower fails or neglects to make payment of any amount under **clause 12.1** then the Project Manager, on behalf of the Land Owner, may deal with the interest of the Grower by exercising any of its powers under clause 16 of the Project and Management Agreement.

13. ASSIGNMENT

13.1 Assignment by Land Owner

Subject to **clause 13.2**, the Land Owner may freely assign any of its rights and interests under this Agreement so long as the Land Owner does not assign its interest in this Agreement in any way without first entering a deed with the person with whom the Land Owner is dealing ("the Grantee"). The deed must contain a covenant by the Grantee in favour of the Grower to observe and perform all or any of the covenants:-

- (a) contained or implied in this Agreement; and
- (b) required to be observed or performed by the Land Owner.

Paragraph 13.1(a) also applies if the Land Owner sells the Land and the obligations of the Land Owner are read as applying to the purchaser of the Land.

13.2 Agreements with Contractors

The Land Owner may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which it has delegated some or all of its obligations under this Agreement, and for this purpose, the Land Owner has obtained the written consent to the assignment from the contractor.

13.3 Land Owner or Grantee to pay for deed

The Land Owner or the Grantee, but not the Grower, must pay the cost of any deed required under **clause 13.1**.

13.4 Assignment by Grower

Subject to the requirements of the Project and Management Agreement, the Grower may not assign its rights under this Agreement unless the Grower first obtains a deed of covenant signed by the proposed assignee in favour of the Land Owner stating that the assignee will at all times during the Term observe and perform all and any of the terms and conditions of this Agreement and the Project and Management Agreement applying to the Grower.

13.5 Release of liability of Grower

Once the Grower has perfected an assignment of its interest in this Agreement in accordance with **clause 13.3**, the Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected.

14. GOODS AND SERVICES TAX

- (a) If any supply made by a party ("Supplier") to the other ("Recipient") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "GST Exclusive Amount") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this

Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.

- (c) GST payable under paragraph (b) must be paid by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph (b).
- (d) If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST, except any GST for which that Party is entitled to an input tax credit.
- (e) If a Party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

15. LIMITATION OF LIABILITY OF GROWER

Subject to clause 12.2, in no circumstances will the Grower be obliged to incur any liability under this Agreement in excess of the annual licence fee, its Participating Interest of the fees and expenses payable under the Project and Management Agreement and the Proceeds.

16. NOTICE

16.1 Form of Notice

Any notice to be given under or in connection with this Agreement will be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

- (a) hand delivery;
- (b) post or registered or certified mail, or
- (c) fax

to such address or fax number of the party to whom the notice is directed as the addressee may notify prior to such notice being given.

16.2 Receipt of Notice

Any notice will be effective and will be deemed to be received:

- (a) if hand delivered, then upon delivery;
- (b) if posted, then 48 hours after the notice has been properly posted if that falls on a business day, and if not, on the first business day afterwards; and

-
- (c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.
-

17. PROPER LAW

This Agreement is governed by and to be interpreted in accordance with the laws of Victoria and the parties to this Agreement submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement.

18. AMENDMENTS

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
 - (b) Subject to paragraph (c), the Land Owner, with the written consent of the Project Manager, may amend the provisions of this Agreement to such extent as may be required to:
 - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
 - (ii) comply with the effect of any judicial decision; or
 - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
 - (c) Prior to making any amendment under paragraph (b), the Land Owner must be reasonably satisfied that the amendment does not adversely affect the rights of Growers.
 - (d) The Land Owner may make the amendments on behalf of itself, and then on behalf of the Grower. To give effect to this clause, each Grower appoints the Land Owner as its attorney to make amendments to this Agreement.
 - (e) If the Land Owner cannot be satisfied that the amendments can be made in accordance with the paragraph (c), then amendments may only be made in accordance with paragraph (a) of this clause.
-


19. DISPUTES

If a dispute arises under this Agreement between the parties it must be referred for resolution in accordance with the dispute resolution provisions of the Project and Management Agreement.

Executed as an Agreement

EXECUTED by ALMOND LAND
PTY LTD

by authority of its directors:



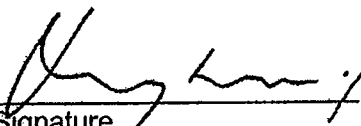
Signature

Darren Lipton

Full Name

Director

Position Held



Signature

John Vaughan

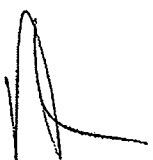
Full Name

Director

Position Held

EXECUTED by ALMOND
MANAGEMENT PTY LTD

as agent and attorney for and on
behalf of each several Grower by
authority of its directors:



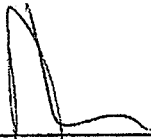
Director

Darren Lipton

Director/Secretary

EXECUTED by ALMOND
MANAGEMENT PTY LTD
by authority of its directors:

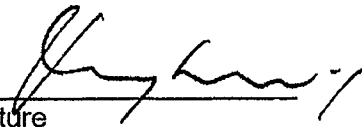
)
)
)
)



Signature
Darren Lipton

Full Name
Darren

Position Held



Signature
John Vaughan

Full Name
DIRECTOR

Position Held

SCHEDULE 1

Grower and JV Almondlot Details

2002 007A
private

ALMOND LAND PTY LTD
EACH GROWER
ALMOND MANAGEMENT PTY LTD

DEED OF VARIATION
(Licence and Joint Venture Agreement)
2002 Timbercorp Almond Project (Private Offer)

CORRS CHAMBERS WESTGARTH

Lawyers
Bourke Place
600 Bourke Street
Melbourne VIC 3000
AUSTRALIA
Tel: (03) 9672 3000
Fax: (03) 9602 5544
DX: 336 MELBOURNE

Ref: TB/UG
TIMB1480/6551865
M/928093/2

THIS DEED is made on

16 July

2002

BETWEEN **ALMOND LAND PTY LTD** ACN 091 460 392 ("**Land Owner**")

AND **EACH GROWER**

AND **ALMOND MANAGEMENT PTY LTD** ACN 094 468 845 ("**Project Manager**")

BACKGROUND TO THE DEED

- A** Pursuant to a Licence and Joint Venture Agreement in respect of the 2002 Timbercorp Almond Project (Private Offer) between the Land Owner, the Project Manager and each Grower (each, a "**Licence & Joint Venture Agreement**"), the Land Owner has granted a licence to each Grower to use and occupy the JV Almondlots (in association with the Land Owner), for the cultivation of Almond Trees and the harvesting of Almonds .
- B** The Land Owner, the Project Manager and Almond Management Pty Ltd (as attorney for each of the Growers), wish to amend the Licence and Joint Venture Agreements for the purpose of facilitating the management and operation of each Project and have satisfied themselves that the amendments effected by this Deed will not adversely affect the rights or interests of the Growers.
- C** The Project Manager consents to the amendments made in this Deed.

IT IS AGREED

1 INTERPRETATION

1.1 Definitions

In this Deed:

"**Grower**" means a person who is a party to a Licence and Joint Venture Agreement with the Land Owner in respect of the 2002 Timbercorp Almond Project (Private Offer) which has not terminated before the date of this Deed.

1.2 Incorporation of terms

Terms defined in the Licence and Joint Venture Agreements have the same meaning in this Deed unless the context requires otherwise.

2 CONSIDERATION

Each party acknowledges that it has received valuable consideration for entering into this Deed.

3 AMENDMENT

- (a) This document is supplemental to and constitutes an amendment of each of the Licence and Joint Venture Agreements, and the Licence and Joint Venture Agreements shall be construed and take effect as amended in this Deed.

- (b) With effect on and from the date of this Deed, each Licence and Joint Venture Agreement is amended as follows:

- (i) Clause 1.1 is amended by inserting the following definition:

“Project Documents” means this Agreement, the Project and Management Agreement, the “Call Option Agreement”, the “Almond Orchard Management Agreement” and each lease and sub-lease in relation to the Project, and each other document contemplated by, or required in connection with, the Project and each document entered into for the purpose of amending, novating, restating or replacing any such document.”

- (ii) A new clause 3.4 is inserted as follows:

“3.4 Replacement of Almond lots

The Land Owner may, at any time, allocate or allot a Grovelot or Grovelots to a Grower from the Land (of such location or locations within the Land as the Land Owner in its absolute discretion thinks fit) in substitution for a Grovelot or Grovelots allocated or allotted to a Grower pursuant to this Agreement. The Land Owner or its nominee (each as attorney for and on behalf of the Grower) may enter into such documents, and the Land Owner may do such other things, as the Land Owner in its absolute discretion considers necessary or desirable in order to give effect to this clause, including but not limited to making amendments to any document, or to any lease or sub-lease in respect of all or any part of the Land.”

- (iii) A new clause 10.7 is inserted as follows:

“10.7 Ownership of Almond Trees and Almonds during and following termination of Project

Notwithstanding anything to the contrary in a Project Document:

- (i) at all times during the term of the Project, the Almond Trees are, and will remain, the property of the Land Owner and the Almonds and any resulting product will be the Property of the Grower to the extent of its joint venture interest; and
- (ii) on termination of the Project for whatever reason before its expiry, the Almond Trees, the Almonds and any resulting product will be the property of the Land Owner, provided that the last crop of Almonds harvested before that termination and any resulting product will remain the property of the Grower; and

(iii) on expiry of the Project, the Almond Trees, the Almonds and any resulting product will be the property of the Land Owner."

(iv) A new paragraph is inserted at the end of clause 13.1 as follows:

"Notwithstanding anything to the contrary in this Agreement, the Land Owner may grant security over its rights and interests under this Agreement in favour of any financier (or the financier's representative) and by any means, provided that the Land Owner procures the agreement of the financier (or its representative) to enter into a deed of covenant where the relevant financier (or its representative) takes its security subject to the rights of the Growers on terms acceptable to the Land Owner."

4 **RATIFICATION**

In all other respects, the parties hereby ratify the terms and conditions of the Licence and Joint Venture Agreement.

5 **PROJECT MANAGER'S CONSENT**

The Project Manager hereby ratifies and consents to the amendments to the Licence and Joint Venture Agreement in the manner set out in this Deed.

6 **GOVERNING LAW**

This Deed is governed by the law in force in Victoria.

EXECUTED as a deed.

EXECUTED by **ALMOND LAND PTY LTD** by the party's attorney pursuant to a power of attorney dated 15 July 2002 who states that no notice of revocation of the power of attorney has been received in the presence of:

.....
Witness

.....
Name of Witness (print)

.....
Attorney

Sol Rabinowicz

.....
Name of Attorney (print)

EXECUTED by **EACH GROWER IDENTIFIED IN THE LICENCE AND JOINT VENTURE AGREEMENT** by its attorney **ALMOND MANAGEMENT PTY LTD** who states that no notice of revocation of the power of attorney has been received

Executed by **ALMOND MANAGEMENT PTY LTD** by its attorney under power of attorney dated 15 July 2002 who states that no notice of revocation of the power of attorney has been received in the presence of

.....
Attorney

Sol Rabinowicz

.....
Name of Attorney

.....
Witness

.....
Name of Witness

EXECUTED by ALMOND)
 MANAGEMENT PTY LTD by the)
 party's attorney pursuant to a power of)
 attorney dated 15 July 2002 who)
 states that no notice of revocation of the)
 power of attorney has been received in the)
 presence of:

.....
 Witness

.....
 Name of Witness (print)

.....
 Attorney

.....
 Name of Attorney (print)

Sol Rabinowicz

Sol Rabinowicz

Private 2002 006

Project and Management Agreement

**2002 TIMBERCORP ALMOND PROJECT
(PRIVATE OFFER NO. 1)**

Almond Management Pty Ltd

Each Grower

Timbercorp Securities Limited

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Project and Management Agreement

Date of the Agreement:

In respect of each several Grower means the date on which the Project Manager has accepted the Grower's application for interests being offered under the Information Memorandum and Application and Documents Package as specified in Schedule 1 to this Agreement.

Parties to the Agreement:

1. Each several Grower named in the First Schedule to this Agreement together with the Land Owner as joint venturers in their respective proportions

(Grower)

2. **ALMOND MANAGEMENT PTY LTD**

ACN 094 468 845
Level 8, 461 Bourke Street
Melbourne Victoria 3000

(Project Manager)

3. **TIMBERCORP SECURITIES LIMITED**

ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne Victoria 3000

(TSL)

Background to the Agreement

- A. Each Grower has been granted a licence by the Land Owner in respect of one or more Almondlots under the Licence and Joint Venture Agreement.
- B. The Licence and Joint Venture Agreement permits each several Grower to use its Almondlots for the purpose of cultivation of Almonds and each Grower intends to use its Almondlots for this purpose
- C. Each Grower wishes to engage the Project Manager:
 - (a) to cultivate and maintain Almond Trees on, and generally manage, the Almondlots in accordance with the Management Plan and carry out and perform each Grower's obligations under the Licence and Joint Venture Agreement; and
 - (b) to procure the processing of the Almonds and sell the Almonds on behalf of the Grower.

-
- D. Each Grower acknowledges that the Project Manager has entered into an Almond Orchard Management Agreement with Select Harvests in respect of the Project, under which the Project Manager has engaged Select Harvests to undertake the day-to-day management of the Orchard, process the Almonds and market the Almonds through established domestic and export channels.
-

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context is clearly to the contrary, the following words have the meanings set out opposite them:

Accounts:	receipt and expenditure statements and balance sheets together with statements, reports and notes (including any notes of the Project Manager) attached to or intended to be read with any of those statements or balance sheets;
Accountants:	such firm or firms of accountants as may from time to time be appointed by the Project Manager;
Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Almond Orchard Management Agreement:	the agreement of that name between the Project Manager and Select Harvests under which the Project Manager has engaged Select Harvests to undertake the day-to-day farming of the Orchard, process the Almonds and market the Almonds through established domestic and export channels;
Almondlot:	a discrete allotment of approximately 0.25 hectares, comprising part of the Orchard, on which a Grower will carry on the business of primary production in a joint venture with the Land Owner, and includes the Capital Works and the Water Licences attributed to the Project. The expression "Growers' Almondlots" means all of the Growers' Almondlots;
Almonds:	the almonds grown or growing on the Grower's Almondlots or the Orchard, whichever is applicable;
Almond Trees:	the almond trees planted on the Orchard;
Application and Documents Package	means the application and documents package which comprise the application form for the Project, instructions on how to complete the application form and a pro forma copy of the Project Agreements;
Authorised Investments:	(a) money; (b) interest bearing deposits at call or for a term not exceeding three (3) months with or without security with

	<p>any Financial Institution;</p> <p>(c) negotiable certificates of deposit issued by or bills of exchange drawn, accepted or endorsed by any Bank; and</p> <p>(d) any deposit in the short term money market with any company that has been approved by the Reserve Bank of Australia, or by the Australian Securities and Investments Commission (pursuant to section 65(1)(a) of the Corporations Act), as an authorised dealer in that market;</p> <p>in each case subject to the restrictions in this Agreement;</p>
Bank:	a bank licensed to carry on the business of banking in Australia under the Banking Act 1959 (Commonwealth) or otherwise lawfully carrying on the business of banking in Australia or any of its States or Territories.
Business Day:	a day on which all Banks are open for general banking business in Melbourne, Victoria;
Capital Works:	the infrastructure and capital works, including the planting of the Almond Trees, that the Land Owner has carried out on the Orchard;
Commencement Date:	the date of this Agreement;
Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
Defaulting Grower:	a Grower who fails to pay Licence Fees or Management Fees under clause 16.1 by the due date;
Expenses:	<p>(a) the Management Fees; and</p> <p>(b) any other costs properly incurred and payable by or on behalf of the Growers under this Agreement;</p> <p>but does not include any expenses paid on behalf of a Defaulting Grower under clause 16.5;</p>
Financial Institution:	has the meaning given to it by section 111AZA(1) of the Corporations Act;
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and terminating on 30 June 2002 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Government Agency:	a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration or any applicable law;
Grower:	each several person (or if more than one person, those persons jointly) who is named or otherwise described in the First Schedule together with the Land Owner, as joint venturers under the

	Licence and Joint Venture Agreement;
GST:	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
GST Law:	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Incentive Fee Threshold:	the Net Proceeds estimated in the Information Memorandum to be received by the Grower in that Financial Year, less any allowance for inflation made in the Information Memorandum in arriving at such estimate, but Indexed from the date of this Agreement;
Indexed:	adjusted on the date on which a relevant payment is due (or the date upon which a relevant calculation is made, whichever is applicable) ("the Date"), by the aggregate percentage change in the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) for the previous four (4) quarters most recently published by the Australian Bureau of Statistics prior to the Date (or if in the relevant clause a date is provided from which the adjustment is to be made then prior to that date) (or if in the opinion of the Project Manager that method of calculation is no longer appropriate, such other index number as is recommended by the Accountants as fairly and reasonably taking into account inflation or deflation);
Information Memorandum:	the document (together with the Application and Documents Package) making an excluded offer, under section 708 of the Corporations Act, for interests in the Project to potential Growers;
Joint Venture:	the joint venture between the Grower and the Land Owner as constituted by the Licence and Joint Venture Agreement;
Land:	the land on which the Project will be conducted, as described in the Information Memorandum and such other land which is used in the Project;
Land Owner:	Almond Land Pty Ltd (A.C.N. 091 460 392) of Level 8, 461 Bourke Street, Melbourne in the State of Victoria;
Licence and Joint Venture Agreement:	the licence agreement between the Land Owner as licensor and the Grower as licensee in relation to the Grower's Almondlots and the agreement constituting the Joint Venture;
Licence Fee:	the annual licence fee payable by the Grower under and in accordance with the terms and conditions of the Licence and Joint Venture Agreement;
Management Fees:	the fees payable to the Project Manager under clause 12;
month:	a calendar month;
Net Proceeds:	the proceeds to which a Grower is entitled in a Financial Year under this Agreement;
Orchard:	the almond orchard established on that specified and identifiable part of the Land on which the Project will be conducted and on which Growers will each carry on the business of primary

	production;
Orchard Services:	the services described in clauses 7 and 8;
Participating Interest:	the entitlement of the Grower to the Project Assets, the Almonds and the Proceeds calculated in accordance with clause 2.2;
Party:	any of the Growers, the Growers, the Project Manager, TSL or any one or more of them as the context requires;
Proceeds:	<p>(a) interest received on moneys in the Bank Account;</p> <p>(b) any moneys payable to the Growers under any policy of insurance in relation to the Growers' Almondlots, the Crop, the Product or the Project;</p> <p>(c) proceeds from the sale of Almonds; and</p> <p>(d) any other moneys payable to a Grower from or in relation to the Project;</p>
Project:	the project promoted by the Project Manager and known as the "2002 Timbercorp Almond Project (Private Offer No. 1)", interests in which are offered under the Information Memorandum, of managing cultivating and harvesting Almond Trees and the processing and sale of Almonds;
Project Assets:	the funds for the time being in the Bank Account, any assets and property acquired through the Term of the Project using the money or property contributed by Growers, including the Proceeds, but excluding any assets or other property vested directly in the Growers, such as the Almonds;
Project Operations:	the operations of the Project described in clause 5.1;
Select Harvests:	Select Harvests Limited (CAN 000 721 380);
Special Resolution:	a resolution passed at a meeting of Growers duly convened and held in accordance with this Agreement by a majority of Growers in number present in person or by representative, attorney or proxy whose total Participating Interests exceed 75%;
Term:	the term of this Agreement under clause 3.1;
Termination Date:	<p>the earlier of:</p> <p>(a) termination of the Grower's Participating Interest in the Project;</p> <p>(b) 30 June 2022; and</p> <p>(c) termination of the Project;</p>
Water Licences:	the water licences owned or acquired by the Land Owner and attributed to the Project.

1.2 Construction

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other Agreement includes a variation or replacement of it;

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- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
 - (c) the singular includes the plural and vice versa;
 - (d) if a word is defined, cognate words have corresponding definitions;
 - (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
 - (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and assigns;
 - (g) a reference to a gender includes the other genders;
 - (h) a reference to "\$" or "dollars" is a reference to Australian dollars;
 - (i) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
 - (j) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally;
 - (j) if any of the persons comprising the Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
 - (k) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be read as if the expression "(but not limited to)" immediately followed such word.

1.3 Headings

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

1.4 Grower and Agreement

- (a) The term "Grower" in this Agreement is a reference to the particular Grower named in the Schedule to this Agreement and, unless the context otherwise requires, includes the Land Owner pursuant to the Joint Venture, in respect of the Almondlots that have been allotted to them.
- (b) The term "growers" in this Agreement is a reference to all growers that hold Almondlots in the Project in joint venture with the Land Owner and according to the context, the term "growers" may also include the Grower.
- (c) This Agreement is entered into in respect of the Grower's Almondlots referred to in Schedule 1 and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of each Almondlot held by the Grower.

1.5 Delegation

The Project Manager will be entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement, through,

its employees, agents and contractors. In the case of a delegation by the Project Manager of an obligation, that obligation will be deemed to have been fulfilled if carried out by the person to whom it was delegated.

2. PROJECT

2.1 Name

The Project will be known as the "2002 Timbercorp Almond Project (Private Offer No. 1)".

2.2 Grower's Participating Interest

- (a) Each Grower is entitled to a Participating Interest calculated in accordance with the formula:

$$A / B$$

where:

A: is the number of Almondlots licensed by the Grower under the Licence and Joint Venture Agreement and used in the Project; and

B: is the total number of Almondlots licensed by all of the Growers under the Licence and Joint Venture Agreement and used in the Project.

- (b) If there is a reduction in the area of a Grower's Almondlot or Almondlots under clause 10.4 of the Licence and Joint Venture Agreement, the Participating Interest of each Grower will be recalculated in accordance with the formula in paragraph (a) of this subclause. The recalculated Participating Interests will be applied from the date of the reduction in the area.

2.3 Entitlements and Obligations

- (a) Subject to **clause 18.2**, the Grower is entitled to the Almonds in proportion to its Participating Interest.
- (b) The Grower must
- (i) bear and pay to the Project Manager, in proportion to its Participating Interest, the Expenses of the Project; and
 - (ii) pay the Licence Fee.

3. COMMENCEMENT AND TERM OF THIS AGREEMENT

3.1 Term

The Project commences on the Commencement Date and, unless terminated under **clauses 21.2 or 21.4**, terminates on the Termination Date.

3.2 Disposition of Project Assets on Termination

- (a) On termination of the Project, all the Project Assets must be distributed to, or be held for the benefit of, the Growers in such manner as the Growers may agree, or be sold.
- (b) If the Project Assets are sold under paragraph (a), the net proceeds of sale must be divided amongst the Growers on a pro rata basis in accordance with their Participating Interests.

4. RELATIONSHIP OF THE PARTIES

4.1 No Partnership, etc

The relationship amongst the Growers, between the Growers and the Project Manager and between the Grower and the Project Manager is not, is not intended to be, is not deemed to be and is not to be treated as a partnership or association or, other than the relationship between the Land Owner and a Grower, a joint venture.

4.2 Project

The Parties expressly agree and acknowledge that:

- (a) the rights, duties, obligations and liabilities of the Growers are in every case several and not joint or joint and several;
- (b) each Party is an independent contracting party; and
- (c) no Party has any authority or power for or on behalf of any other Party to enter into any contract, to pledge any credit, to incur any liabilities, to assume any obligations or to make any warranties or representations whatsoever except as specifically provided by this Agreement.

5. THE PROJECT MANAGER

5.1 Engagement of Project Manager

The Grower engages the Project Manager for the Term and on the terms and conditions set out in this Agreement to:

- (a) generally manage and administer the Project;
- (b) cultivate the Orchard, harvest the Almonds and perform the Orchard Services;
- (c) as agent and attorney for the Grower, procure and perform the Orchard Services; and
- (d) sell the Almonds as agent and attorney for the Grower.

5.2 Project Manager to Carry out Orchard Services as Independent Contractor

The Parties agree that the Project Manager will carry out the Orchard Services as an independent contractor and not as agent of the Grower.

5.3 Grower to Ensure Project Manager's Actions

- (a) The Grower must do and ensure that any person who is removed as Project Manager and any person who is appointed as Project Manager, does all things and executes all documents necessary to transfer to the appointed Project Manager full legal title to all Project Assets and to effect all other matters required to be effected in connection with the removal or appointment.
- (b) The Grower must do all things necessary to ensure that the Project Manager at all times in acting as Project Manager under this Agreement acts solely in accordance with the terms and conditions set out in this Agreement.

5.4 Authority to Act

The Project Manager does not have any authority to act for, or to assume any obligation or liability on behalf of, the Grower or the Growers except such authority as is conferred on the Project Manager by this Agreement.

5.5 Limitation on Borrowings

The Project Manager may not raise or borrow moneys from any person or persons in connection with, or on behalf of, the Project, other than under the Information Memorandum.

5.6 Investment Powers

- (a) The Project Manager may apply the whole or part of such moneys as are from time to time standing in the Bank Account in such Authorised Investments in the name of the Project Manager as the Project Manager sees fit.
- (b) Should the Project Manager at any time and from time to time consider it desirable in the interests of a Grower or of the Growers to sell or otherwise dispose of, exchange, vary, modify or otherwise change any investment made pursuant to paragraph (a), the Project Manager may in its absolute discretion do so.
- (c) Any interest or other income earned from Authorised Investments will be paid to the Project Manager as part of its fees.

5.7 Indemnity

The Project Manager agrees to indemnify and hold the Grower and its officers, employees and agents, harmless from and against any and all losses, claims, damages and liabilities arising out of any act or any assumption of any obligation by the Project Manager done or undertaken on behalf of the Grower otherwise than by authority conferred by this Agreement.

5.8 Performance of Obligations

Subject to this Agreement, the Project Manager must use reasonable endeavours to perform all its functions and exercise its powers under this Agreement and conduct the Project Operations:

- (a) in a commercially reasonable manner;
- (b) honestly;
- (c) generally in accordance with good horticultural management and environmental practices which are generally recognised and adopted in Australia and are known and acceptable to the Project Manager and suitable for use on the Orchard; and
- (d) in the best interests of all the Growers and not in the interests of the Project Manager if those interests are not the same as those of the Growers.

The phrase "commercially reasonable manner" means, in any particular circumstances, a manner, which the Project Manager honestly believes is commercially reasonable in those circumstances having regard where appropriate to the fact that the Project Manager has to meet the costs of conducting the Project Operations out of the fees paid to it. Subject to paragraph (d) of this subclause, the phrase does not require the Project Manager to have regard to the interests of any person other than itself.

5.9 Additional Services

In addition to the activities set out in **clause 5.1** and without limiting the generality of **clause 5.1**, the Project Manager must, at its own expense, provide all necessary administrative, supervisory and consulting services.

5.10 Acceptance of Engagement

The Project Manager accepts its engagement on the terms of this Agreement.

6. CUSTODY OF PROJECT ASSETS

6.1 Custody of Project Assets

The Project Manager will have full and exclusive custody and control of the Project Assets for the purpose of conducting the Project Operations.

6.2 Limitation of Use of Project Assets

The Project Assets must not be used for any purpose other than in the normal course of the Project Operations.

6.3 No Proprietary Interest

The Project Manager does not have any proprietary interest in or title to any Project Assets under this Agreement.

7. ORCHARD MANAGEMENT

7.1 Management Plan

The Project Manager will cultivate and manage the Orchard in accordance with:

- (a) the Management Plan; and
- (b) good horticultural and environmental practices.

The Initial Management Plan for the Financial Year ending 30 June 2002 will be prepared within 30 days of the commencement of this Agreement and attached to this Agreement.

7.2 Management Services

Without limiting the generality of **clause 7.1**, the Project Manager will carry out the following activities, as required:

- (a) prune the Almond Trees by mechanical or other methods;
- (b) as permitted by law, eradicate vermin which have caused or may cause damage to the Almond Trees or the Orchard and put in place measures to control such vermin;
- (c) provide the Orchard with necessary irrigation water made available by the Land Owner through the Water Licences, operate the irrigation system licensed to Growers on the Orchard at various times in order to irrigate the Orchard;
- (d) at its discretion, conduct tests to ascertain the availability of nutrients in the soil on the Orchard and, based on the results, take whatever action is required to maintain the growth rate and productivity of the Almond Trees;

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- (e) fertilise the Orchard as required, in accordance with good horticultural practices, to maintain satisfactory rates of growth and productivity of the Almond Trees;
 - (f) in its absolute discretion and without needing the Grower's consent, destroy any of the Almond Trees or Almonds which have contracted an exotic, noxious or incurable disease;
 - (g) keep the improvements on the Orchard in good and substantial repair;
 - (h) maintain fire breaks in accordance with regulatory and insurance requirements and good horticultural practices;
 - (i) maintain the Orchard in accordance with good horticultural practices including using soil management technique methods to reduce erosion and maintain soil quality;
 - (j) as far as reasonably possible, keep the Orchard free from competitive weeds or other vegetation which may affect the growth or yield of the Almond Trees;
 - (k) protect the Almond Trees from insect infestation and competition from competing growth using good horticultural practices, including applying herbicides or pesticides to the Orchard and spraying under the Almond Trees as permitted by law;
 - (l) keep proper and accurate records of all fertilizers, nutrients and other chemicals applied to the Orchard or Almond Trees;
 - (m) regularly inspect and repair all stakes, fences and irrigation equipment on the Orchard;
 - (n) inspect and, where appropriate, retie the Almond Trees to stakes and attach Almond Trees to trellising in accordance with good horticultural practices;
 - (o) replant any of the Almond Trees in need of replacement in accordance with the terms of any agreement made with suppliers of the Almond Trees;
 - (p) comply with the Grower's licence obligations under the Licence and Joint Venture Agreement (except for those relating to the payment of fees);
 - (q) not discriminate between the Growers in the supply of water under the Water Licences;
 - (r) each Financial Year, commencing the Financial Year ending 30 June 2002, prepare, or arrange for the preparation of, the Management Plan for the Project, including a horticultural plan for the Orchard, horticultural program, operational plan and annual financial and operational budgets in relation to these horticultural matters, review the Management Plan and, if necessary, make amendments to it;
 - (s) provide any other service or thing which, in the reasonable opinion of the Project Manager, is incidental or ancillary to the ongoing management of the Orchard; and
 - (t) comply with all laws and regulations relating to the use and occupancy of the Orchard.

7.3 No Unlawful Acts

The Project Manager must not do or allow any unlawful act to be done on or adjacent to the Orchard and nothing in this Agreement or in the Management Plan for any Financial Year will require the Project Manager to do so.

7.4 Notify Land Owner of Notices

The Project Manager must give the Land Owner a copy of any notice (other than rates notices), which it receives from any Government Agency with respect to the Grower's Almondlots or the Orchard within seven days after receipt of the notice.

8. HARVESTING

8.1 Harvesting

Each year during the Term the Project Manager will, in accordance with good horticultural practices, test the maturity of the Almonds to determine whether the Almond Trees are ready for harvesting and, having done so, will harvest the mature Almond Trees.

8.2 Harvesting Method

The Project Manager must harvest the Almonds in accordance with good horticultural practices by any method (including machine harvesting) deemed appropriate by the Project Manager.

8.3 Delivery

The Project Manager will promptly deliver all harvested Almonds to a delivery point or points to enable the Almonds to be processed or sold.

8.4 Storage

Until the Almonds that are harvested are delivered, the Project Manager will store them in an appropriate manner to minimise the deterioration of the Almonds' quality. The Almonds may be stored on the Orchard or any other premises whether or not owned or operated by the Project Manager.

9. COMMENCEMENT OF ORCHARD SERVICES

9.1 Commencement

The Project Manager must commence to carry out or cause the commencement of the carrying out of the Orchard Services on behalf of the Grower on the Commencement Date.

10. ACCESS TO ORCHARD

10.1 Project Manager has Access

The The Project Manager and its invitees will be entitled to such access to the Almondlots as is necessary or desirable to perform the Project Manager's obligations under this Agreement.

10.2 Removal of Project Manager's Property After Termination

The Project Manager The Project Manager may remove from the Almondlots such plant and equipment, implements, furniture and other items brought onto the Almondlots within one month after the termination of this Agreement and may enter the Almondlots for the purpose of removing such items.

10.3 Roads and Tracks

- (a) The Project Manager is entitled (but has no obligation) to construct and maintain roads and tracks on the Grower's Almondlots primarily and principally to provide access to and from the Orchard from a public road for the:
 - (i) cultivation, maintenance and tending of the Almond Trees and the Almonds;
 - (ii) harvesting of the Almonds; and
 - (iii) removal of the Almonds.
- (b) Where the Project Manager has removed any material for road building purposes, the Project Manager must use reasonable endeavours to return the surface of the land to an appearance as close as possible to the appearance of the surface of surrounding land.

10.4 Grower's Access

Provided the Grower first gives the Project Manager 7 days' prior notice in writing, the Project Manager must permit the Grower or its duly authorised representatives to have access, at the Grower's expense and risk, at all reasonable times to the Grower's Almondlots and the facilities located on them.

10.5 Warranty as to Access

The Grower warrants that it has the right to grant access to the Grower's Almondlots for the performance by the Project Manager of its obligations, and the exercise by the Project Manager of its rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the owner of the land, any of the Growers or any person who derives title through or under the owner, or any of the Growers.

10.6 Failure to Perform if Access Denied

The Project Manager will not be liable for any failure to perform its obligations under this Agreement, which arises because it is denied access to, or possession or occupation of, the Orchard or any part of it.

11. NO LEASE OR LICENCE

This Agreement does not create any leasehold or proprietary interest or licence in favour of the Project Manager concerning the Growers' Almondlots.

12. PROJECT MANAGER'S FEE

12.1 Annual Fee

The Project Manager will be paid management fees in respect of each the periods set out below as follows:

- (a) in respect of the period commencing on the Commencement Date and ending on 30 June 2002 (the "first Financial Year") an amount of \$5,250.50 per Almondlot payable in advance on or before the Commencement Date; and
- (b) in respect of the period 1 July 2002 to 30 June 2003 – \$1,563.27 per Almondlot payable on 31 October 2002; and

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- (c) in respect of the period 1 July 2003 to 30 June 2004 – \$1,563.27 per Almondlot payable on 31 October 2003;
 - (d) thereafter, in respect of each subsequent Financial Year during the Term, an amount per Almondlot estimated by the Project Manager to be the reasonable costs of operating the Almondlots (which will include an allocation of overhead costs incurred by the Project Manager or its contractors that will not exceed \$50 per Almondlot Indexed (adopting June 2002 as the base year)) payable on 31 October during that respective Financial Year; and
 - (e) after the actual costs for that Financial Year have been determined by the Project Manager, the Project Manager will, when notifying the Grower under paragraph (d) of the projected costs for the succeeding Financial Year, notify the Grower of those actual costs per Almondlot, and either deduct the surplus per Almondlot from, or add the excess per Almondlot to, the fees payable for the next Financial Year, depending on whether they are more or less than the costs calculated by the Project Manager under paragraph (d).

12.2 Additional Management Fee

The Project Manager will be entitled to be paid additional management fees:

- (a) 2.5% of the annual proceeds of sale of Almonds payable to the Grower, in consideration of it managing the Grower's Almondlots; and
- (b) 25% of so much of the annual Net Proceeds in a Financial Year as exceeds the Incentive Fee Threshold. But if in the immediately preceding Financial Year, the Net Proceeds were less than the Incentive Fee Threshold, the sum of the deficit must be deducted from the Net Proceeds when calculating the fee payable to the Project Manager under this paragraph in respect of the Financial Year to which reference is first made;

After the actual costs for a Financial Year have been determined by the Project Manager, the Project Manager will, when notifying the Grower under paragraph (a) of the projected costs for the succeeding Financial Year, notify the Grower of those actual costs per Almondlot, and either deduct the surplus per Almondlot from, or add the excess per Almondlot to, the fees payable for the next Financial Year, depending on whether they are more or less than the costs calculated by the Project Manager under paragraph (a).

12.3 No Refund

The Project Manager The Project Manager will not have any obligation in any circumstances to refund the Management Fee paid to it in respect of any Financial Year. In particular (but without limitation) the Project Manager will be entitled to retain the whole of that fee even if:

- (a) this Agreement terminates otherwise than through the effluxion of time; or
- (b) that fee exceeds the cost to the Project Manager of conducting the Project Operations.

13. BANK ACCOUNT

13.1 Bank Account

The Project Manager must keep as agent for the Growers the Bank Account, which account must be interest bearing.

13.2 Receipts

The Project Manager must pay all receipts of the Project (including Proceeds) into the Bank Account.

13.3 Expenses

The Project Manager must make any payments under **clause 16.2** as agent for the Growers out of the Bank Account.

14. RECORDS AND DOCUMENTS

14.1 Records to be Kept

The Project Manager must keep or cause to be kept documents and records of:

- (a) the Project Operations;
- (b) the Project Manager's performance of its duties under this Agreement;
- (c) all transactions on behalf of the Growers; and
- (d) all the Expenses and receipts of the Project.

14.2 Details in Records and Accounts

The documents and records kept under **clause 14.1** must be kept up to date and must include:

- (a) each amount received by the Project Manager from or on behalf of any or all of the Growers and the date of receipt;
- (b) each amount received by the Project Manager for any or all of the Growers, the date of receipt and the source;
- (c) each amount expended or disbursed by the Project Manager for any or all of the Growers, the date and the purpose;
- (d) the acquisition of materials, equipment, supplies, Project Assets and any other property by the Project Manager for any or all of the Growers and the date and cost of the acquisition and description;
- (e) inventories of materials, equipment, supplies, Project Assets and other property owned by the Growers and in the possession or custody of the Project Manager; and
- (f) the sale or other disposition by the Project Manager or any or all of the Growers of any materials, equipment, supplies, Project Assets and any other property owned by any or all of the Growers relating to the Project.

14.3 Accounts

- (a) The Project Manager must forward to the Grower within 4 months after the end of each Financial Year, Accounts reflecting for that Financial Year all of the assets, liabilities, purchases, expenses, receipts, payments, engagements and transactions of the Project.
- (b) The Accounts will be binding on the Grower, but if any manifest error is found in the Accounts and notified by any Grower to the Project Manager within one month after receipt, the Accounts must be rectified.

14.4 Other Records and Accounts required by the Growers

The Project Manager must keep or cause to be kept in respect of the Project Operations such other documents and records as the Grower may reasonably require by written notice to the Project Manager but entirely at the cost and expense of the Grower.

14.5 Documents to be kept at Registered Office

The Accounts, records and all letters, papers and documents belonging or relating to the Project must be kept at the office of the Project Manager. The Grower, upon giving the Project Manager reasonable notice must have reasonable access during business hours by itself or by its agent to examine and copy the documents insofar as they relate to the Project or to the Participating Interest of the Grower.

14.6 Confidentiality

- (a) The Project Manager must treat as confidential all confidential records, documents and things and all other confidential information relating to the Project Operations, which it obtains while acting as Project Manager, and must take or cause to be taken all reasonable precautions necessary to prevent the disclosure of the information or any part of the information to any person.
- (b) Nothing in this clause will prevent the Project Manager from disclosing any such information where it is required to do so as a matter of law, or to any of its related entities (as defined in the Corporations Act) or to its advisers or others who have, in the Project Manager's reasonable opinion, a need to know, which will include any employee, agent or contractor through whom the Project Manager performs, or proposes to perform, any of its obligations under this Agreement or exercises, or proposes to exercise, any of its rights under this Agreement.
- (c) The Project Manager's obligations under this clause cease immediately the confidential information becomes public knowledge except as a result of the Project Manager's breach of this clause.

15. RESTRICTIONS

15.1 Grower's Covenants

The Grower may not without the consent and approval of the other Growers and the Project Manager may not without the consent and approval of the Growers:

- (a) in the case of the Grower, sell, assign, transfer, mortgage, charge or otherwise dispose of or encumber the Grower's Participating Interest or introduce or attempt to introduce any other person into the Project except as provided for in this Agreement;
- (b) incur any liabilities on behalf of the Project or employ any of the moneys or the effects of the Project otherwise than in the ordinary course of Project Operations.

15.2 Insurance

- (a) The Project Manager will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Grower, with a reputable insurer against damage to the Orchard, which is caused by fire or other insurable risks, including public risk and

occupier's liability PROVIDED THAT the cost of any such insurance is economically justified and it does not include crop insurance unless specifically agreed between the Project Manager and the Grower from year to year.

- (b) All such policies of insurance must be in the names of or note the interests of the Project Manager, the Land Owner and the Grower.
 - (c) No Party will at any time during the Term permit or suffer to be done, and nothing in this Agreement will require the Project Manager to permit or suffer to be done, any act, matter or thing upon the Orchards whereby any insurances in respect of the Orchard or any Grower's Almondlots (or any part thereof) may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.
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16. FINANCING THE PROJECT

16.1 Payment of Licence Fee and Expenses

The Grower agrees to pay the Grower's Participating Interest of the Expenses and the Licence Fee, by making payments to the Project Manager and the Land Owner, respectively, on the date or dates they fall due.

16.2 Payment of Expenses and Licence Fee out of Proceeds

In respect of each Financial Year in which the Project Manager holds Proceeds in the Bank Account on behalf of Growers and where a Grower is required to pay the Licence Fee or pay its Participating Interest of the Expenses under **clause 16.1**, the Project Manager may in the first instance pay or deduct those moneys out of any Proceeds so held on behalf of the Grower or to which the Grower is entitled, so long as the Grower requests and authorises the Project Manager to make such payments or deductions.

16.3 Shortfall

Where any moneys payable by a Grower under **clause 16.1** are not applied in full out of any Proceeds held in the Bank Account under **clause 16.2** then:

- (a)
 - (i) any amount paid or deducted will first be applied in full payment of the Licence Fees payable by the Grower;
 - (ii) the balance of the amount paid or deducted will be applied in part payment of Expenses payable by the Grower; and
 - (iii) to the extent that the amount paid is insufficient to pay in full the Licence Fee payable by the Grower, and where the Land Owner has given to the Grower written notice of non-payment of the Licence Fee under the Licence and Joint Venture Agreement, the Project Manager will pay to the Land Owner the balance of the Licence Fee payable by the Grower; and
- (b) any balance of Expenses that remain unpaid and any amount of Licence Fee paid by the Project Manager on behalf of the Grower under paragraph (a)(iii) will be paid or deducted out of the next available Proceeds that are received by or on behalf of the Grower or payable to the Grower.

Nothing in this clause operates to release the Grower from its primary obligations under **clause 16.1** and the Project Manager may institute recovery action against the Grower for failure to pay any amounts due at any time.

16.4 Failure to Pay

In the event that a Grower fails or neglects to pay any moneys payable under **clause 16.1** by the due date, the Project Manager may after giving the Grower 14 days' prior written notice exercise either of the remedies set out in **clauses 16.5** and **16.6** in addition to and without prejudice to any other rights of the Project Manager.

16.5 Project Manager may Pay on Behalf of Defaulting Grower

In the event that a Grower fails or neglects to make payment of any amount under **clause 16.1**, the Project Manager may from its own funds pay on behalf of the Grower any Expense or Licence Fee owing by the Grower and the Project Manager will be entitled to be reimbursed out of any Proceeds of the Grower the amount of such payment together with interest at a rate of 3% plus the Commonwealth Bank's prime overdraft lending rate, calculated from the date that the payment fell due until the Project Manager has been reimbursed in full.

16.6 Project Manager may Sell Defaulting Grower's Interest to Other Growers

In the event that a Grower fails or neglects to make payment of any amount under **clause 16.1**, the Project Manager may offer the Defaulting Grower's Almondlots to the other Growers by auction, by tender or by any other method which the Project Manager reasonably believes is appropriate in the circumstances. If no Grower wishes to purchase the Defaulting Grower's Almondlots at the Project Manager's reserve price, the Project Manager may sell or dispose of the Defaulting Grower's Almondlots as it thinks fit, in which case the Project Manager will have no liability whatsoever to that Grower or any other Grower.

16.7 Application of Proceeds

The net proceeds from the sale of a Defaulting Grower's Almondlots under **clause 16.6** must be applied:

- (a) first, in payment of any Licence Fees owing under **clauses 16.1** or **16.2**;
- (b) secondly, in payment to the Project Manager of any costs incurred in selling the Defaulting Grower's Almondlots;
- (c) thirdly, in payment of any moneys owing to the Project Manager under **clause 16.5**;
- (d) fourthly, in payment of any Expenses owing under **clauses 16.1** or **16.3**; and
- (e) fifthly, in payment of any balance to the Defaulting Grower.

16.8 Appointment of Project Manager as Attorney

Each Grower irrevocably nominates and appoints the Project Manager as its attorney for the purpose of executing any agreements in its name and on its behalf as may be necessary to effect the sale of any Grower's Almondlots under **clause 16.6**.

17. MANAGEMENT PLAN AND REPORTS

17.1 Management Plan

- (a) In performing its obligations under this Agreement, the Project Manager must observe and act in accordance with, the Management Plan.

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- (b) Despite the preceding paragraph, the Project Manager is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from the Grower under **clause 17.2** requires the Project Manager to do something which is not in accordance with the Management Plan.

17.2 Recommendation or Direction by Grower

The Project Manager must consider any recommendation or direction made by a Grower and where it is satisfied that any such recommendation or direction is in the interests of the Growers and the Project generally the Project Manager must use its best endeavours to carry out the recommendation or direction in accordance with the terms and conditions set out in this Agreement.

17.3 Changes to Management Plan

At any time during the Financial Year to which a Management Plan relates, the Project Manager may make changes to that Management Plan.

17.4 Performance of Management Services

The Project Manager will have complete discretion as to the manner and method of conducting the Project Operations, subject to the express terms of this Agreement.

17.5 Reports

Within 4 months after the end of each Financial Year during this Agreement the Project Manager will send a report (*Annual Report*) to the Grower that addresses and contains information concerning the following matters:

- (a) the results of the harvest of Almonds;
- (b) the condition of the Orchard and Almond Trees;
- (c) any other matters which the Project Manager considers material concerning the Orchard or the Project and which ought reasonably to be made known to the Grower; and
- (d) any other matter reasonably requested by the Grower.

18. ALMONDS

18.1 Entitlement to Almonds

Subject to **clause 18.2**, the Grower is entitled to the whole of the Almonds in each year in proportion to the Grower's Participating Interest.

18.2 Almonds of Defaulting Grower

A Grower is not entitled to its Participating Interest of the Almonds in each year where the Grower is a Defaulting Grower, in which case that Grower's Participating Interest of the Almonds will be used to satisfy the Grower's obligations.

18.3 Sale of Almonds

In order to facilitate the processing of its share of the Almonds, the Grower severally authorises and requests the Project Manager to process its Participating Interest of the Almonds and sell its Participating Interest of the processed Almonds as agent and attorney for the Grower, subject to the following terms:

-
- (a) the Project Manager must keep full and complete records of the sale of the Grower's Almonds;
 - (b) the Project Manager may sell the Almonds on such terms and conditions as the Project Manager, in its absolute discretion, determines;
 - (c) the Project Manager must use its reasonable endeavours to seek to maximise returns; and
 - (d) the Project Manager must separately account to the Grower in respect of the proceeds of sale of that Grower's Almonds and pay those proceeds of sale into the Bank Account.

18.4 Gather In Almonds

Prior to the sale of the Almonds, the Project Manager may gather in all of the Growers' Almonds and the Project Manager may store, market and sell the Almonds gathered in without having regard to the quantity or quality of the particular Almonds from the particular Almondlots. The proceeds of sale of the Almonds gathered in will be divided pro rata according to the Growers' Participating Interests in the Almonds.

18.5 Lien

- (a) The Grower acknowledges and agrees with the Project Manager that the Project Manager can call for a first and paramount lien at any time in respect of the Grower's Participating Interest in the Almonds until such time as any outstanding Expenses due and payable to the Project Manager under this Agreement have been paid.
- (b) The Project Manager is authorised to sell or cause to be sold any of the Grower's Participating Interest in the Almonds over which the Project Manager has the lien for the purpose of applying the sale proceeds in payment of any outstanding fees or expenses due to the Project Manager.

18.6 Action Recovery of Sale Proceeds

In the event that a payment due by a purchaser of the Almonds under an agreement for the sale of the Almonds is overdue, the Grower authorises the Project Manager to take any action which it reasonably considers to be necessary for the purpose of recovering any such outstanding payments or any Almonds from the purchaser.

18.7 Product Liability Insurance

The Project Manager must at all times keep current with a reputable Insurance company a product liability policy in respect of all of the Almonds of the Grower which is sold by or on behalf of the Grower. The policy must be in the names of the Project Manager and the Grower.

19. DISTRIBUTIONS

19.1 Distribution of Proceeds to Growers

Subject to clauses 12.2, 16.2 and 19.2, within 4 months after the end of each Financial Year, the Project Manager must pay to each Grower the amount of Proceeds standing to the credit of the Grower in the Bank Account.

19.2 Right to Withhold Proceeds

The Project Manager is not obliged to make any distribution of Proceeds to a Grower if

in the reasonable opinion of the Project Manager there will be insufficient moneys in the Bank Account to pay the Licence Fee within the next 6 months.

19.3 Interim Distribution of Proceeds

Despite anything contained in this Agreement, the Project Manager may from time to time and at any time make such interim distributions to Growers on account of their respective entitlements under this **clause 19**. The timing and amount of the distributions is at the complete discretion of the Project Manager.

19.4 Deduction of Taxes

The Project Manager may, at its discretion, deduct or require to be deducted from any amounts payable to any Grower, the amount of any tax or duty which is paid or payable by the Project Manager in respect of the Grower.

19.5 Indemnity

The Project Manager is indemnified by each person who is or was at any time a Grower in respect of any tax or duty referred to in **clause 19.4**.

20. SALE BY A GROWER OF ITS PARTICIPATING INTEREST

Subject to paragraph (a) of **clause 15.1**, no Grower may sell, transfer, assign or otherwise dispose of its Almondlots unless the Grower first obtains a deed of covenant by the proposed purchaser, transferee, assignee or acquired (the "Grantee") in favour of the other Parties that the Grantee will at all times during the Term observe and perform all and any of the terms and conditions of this Agreement and of the Licence and Joint Venture Agreement applying to the Grower.

21. TERMINATION AND DEFAULT

21.1 Termination of Engagement of Project Manager

The Project Manager must immediately retire as Project Manager of the Project if the Project Manager:

- (a) goes into liquidation other than for the purposes of reconstruction or amalgamation or a Controller or Administrator is appointed in relation to the undertaking of the Project Manager or any part of its undertaking;
- (b) ceases to carry on business; or
- (c) fails or neglects to pay any monies due to any Grower or the Project Manager is in default of any obligation under this Agreement and such default continues for a period of 3 months after receipt by the Project Manager of written notice from the Growers or a Grower specifying the default and requesting that the default be remedied (except where the Project Manager has advised the Growers or the Grower, whichever is the case, of a plan of remedial action to satisfy any such duty and has substantially completed such plan); or

21.2 Termination of Licence

This Agreement terminates in respect of the Grower immediately if the Licence and Joint Venture Agreement is terminated in respect of the Grower for any reason.

21.3 Project Manager to Relinquish Property and Books and Records

Provided that the Growers have paid all of the Expenses due to the Project Manager and it is not otherwise in breach of any of its obligations under this Agreement, the Project Manager must relinquish custody and control to the Growers or as the Growers direct, of all property of the Growers held by the Project Manager under this Agreement and all books and records and documents kept under this Agreement upon cancellation of the engagement of the Project Manager or termination of this Agreement, other than those which the Project Manager is required by law to keep.

21.4 Failure to Appoint Replacement Project Manager

If the engagement of the Project Manager is terminated under this **clause 21** and a replacement Project Manager is not appointed within 3 months, then the Growers may by Special Resolution terminate this Agreement.

21.5 Effect of Termination

The termination of this Agreement, whether under this clause or under any other clause, will terminate the rights and obligations of the Parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination. The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.

22. EXCUSES FOR NON PERFORMANCE

22.1 Force Majeure

A Party will not have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

22.2 Lack or Unavailability of Funds

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

22.3 Liability

A Party's failure to observe or comply with the terms of this Agreement will not give rise to any liability to the other Party for any direct or indirect consequential or special loss or damage of any kind to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

22.4 Definition of Force Majeure

For the purposes of this Agreement, "Force Majeure" means any event or circumstance not reasonably within the control of the Project Manager or which the Project Manager is not reasonably able to prevent. It includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;

-
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
 - (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
 - (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality, including any failure to grant or any withdrawal of any licences, consent or authority;
 - (e) epidemic or quarantine;
 - (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
 - (g) delays in transportation or communication; and
 - (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph is to be construed separately and independently. None of them is to limit the generality of any other.

23. GUARANTEE AND INDEMNITY

If a Grower is a corporation, the Project Manager may require that one or more of the directors of the Grower guarantee to the Project Manager the observance and performance by the Grower of its obligations under this Agreement in a deed in the form set out in the Third Schedule.

24. LIMITATION ON GROWER'S LIABILITY

24.1 No obligation beyond Licence Fee and Expenses

Despite anything else contained in this Agreement, the Grower is not obliged to contribute any money in respect of the Project Operations and the Licence beyond the Licence Fee and the Grower's Participating Interest of the Expenses paid or payable to the Project Manager under this Agreement.

24.2 Limitation of Liability

Despite anything else contained in this Agreement the liability of the Grower is absolutely limited to the Licence Fee and the Grower's Participating Interest of the Expenses paid or payable to the Project Manager under this Agreement and to any Proceeds of the Grower.

24.3 Project Manager to Disclose

If the Project Manager enters into any agreement with a party other than Select Harvests, it must disclose that:

- (a) it is contracting as agent for the Growers;
- (b) the liability of the Grower in respect of the Project Operations and the Licence and Joint Venture Agreement is limited to the amount of money contributed by

-
- the Grower as Licence Fees and Expenses and to any Proceeds of the Grower; and
- (c) the Grower is under no liability to the other party to the contract or to any of its servants or agents, whether in contract or otherwise, beyond the money contributed by the Grower as Licence Fees, Grower's Participating Interest of the Expenses and to any Proceeds of the Grower.
-

25. LIABILITIES AND INDEMNITIES OF PROJECT MANAGER

25.1 Project Manager's Liability

- (a) To the extent permitted by law, the Project Manager is not liable for any loss or damage to any person, including any Grower, arising out of any matter unless, in respect of that matter, it acted both:
- (i) otherwise than in accordance with this Agreement and its duties; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Agreement and its duties.
- (b) In particular, the Project Manager is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
- (i) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Project Manager;
 - (ii) it acted as required by law;
 - (iii) it relied in good faith upon any signature, marking or document; or
 - (iv) it followed a direction given to it by a resolution passed at a duly convened meeting of Growers.
- (c) The Project Manager may decide how and when to exercise its powers in its absolute discretion.

25.2 Indemnity of Project Manager

- (a) In addition to any indemnity under any law, the Project Manager has a right of indemnity out of the Bank Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Project Manager has acted negligently, fraudulently or in breach of its duties.
- (b) Such right of indemnity in respect of a matter ("Indemnified Matter") will not be lost or impaired by reason of a separate matter, whether before or after the Indemnified Matter, in breach of this Agreement.
- (c) The right of indemnity continues to be available after the Project Manager retires or is removed as Project Manager.
- (d) The Project Manager may pay out of the Bank Account any amount for which the Project Manager would be entitled to be indemnified under paragraph 25.2(a).
-

26. DISPUTES

26.1 Dispute Resolution Procedure

If there is a dispute between the Parties arising from or connected with any provision of this Agreement, the Parties must follow the following dispute resolution procedure before commencing legal proceedings, other than proceedings seeking interlocutory relief.

26.2 Notice of Dispute

A Party may give a notice of dispute to the other Parties if there is a dispute arising out of this Agreement.

26.3 Parties Must Meet

Upon one Party giving a notice of dispute to the other Parties, the Parties must meet within 10 Business Days of the date of that notice in order to try to resolve the dispute.

26.4 Mediation

If the Parties cannot resolve the dispute within 10 Business Days of the date of notice of dispute, either Party may refer the matter to mediation.

26.5 Parties Agree to Mediate

The Parties agree to mediate if a dispute is referred to mediation by any one of the Parties.

26.6 Mediator

The Parties will agree as to the mediator.

26.7 Failure to Agree as to Mediator

If the Parties cannot agree to a mediator within a further 5 Business Days, a mediator will be chosen by the President for the time being of the Law Institute of Victoria.

26.8 Costs of Mediation

The Parties will equally bear any costs associated with the mediator's fees and will bear their own costs in relation to preparation or representation at the mediation.

26.9 Certificate of Mediation

The mediator will provide a certificate of mediation, which sets out the result of the mediation.

26.10 Legal Proceedings

Subject to clause 26.1, a Party may only issue legal proceedings after the mediator has provided a certificate of mediation.

27. COUNTERPARTS

27.1 Counterparts

This Agreement may consist of a number of counterparts and if so the counterparts

taken together will constitute the one instrument.

27.2 Grower's Covenant

The Grower covenants with the Project Manager that it will at the request of the Project Manager execute any further counterparts in the form or to the effect of this Agreement, which counterparts may include a lesser or greater number of Growers to those executing this instrument so long as in no circumstances will the rights or entitlement of any Grower be diminished.

27.3 Execution of Counterpart

The Parties agree that by their execution of any counterpart of this Agreement they will be and remain liable to each of the other Parties despite that any other person intended to be a Party does not sign or execute this or any other counterpart of the Agreement.

28. MISCELLANEOUS

28.1 Further Assurances

Each Party must execute all Agreements and take all other action necessary or desirable to give full effect to this Agreement.

28.2 Entire Understanding

This Agreement contains the entire understanding between the Parties concerning the subject matter contained in it. All previous representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect, other than any agreement executed by the Parties that is clearly intended to be supplemental to this Agreement or in substitution for it.

28.3 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right to exercise of any other right.
- (b) No Party is liable for any loss or expense of another Party caused or partly caused by the waiver, exercise or failure to exercise a right.

28.4 Parties to Give Effect to the Agreement

- (a) Each Party must exercise all powers as are available to it, do all such acts and things and sign, execute and deliver all documents as may be necessary or reasonably required to give full effect to this Agreement.
- (b) If any Party immediately after being requested by the other Parties, or those of them entitled to request fails to do the act or thing, the defaulting Party irrevocably appoints each of the other Parties as its attorney for the purpose of giving effect to this clause.
- (c) The defaulting Party indemnifies the other Parties and holds them harmless from and against all actions, suits, demands and claims consequent upon the exercise of the power granted under this Agreement.

28.5 Stamp Duty

The Project Manager will pay the stamp duty payable in relation to this Agreement.

28.6 GST

- (a) If any supply made by a party ('Supplier') to the other ('Recipient') under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to pay GST, the Parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (ie. the GST Exclusive Amount) and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- (c) GST payable under paragraph (b) must be paid by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph (b).
- (f) If a Party has a claim under or in connection with this Agreement for a cost on which that Party must pay GST, the claim is for the cost plus all GST, except any GST for which that Party is entitled to an input tax credit.
- (g) If a Party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

28.7 Amendments

- (a) This Agreement may be amended by another document in writing and duly signed by the Parties.
- (b) Subject to paragraph (c), the Project Manager may amend the provisions of this Agreement to such extent as may be required to:
 - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
 - (ii) comply with the effect of any judicial decision; or
 - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Prior to making any amendment under paragraph (b), the Project Manager must be reasonably satisfied that the amendment does not adversely affect the rights of Growers.
- (d) The Project Manager may make the amendments on behalf of itself, and then on behalf of the Grower. To give effect to this clause, each Grower appoints the Project Manager as its attorney to make the amendments to this Agreement.

-
- (e) If the Project Manager cannot be satisfied that the amendments can be made in accordance with paragraph (c), then amendments may only be made in accordance with paragraph (a) of this clause.

28.8 Proper Law

This Agreement is governed by and to be interpreted in accordance with the laws of Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement.

29. NOTICES

29.1 Manner of Giving Notices

Any notice to be given under or in connection with this Agreement will be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

- (a) hand delivery;
- (b) post or registered or certified mail; or
- (c) fax,

to such address or fax number of the party to whom the notice is directed as the addressee may notify prior to such notice being given.

29.2 Receipt of Notices

Any notice will be effective and will be deemed to be received:

- (a) if hand delivered, then upon delivery;
 - (b) if posted, then 48 hours after the notice has been properly posted if that falls on a Business Day, and if not, on the first Business Day afterwards; and
 - (c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.
-

30. TSL'S RIGHTS OF STEP-IN

30.1 TSL May Step-In

TSL may, for any reason whatsoever and at any time during the Term, elect to step-in and assume the rights, duties, obligations and liabilities of the Project Manager under this Agreement, by giving written notice to the Project Manager notifying it of that election ("**Step-in Notice**") without in any way releasing the Project Manager from those duties, obligations and liabilities which arose prior to or on the Step-in Date as defined in clause 30.2 and without in any way affecting, altering, derogating, diminishing, prejudicing or waiving any remedies or rights Select may have against the Project Manager under the Almond Orchard Management Agreement.

30.2 Effect of Step-In

Immediately upon, and with effect from the date on which TSL giving Select a Step-in Notice ("**Step-in Date**"):

-
- (a) this Agreement will automatically be amended by deleting all references to "Almond Management Pty Ltd" throughout the Agreement and replacing them with a reference to "TSL";
 - (b) TSL will be bound by and must comply with, perform and otherwise observe all duties, obligations and liabilities of the Project Manager under this Agreement, including duties, obligations and liabilities which have arisen prior to the Step-in Date and which have not been fully performed or discharged on or before the Step-in Date;
 - (c) TSL will enjoy all the rights and benefits of the Project Manager under this Agreement; and
 - (d) the Grower acknowledges that it will continue to be bound by, and will continue to perform and observe, all of its duties, obligations and liabilities under this Agreement after the Step-in Date, having regard to the amendment of this Agreement in accordance with paragraph (a).

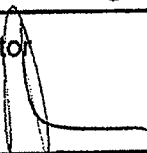
Executed as an Agreement

EXECUTED by ALMOND
MANAGEMENT PTY LTD by
authority of its directors:

)
)
)
)



Director



Director/Secretary

EXECUTED for and on behalf of
each several Grower by his or her
duly appointed attorney, ALMOND
MANAGEMENT PTY LTD by
authority of its directors:

)
)
)
)




Director



Director/Secretary

EXECUTED by TIMBERCORP
SECURITIES LIMITED by authority
of its directors:

)
)
)
)



Director



Director/Secretary

FIRST SCHEDULE

GROWERS AND ALMONDLOTS

In accordance with the terms of the Licence and Joint Venture Agreement, each Grower participates in the Project in joint venture with the Land Owner, each in their respective proportions

ALMOND ORCHARD MANAGEMENT PLAN

**PARTIES: ALMOND MANAGEMENT PTY LTD
SELECT HARVESTS LIMITED**

**LIPAROO - ALMOND PROJECT
AREA: 2457 ACRES-YEAR 2001 PLANTINGS
FINANCIAL YEAR 1 JULY 2002 TO 30 JUNE 2003**

Prepared by
Select Harvests Limited

FEBRUARY 2002

FINAL

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Appendix 1. FARM PROGRAM 2002/03

1.0 Introduction

Select Harvests Limited (SHV) has been engaged by Almond Management Pty Ltd as an independent contractor to carry out a range of services as defined in the Almond Orchard Management Agreement between the two companies.
This Management Plan outlines the Orchard Services to be provided in the year ended 30.6.2003.

The Liparoo almond project consists of 2457 acres of orchard, located on Robinvale /Hattah road, Wemen.

2.0 Orchard Services

The orchard services, for which Select Harvests is responsible have been set out in clause 4 of the Almond Orchard Management Agreement and are summarised as follows;

- Clause 4.1 Cultivation, maintenance and management services
- Clause 4.2 Harvest) NB. Will occur in future years.
- Clause 4.3 Testing of Almonds) NB. Will occur in future years.

2.1 Horticultural Planning

The following section outlines the key horticultural activities to be performed in the orchard. Appendix 1 schedules proposed fertigation and spray programs for season 2002-03.

2.1.1 Overhead Spray program

The aim of the overhead spray program is to apply fungicide sprays in a timely manner to maintain a continuous barrier to the inoculation of leaf tissue by bacteria and fungal spores. The fungal sprays used are protective and not curative and therefore form part of a prevention program. Fungicide spraying usually occurs through winter and spring months to prevent the development of "shot hole" and "stone fruit rust".

Nutrient sprays are included within the spray program and are designed to boost levels of minor and trace elements especially through periods of stress caused by extremes in the climate. The final component of the spray program is the application of zinc sulphate to defoliate leaves and to add trace elements of zinc & boron. This occurs in early May and is done to prevent infection of new leaf tissue in spring by "shot hole" and "stone fruit rust".

2.1.2 Weed Control Program

The control of weeds via a weed spray and slashing program is required to ensure the effectiveness of irrigation and fertiliser programs. Weed spraying occurs throughout the year, with the main period from May (post harvest) through to February (pre harvest). Control of weeds is especially important in young orchards.

The weed control program involves;

- i) Herbicide spraying of tree rows
- ii) Slashing or mulching of mid rows where required.
- iii) Spot spraying of tree rows and mid rows

2.1.3 Fertigation Program

The fertigation program is designed to stimulate growth and structure in young trees. This program is complimented by the foliar spray program.

The fertigation program commences in Late July. The programmed N:P:K is aimed at facilitating root development to accommodate future tree growth.

The fertigation program continues through the growing season of mid-October through to mid-April with a balance of N:P:K. In the later part of summer, nitrogen inputs are increased to induce good tree growth and bud development and potassium is increased to develop strength in the trees.

In late March and April inputs are reduced as the tree shuts down for the Winter period.

2.1.4 Pruning

Pruning is required in the orchard to continue to shape and train the trees and stimulate growth.

The Second year program consists of;

- Aug – Nov, Summer pruning - bud rubbing of primary limb tips continues to define tree shape, supported by heading of all permanent primary limbs to induce branching/forking of progressive stages. Removal of unwanted branches will continue as required.
- June, Winter prune - heading cuts are made to induce branching/forking of the next stage of primary limbs, pruning also has a strong focus on identification of permanent primary limbs and removal of branches causing congestion.

The timing of the above is dependent on tree growth and seasonal conditions. Rapid tree growth could see a further pruning brought forward from the next year's program.

3.0 Irrigation Applications and Management

Irrigation management consists of;

- Soil moisture monitoring
- Water application scheduling
- Application of water
- Maintenance of equipment

Irrigation application is expected to commence in July/August.

Moisture monitoring is carried out throughout the year with greater emphasis in the months of Oct – March. Programs are established to commence accurate moisture readings.

The timing and duration of applications will be determined using moisture monitoring results, soil characteristics, climatic conditions and irrigation results. Adequate time will be given for staff training with the irrigation system, moisture monitoring, scheduling and applications.

Estimated water usage;

- To 30th June 2003 4.39ML/Hectare = 4367ML

Factors which will impact on water usage outside of management control are;

1. Rainfall
2. Wind
3. Temperature
4. Tree growth rate

Increases or decreases to proposed water use could occur because of the influence of these factors.

The ongoing maintenance program involves the following;

- i) Dripper line, submain and mains flushing
- ii) Dripper line checks
- iii) In-line filter cleaning

This will be scheduled as required over the irrigation season.

4.0 Manpower Requirements

The Liparoo Almond Orchard forms part of Kyndalyn Park Almond orchards, which has a dedicated management team.

Staff

Farm Manager
Second in Charge
Leading Hand
Water Manager
Tee Tech Supervisor

In addition, the Almond Orchard will be serviced on site, by maintenance and water management, personnel. The management structure will be reviewed at the property on a regular basis and may change from time to time.

The orchard will utilise a combination of permanent and casual staff to carry out the farm program depending on seasonal requirements. In addition contract labour will be used for a number of seasonal programs eg. harvest, pruning etc..

5.0 Farm Equipment

SHV will provide the necessary farm equipment to carry out the farm program. There will be a combination of equipment dedicated to the specific site where appropriate, and shared equipment with other locations for less frequently used equipment.

5.1 Equipment Maintenance

The maintenance department is responsible for the up keep and maintenance of all farm equipment. They are to ensure that the above equipment is in the best possible condition and ready for use when scheduled.

The maintenance program uses a combination of in-house work, outsourcing of large jobs and external service contracts for some items of equipment. We have a major workshop at Kyndalyn Park, which services our harvesting equipment and the hulling and cracking plant. This facility has two permanent staff and uses contract labour during harvest and processing to ensure, 24 hour service.

6.0 Reporting

Under the Almond Orchard Management Agreement SHV has committed to provide reports to AMPL on the following basis;

- Annual management plan
- Six monthly report

Half yearly reporting will focus on providing an update on activities performed and will indicate the progress and condition of the orchard.

7.0 General activities

SHV will carry out the following general activities;

- Eradication of vermin
- Keep improvements on the orchard in good and substantial repair
- Maintain fire breaks
- Periodically inspect and repair all stakes, fences and irrigation equipment
- Keep proper records of all fertilizers, nutrients, other chemicals etc applied to the orchard and make those records available for inspection upon reasonable request.

APPENDIX 1

ORCHARD FERTILISER & SPRAY PROGRAM FY2003

ALMOND ORCHARD MANAGEMENT PLAN

**PARTIES: ALMOND MANAGEMENT PTY LTD
SELECT HARVESTS LIMITED**

**CARINA BLOCK 13 - ALMOND PROJECT
AREA: 352 ACRES-YEAR 2001 PLANTINGS
FINANCIAL YEAR 1 JULY 2002 TO 30 JUNE 2003**

**Prepared by
Select Harvests Limited**

FEBRUARY 2002

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1.0 Introduction

Select Harvests Limited (SHV) has been engaged by Almond Management Pty Ltd as an independent contractor to carry out a range of services as defined in the Almond Orchard Management Agreement between the two companies.

This Management Plan outlines the Orchard Services to be provided in the year ended 30.6.2003.

The project consists of 352 acres of almond orchards located at Carina.

2.0 Orchard Services

The orchard services for which Select Harvests is responsible have been set out in clause 4 of the Almond Orchard Management Agreement and are summarised as follows;

- Clause 4.1 Cultivation, maintenance and management services
- Clause 4.2 Harvest) NB. Will occur in future years.
- Clause 4.3 Testing of Almonds) NB. Will occur in future years.

2.1 Horticultural Planning

The following section outlines the key horticultural activities to be performed in the orchard. Appendix 1 schedules proposed fertigation and spray programs for season 2002-03.

2.1.1 Overhead Spray program

The aim of the overhead spray program is to apply fungicide sprays in a timely manner to maintain a continuous barrier to the inoculation of leaf tissue by bacteria and fungal spores. The fungal sprays used are protective and not curative and therefore form part of a prevention program. Fungicide spraying usually occurs through winter and spring months to prevent the development of "shot hole" and "stone fruit rust".

Nutrient sprays are included within the spray program and are designed to boost levels of minor and trace elements especially through periods of stress caused by extremes in the climate. The final component of the spray program is the application of zinc sulphate to defoliate leaves and to add trace elements of zinc & boron. This occurs in early May and is done to prevent infection of new leaf tissue in spring by "shot hole" and "stone fruit rust".

2.1.2 Weed Control Program

The control of weeds via a weed spray and slashing program is required to ensure the effectiveness of irrigation and fertiliser programs. Weed spraying occurs throughout the year, with the main period from May (post harvest) through to February (pre harvest). Control of weeds is especially important in young orchards.

The weed control program involves;

- i) Herbicide spraying of tree rows
- ii) Slashing or mulching of mid rows where required.
- iii) Spot spraying of tree rows and mid rows

2.1.3 Fertigation Program

The fertigation program is designed to stimulate growth and structure in young trees. This program is complimented, by the foliar spray program.

The fertigation program commences in Late July. The programmed N:P:K is aimed at facilitating root development to accommodate future tree growth.

The fertigation program continues through the growing season of mid-October through to mid-April with a balance of N:P:K. In the later part of summer, nitrogen inputs are increased to induce good tree growth and bud development and potassium is increased to develop strength in the trees.

In late March and April inputs are reduced as the tree shuts down for the winter period.

2.1.4 Pruning

Pruning is required in the orchard to continue to shape and train the trees and stimulate growth.

The Second year program consists of;

- Aug – Nov, Summer pruning - bud rubbing of primary limb tips continues to define tree shape, supported by heading of all permanent primary limbs to induce branching/forking of progressive stages. Removal of unwanted branches will continue as required.
- June, winter prune - heading cuts are made to induce branching/forking of the next stage of primary limbs, pruning also has a strong focus on identification of permanent primary limbs and removal of branches causing congestion.

The timing of the above is dependent on tree growth and seasonal conditions. Rapid tree growth could see a further pruning brought forward from the next year's program.

3.0 Irrigation Applications and Management

Irrigation management consists of;

- Soil moisture monitoring
- Water application scheduling
- Application of water
- Maintenance of equipment

Irrigation application is expected to commence in July/August.

Moisture monitoring is carried out throughout the year with greater emphasis in the months of Oct – March. Programs are established to commence accurate moisture readings.

The timing and duration of applications will be determined using moisture monitoring results, soil characteristics, climatic conditions and irrigation results. Adequate time will be given for staff training with the irrigation system, moisture monitoring, scheduling and applications.

Estimated water usage;

- To 30th June 2003 4.39ML/Hectare = 626ML

Factors, which will impact on water usage outside of management control are;

1. Rainfall
2. Wind
3. Temperature
4. Tree growth rate

Increases or decreases to proposed water use could occur because of the influence of these factors.

The ongoing maintenance program involves the following;

- i) Dripper line, submain and mains flushing
- ii) Dripper line checks
- iii) In-line filter cleaning

This will be scheduled as required over the irrigation season.

4.0 Manpower Requirements

The Almond Orchard forms part of Carina Division, which has a dedicated management team.

Staff

Farm Manager
Second in Charge
Leading Hand
Water Manager
Tree Tech Supervisor

In addition, the Almond Orchard will be serviced on site, by maintenance and water management personnel.

The management structure will be reviewed at the property on a regular basis and may change from time to time.

The orchard will utilise a combination of permanent and casual staff to carry out the farm program depending on seasonal requirements. In addition contract labour will be used for a number of seasonal programs eg. harvest, pruning etc..

5.0 Farm Equipment

SHV will provide the necessary farm equipment to carry out the farm program. There will be a combination of equipment dedicated to the specific site where appropriate, and shared equipment with other locations for less frequently used equipment.

5.1 Equipment Maintenance

The maintenance department is responsible for the up keep and maintenance of all farm equipment.

They are to ensure that the above equipment is at all times in the best possible condition and ready for use when scheduled.

The maintenance program uses a combination of in-house work, outsourcing of large jobs and external service contracts for some items of equipment. We have a major workshop at Kyndalyn Park which services our harvesting equipment and the hulling and cracking plant. This facility has two permanent staff and uses contract labour during harvest and processing to ensure 24 hour service.

There is an additional workshop at Carina with two permanent staff.

6.0 Reporting

Under the Almond Orchard Management Agreement SHV has committed to provide reports to AMPL on the following basis;

- Annual management plan
- Six monthly report

Half yearly reporting will focus on providing an update on activities performed and will indicate the progress and condition of the orchard.

7.0 General activities

SHV will carry out the following general activities;

- Eradication of vermin
- Keep improvements on the orchard in good and substantial repair
- Maintain fire breaks
- Periodically inspect and repair all stakes, fences and irrigation equipment
- Keep proper records of all fertilizers, nutrients, other chemicals etc applied to the orchard and make those records available for inspection upon reasonable request.

APPENDIX 1

ORCHARD FERTILISER & SPRAY PROGRAM FY2003

TECH DIVISION YEAR 2 PROGRAM 2002-03 SEASON.

Fertiliser Program

Orchard Program

note: dates may vary depending on weather conditions

Weedspray Program

note: dates may vary depending on weather conditions

Shot No.	Fertigation Dates	Fertiliser
1	Late July	N
2	Early Aug	N:P:K
3	Mid Aug	N:P:K
4	Early Sept	N:P:K
5	Mid Sept	N:P:K
6	Early Oct	N:P:K
7	Mid Oct	N:P:K
8	Early Nov	N:P:K
9	Mid Nov	N:P:K
10	Early Dec	N:P:K
11	Mid Dec	N:P:K
12	Early Jan	N:P:K
13	Mid Jan	N:P:K
14	Early Feb	N:P:K
15	Mid Feb	N:P:K
16	Early March	N:P:K
17	Mid March	N:P:K
18	Early April	N:P:K
19	Mid April	N:P:K

Spray No.	Spray Dates	Overhead Spraying
1	Late Jul (green tip, pink bud)	Copper 1
2	Aug	Cover 1 Fungicide
3	Early Sep	Cover 2 Fungicide, Foliar
4	Late Sep	Cover 3 Fungicide, Foliar
5	2nd week Oct	Cover 4 Fungicide, Foliar
6	3rd week Nov	Cover 5 Fungicide, Foliar
7	December	Booster 1 Foliar
8	January	Booster 2 Foliar
9	February	Booster 3 Foliar
10	Late March - Early April	Boron 1 Trace
11	Early May	Zinc Sulphate Leaf drop spray Zinc
12	Late May- Early Jun	Copper 2
13	Mid Jun	Boron 2

Spray No.	Spray Dates	Weedspray
1	July (Late July)	Undertree Knock down, contact
2	Mid - Late August	Undertree Knock down, contact
3	September	Undertree Knock down, contact
4	October	Undertree Knock down, contact
5	November	Undertree Knock down, contact
6	December	Undertree Knock down, contact
7	January	Undertree Knock down, contact
7S	January or May Backup Spray	Under tree Systemic
1	January	Spot spray Systemic
8	February	Undertree Knock down, contact
2	February	Spot spray Systemic
9	March	Undertree Knock down, contact
10	April	Undertree Knock down, contact
11S	May/June Backup Spray	Undertree Systemic
11S	June	Undertree Knock down, contact

THIRD SCHEDULE

GUARANTEE AND INDEMNITY

1. GUARANTEE

The person or persons referred to in Item 1 of this Third Schedule (collectively referred to as "Guarantor") unconditionally and irrevocably guarantee/s:

- (a) the due and punctual payment of all moneys owing by the Grower specified in Schedule 1 ("Grower") to the Project Manager from time to time under the Project and Management Agreement between the Grower and the Project Manager ("Project Agreement"); and
- (b) the prompt service and performance of all of the Grower's obligations and covenants under the Project Agreement.

2. INDEMNITY

The Guarantor indemnifies the Project Manager from time to time and will keep the Project Manager indemnified against all loss that it incurs and any claims, demands or causes of action against it, other than from its own default, because of the failure of the Grower to punctually pay moneys or comply with the obligations and covenants guaranteed under clause 1.

3. GUARANTEE UNAFFECTED BY CERTAIN EVENTS

Rights and remedies against the Guarantor will not in any way be affected by:

- (a) death, incapacity, bankruptcy or the winding up of any person or persons referred to in schedule 1; or
- (b) the fact that this guarantee and indemnity may be unenforceable for any reason against any person or persons referred to in schedule 1, in which event all other person or persons referred to in schedule 1 against whom this guarantee is enforceable will be jointly and severally liable under this instrument.
- (c) the exercise by TSL of its step-in rights under clause 30 of the Project Agreement.

4. DURATION OF GUARANTEE

The Guarantee remains in full force and the Guarantor is not released from any of its obligations under this Guarantee until:

- (a) all of the moneys guaranteed have been paid in full to the Project Manager and all of the obligations guaranteed have been performed in full; or
- (b) this Project Agreement is terminated under clauses 21.2 or 21.4

5. NO INDUCEMENT TO GUARANTOR

The Guarantor acknowledges that the Project Manager:

- (a) did not make any promise, representation or statement to the Guarantor to induce or persuade the Guarantor to execute this Guarantee; and
- (b) is and was before executing this Agreement, under no duty to disclose to the Guarantor, or do anything relating to, the affairs of the Grower or the Grower's transactions with the Project Manager.

6. INDEPENDENT ADVICE

The Guarantor acknowledges that:

- (a) before executing this Guarantee the Project Manager advised the Guarantor to seek independent legal and financial advice in relation to this Guarantee; and
- (b) the Guarantor understands the true nature and extent of the Guarantor's obligations under the Project Agreement.

ITEM 1: [name of Guarantor]