

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION**

**No. VID 541 of 2009**

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

**AND**

**IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)  
ACN: 055 185 067**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469  
and OTHERS**

Plaintiffs


**WA CHIP & PULP CO. PTY LTD  
and OTHERS  
ACN 008 720 518**

Defendants

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-27**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 31 July 2009.

Before me: .....

  
**LUCY HANNAH KIRWAN**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

## Part 8 Extension of the Term

### 8.1 Extension for late harvesting

If the Sub-Lessee is prevented from:

- (a) harvesting the Plantation Crop; or
- (b) processing the products derived from the Plantation Crop,

due to an Event of Force Majeure, the Sub-Lessee may by giving written notice to the Sub-Lessor elect to extend the Term for a period of time equal to the duration of the event of Force Majeure. Upon receipt of such notice from the Sub-Lessee, the Sub-Lessor shall forthwith give written notice of such force majeure to the Head Sub-Lessor as required under the provisions of the Head Sub-Lease. PROVIDED FURTHER THAT the maximum period for which the Sub-Lessee may extend the Term in accordance with this clause cannot exceed the maximum period for which the Sub-Lessor as sub-lessee under the Head Sub-Lease can extend the Term of the Head Sub-Lease

### 8.2 Definition of Force Majeure

In clause 8.2, "Event of Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightning, storm or tempest;
- (b) strikes, lockouts, stoppages, restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot, civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment except where such breakdown is due to a failure by the Sub-Lessee claiming Force Majeure to maintain the plant, machinery or equipment in a proper manner;
- (e) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

## Part 9 Early termination and reduction of the Leased Area

### 9.1 Termination by Sub-Lessee

- (a) If the Sub-Lessor breaches any of its covenants under this Sub-Lease and:-
  - (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Sub-Lessor in accordance with **clause 9.1(b)** ("General Default Notice") or such other period as is determined to be the period within which it must be remedied as determined in accordance with **clause 9.1(d)** ; or
  - (ii) if the breach is one which is incapable of being remedied and the Sub-Lessor fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.1(d)** within a period of 30 days of the General Default Notice being given to the Sub-Lessor

then subject to **clause 9.1(d)** the Sub-Lessee may give to the Sub-Lessor a further written notice complying with **clause 9.1(c)** having immediate effect terminating the Term ("General Termination Notice") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with **clause 9.1(d)** has been paid.

- (b) To constitute and be effective as a General Default Notice the notice given must specify:-
  - (i) the default;
  - (ii) if the default is capable of remedy:-

- (A) what the Sub-Lessee requires to be done to rectify the default; and
  - (B) such period as the Sub-Lessee acting reasonably considers having regard to the nature and extent of the default it is practicable for the Sub-Lessor to rectify the default within; or
- (iii) if the default is incapable of being remedied, the amount of compensation that the Sub-Lessee acting reasonably considers is proper and adequate compensation to the Sub-Lessee for the Sub-Lessee's loss or damage suffered as a consequence of the unremediable default.
- (iv) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-
- The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and
- The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231
- (c) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.1(a)** the notice given must:-
- (i) enclose an original signed by the Sub-Lessee or true photocopy of the signed General Default Notice given;
  - (ii) use clear words of termination; and

- (iii) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (d) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Sub-Lessor gives to the Sub-Lessee written notice ("**the Objection Notice**") claiming any one or more of the following things:-
- (i) the Sub-Lessor is not in default or is not in default as claimed in the General Default Notice;
  - (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
  - (iii) the rectification prescribed by the Sub-Lessee is incorrect; or
  - (iv) the amount of compensation claimed by the Sub-Lessee is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of

Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (e) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Sub-Lessee and the Sub-Lessor or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.
- (f) Termination pursuant to the provisions of this **clause 9.1** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.
- (g) (i) If the Term is terminated by the Sub-Lessee in accordance with this **clause 9.1** then the Sub-Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days

which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop as at the date of termination.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.1(g)** becomes the absolute property of the Sub-Lessor at the end of that licence period.

## 9.2 Termination by Sub-Lessor

- (a) If the Sub-Lessee defaults in the payment of any instalment of Annual Rent and that default is not rectified within 30 days of the Sub-Lessor having given to the Sub-Lessee a default notice complying with **clause 9.2(b)** ("Rent Default Notice") then the Sub-Lessor may give to the Sub-Lessee a further written notice complying with **clause 9.2(b)** having the immediate effect of terminating the Term upon it being given ("Rent Termination Notice") unless prior to the Rent Termination Notice being given the default has been rectified.
- (b) To constitute and be effective as a Rent Default Notice for the purpose of **clause 9.2(a)**, the notice given must:-
- (i) be signed by the Sub-Lessor and clearly dated;
  - (ii) specify the exact amount of Annual Rent overdue for payment;
  - (iii) specify the date the overdue amount should have been paid;
  - (iv) demand payment of the overdue amount within 30 days of the date of the notice being deemed given and state that the consequence of non-payment will be the issue of a Rent Termination Notice;
  - (v) be sent separately by registered post to the following persons at the following addresses or such other person or addresses that the Sub-

Lessee by written notice give in accordance with **clause 13.3** prescribes as the addressees and addresses for the Rent Default Notices:-

The Company Secretary  
Timbercorp Securities Limited  
8<sup>th</sup> Floor  
461 Bourke Street  
MELBOURNE VIC 3000; and

The General Manager  
Timbercorp Forestry  
Level 4  
50 Colin Street  
WEST PERTH WA 6005

- (c) To constitute and be effective as a Rent Termination Notice for the purpose of **clause 9.2(a)** the notice given must:-

(i) enclose an original copy signed by the Sub-Lessor or true photocopy of the signed Rent Default Notice given;

(ii) use clear words of termination; and

otherwise comply with the same requirements as are specified for a Rent Default Notice in accordance with **clauses 9.2(b)(i) and (v)**.

- (d) The time at which a Rent Default Notice or a Rent Termination Notice will be deemed to have been given will be the same time as a notice given in accordance with **clause 13.3** is deemed to have been given.

- (e) If the Sub-Lessee breaches any of its covenants under the Lease other than its covenant to pay Annual Rent and:-

(i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Sub-Lessee in accordance with **clause 9.2(f)** ("**General Default Notice**") or such other period as is determined to be the period within which it

must be remedied as determined in accordance with **clause 9.2(h)** ; or

(ii) if the breach is one which is incapable of being remedied and the Sub-Lessee fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.2(h)** within a period of 30 days of the General Default Notice being given to the Sub-Lessee

then the Sub-Lessor may give to the Sub-Lessee a further written notice complying with **clause 9.2(g)** having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with **clause 9.2(h)** has been paid.

- (f) To constitute and be effective as a General Default Notice the notice given must specify:-

(i) the default;

(ii) if the default is capable of remedy:-

(A) what the Sub-Lessor requires to be done to rectify the default; and

(B) such period as the Sub-Lessor acting reasonably considers having regard to the nature and extent of the default it is practicable for the Sub-Lessee to rectify the default within; or

(iii) if the default is incapable of being remedied, the amount of compensation that the Sub-Lessor acting reasonably considers is proper and adequate compensation

to the Sub-Lessor for the Sub-Lessor's loss or damage suffered as a consequence of the unremediable default

and must otherwise comply with the provisions of **clause 9.2(b)(i)** and **(v)** as if the General Default Notice was a Rent Default Notice.

(g) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.2(e)** the notice given must:-

- (i) enclose an original signed by the Sub-Lessor or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) otherwise comply with the provisions of **clause 9.2(b)(i)** and **(v)** as if the General Termination Notice was a Rent Default Notice.

(h) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Sub-Lessee gives to the Sub-Lessor written notice ("the **Objection Notice**") claiming any one or more of the following things:-

- (i) the Sub-Lessee is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Sub-Lessor is incorrect; or
- (iv) the amount of compensation claimed by the Sub-Lessor is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the

parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

(i) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Sub-Lessor and the Sub-Lessee or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.

(j) Termination pursuant to the provisions of this **clause 9.2** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

(k) (i) If the Term is terminated by the Sub-Lessor in accordance with **clause 9.2(a)** or **clause 9.2(e)** then the Sub-Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in clause 9.2(k) becomes the absolute property of the Sub-Lessor at the end of that licence period.

### 9.3 Loss of Plantation Crop

(a) If:

- (i) the whole or a substantial part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Sub-Lessee reasonably determines that the whole or a substantial part of the Plantation Crop is no longer commercially viable,

then the Sub-Lessee may terminate this Sub-Lease by giving not less than one (1) month's prior written notice of such termination to the Sub-Lessor. Termination under this clause shall take effect on and from the expiration of the period specified in the notice.

- (b) If the Sub-Lessee exercises its option to terminate this Sub-Lease pursuant to this clause, the Sub-Lessee shall not be entitled to reimbursement from the Sub-Lessor for any Yearly Rental which has been previously paid.
- (c) If so directed by the Sub-Lessor in writing within two (2) months after receipt of the Sub-Lessee's notice of termination, the Sub-Lessee shall at the Sub-Lessee's expense forthwith remove from the Leased Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop. The

Sub-Lessor hereby indemnifies and holds free the Sub-Lessee from any Claim made against it by the Head Sub-Lessor because of the carrying out the Sub-Lessor's directive under this clause 9.3 in accordance with the Sub-Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Sub-Lessee, its officers, employees, agents or contractors.

### 9.4 Reduction of the Leased Area

(a) If:

- (i) any part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Sub-Lessee reasonably determines that any part of the Plantation Crop is no longer commercially viable;

the Sub-Lessee may terminate this Sub-Lease in respect of that portion of the Leased Area on which the affected part of the Plantation Crop is or was growing ("the Surrendered Area"), by giving not less than two (2) month's prior written notice of such termination to the Sub-Lessor, and reduce the Yearly Rental payable in proportion to the reduction in the Net Plantable Area. The termination and reduction to take effect from the expiration of the period specified in the notice.

- (b) Where the Net Plantable Area is reduced in accordance with this clause, The Yearly Rental shall not be reduced until clause 9.4(c) has been complied with. Nor shall the Sub-Lessee be entitled to reimbursement of any of the Yearly Rental which fell due and was paid before compliance with clause 9.4(c).
- (c) If so directed by the Sub-Lessor in writing within two (2) months after receipt of the Sub-Lessee's notice of termination, the Sub-Lessee shall at the Sub-Lessee's expense forthwith remove

from the Surrendered Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and, provided it is reasonably practicable to do so, fence off the Surrendered Area from the remainder of the Leased Area, and provide the Sub-Lessor and Head Sub-Lessor under the Head Sub-Lease with reasonable access to the Surrendered Area. The Sub-Lessor hereby indemnifies and holds free the Sub-Lessee from any Claim made against it by the Head Sub-Lessor because of the carrying out the Sub-Lessor's directive under this **clause 9.4** in accordance with the Sub-Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Sub-Lessee, its officers, employees, agents or contractors.

#### **9.5 Effect of termination**

- (a) Termination of the whole or any part of this Sub-Lease under **clauses 9.1, 9.2, 9.3 or 9.4** shall be without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of part of the Leased Area under **clause 9.3** shall not affect the rights or obligations of the Parties in respect of any other part of the Leased Area.

#### **9.6 Limited right of termination**

Except as expressly provided in this Part, neither Party shall be entitled to terminate or rescind this Sub-Lease and the Sub-Lessor shall not be entitled to re-enter the Leased Area or forfeit this Lease, at any time prior to the expiration of the Term (as extended or renewed).

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### **Part 10**

#### **Rights and obligations on expiration or termination**

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##### **10.1 Removal of stumps, roads and tracks**

The Sub-Lessor acknowledges and agrees with the Sub-Lessee that, except to the extent that

**clauses 9.3(c) and 9.4(c)** apply, the Sub-Lessee will not be liable to remove or to pay for the removal of:

- (a) any stumps from the Leased Area; or
- (b) any roads or tracks constructed on the Leased Area or on the Head Sub-Lessor's Neighbouring Land under **clause 6.4**,

at the expiration or earlier termination of this Sub-Lease.

##### **10.2 Removal of products and equipment**

During the three (3) month period following the expiration of this Sub-Lease, the Sub-Lessee may enter upon the Leased Area and remove any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Sub-Lessee during the Term.

##### **10.3 Products and equipment left by the Sub-Lessee**

- (a) Any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Sub-Lessee, which are not removed by the Sub-Lessee within the three (3) month period referred to in **clause 10.2**; and
- (b) any part of the Plantation Crop not harvested by the Sub-Lessee during the Term (as extended or renewed),

shall to the extent permitted by law, be the property of the Sub-Lessor.

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### **Part 11**

#### **Ownership of the Plantation Crop**

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##### **11.1 Ownership**

The Sub-Lessor acknowledges and agrees with the Sub-Lessee that the Plantation Crop will be and shall remain the property of the Sub-Lessee (or, where applicable any other person who derives title to the Plantation Crop through the Sub-Lessee) for the period referred to in **clause 11.3**.

##### **11.2 Additional Rights**

The Sub-Lessor hereby transfers and grants to the Sub-Lessee the following rights in addition



to the other rights granted to the Sub-Lessee under this Sub-Lease:

- (a) to establish, prune, tend and manage the Plantation Crop and to cultivate and plant seedling trees as part of the Plantation Crop;
- (b) to enter upon the Leased Area with or without vehicles and, to the exclusion of the Sub-Lessor and all other persons, to harvest the Plantation Crop and remove and sell the products derived from the Plantation Crop; and
- (c) to exercise and enjoy such of the rights and powers granted to the Sub-Lessee under this Lease as may be necessary to enable the Sub-Lessee to exercise the rights referred to in paragraphs (a) and (b) above.

### 11.3 Independent Proprietary Interest

- (a) The rights and interests granted to the Sub-Lessee under **clauses 11.1 and 11.2** constitute an independent and severable grant of a proprietary interest in the Leased Area by the Sub-Lessor to the Sub-Lessee.
- (b) In the event that the Term or the leasehold interest of the Sub-Lessee under this Sub-Lease:
  - (1) ends; or
  - (2) is terminated (other than by effluxion of time or by the operation of **Parts 2 or 9**); or
  - (3) becomes void whether by reason of some act or default of the Sub-Lessor or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of the Sub-Lessor, or for any other reason whatsoever,

the rights and interests granted to the Sub-Lessee under **clauses 11.1 and 11.2** shall, unless expressly surrendered by the Sub-Lessee, continue in full force and effect and may be exercised and enjoyed by the Sub-Lessee until the date on which the Term (as extended or renewed) would have ended by effluxion of time.

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## Part 12

### Mining and petroleum activities

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#### 12.1 Definitions

In this part, the following expressions have the following meanings:

**"Mining Activities"** means all activities that may be carried out pursuant to a Mining Tenement.

**"Mining Tenement"** means any right or title available under the Mining Act 1978, and includes a permit to enter on private land.

**"Petroleum Activities"** means all activities that may be carried out pursuant to a Petroleum Title.

**"Petroleum Title"** means any right or title available under the Petroleum Act 1967, and includes a permit to enter on private land.

#### 12.2 Application for Mining Tenement or Petroleum Title

If any person applies for a Mining Tenement or a Petroleum Title over any part of the Leased Area, then the following provisions shall apply:

- (a) The Sub-Lessor shall promptly notify the Sub-Lessee.
- (b) Neither the Sub-Lessor nor the Sub-Lessee shall consent to the application or do any act or thing that may assist the grant of the application without the prior written consent of the other Party.
- (c) The Sub-Lessee shall be entitled to object to or resist the application or to restrict the scope of the rights to be obtained by virtue of the grant of the application, to the fullest extent permitted by law.
- (d) For the purpose of giving full effect to **clause 12.2(c)** above, the Sub-Lessor shall sign such documents as the Sub-Lessee may require, and the Sub-Lessee shall be entitled to take such proceedings in the name of the Sub-Lessor as the Sub-Lessee considers appropriate. The Sub-Lessee hereby indemnifies the Sub-Lessor for any loss suffered by the Sub-Lessor as a direct consequence of the Sub-Lessee

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the Lessee claiming Force Majeure to maintain the plant, machinery or equipment in a proper manner;

- (e) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

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**Part 9**  
**Early termination and reduction of the Leased Area**

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**9.1 Termination by Lessee**

- (a) If the Lessor breaches any of its covenants under this Sub-Lease and:-

- (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessor in accordance with **clause 9.1(b)** ("General Default Notice") or such other period as is determined to be the period within which it must be remedied as determined in accordance with **clause 9.1(d)**; or
- (ii) if the breach is one which is incapable of being remedied and the Lessor fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.1(d)** within a period of 30 days of the General Default Notice being given to the Lessor

then subject to **clause 9.1(d)** the Lessee may give to the Lessor a further written notice complying with **clause 9.1(c)** having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or

determined in accordance with **clause 9.1(d)** has been paid.

- (b) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-
  - (A) what the Lessee requires to be done to rectify the default; and
  - (B) such period as the Lessee acting reasonably considers having regard to the nature and extent of the default it is practicable for the Lessor to rectify the default within; or

- (iii) if the default is incapable of being remedied, the amount of compensation that the Lessee acting reasonably considers is proper and adequate compensation to the Lessee for the Lessee's loss or damage suffered as a consequence of the unremediable default.

- (iv) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (c) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.1(a)** the notice given must:-

- (i) enclose an original signed by the Lessee or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (d) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessor gives to the Lessee written notice ("**the Objection Notice**") claiming any one or more of the following things:-

- (i) the Lessor is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessee is incorrect; or
- (iv) the amount of compensation claimed by the Lessee is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the

parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (e) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessee and the Lessor or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.

- (f) Termination pursuant to the provisions of this **clause 9.1** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

- (g) (i) If the Term is terminated by the Lessee in accordance with this **clause 9.1** then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop as at the date of termination.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.1(g)** becomes the absolute property of the Lessor at the end of that licence period.

## 9.2 Termination by Lessor

- (a) If the Lessee defaults in the payment of any instalment of Annual Rent and that default is not rectified within 30 days of the Lessor having given to the Lessee a default notice complying with **clause 9.2(b)** ("Rent Default Notice") then the Lessor may give to the Lessee a further written notice complying with **clause 9.2(b)** having the immediate effect of terminating the Term upon it being given ("Rent Termination Notice") unless prior to the Rent Termination Notice being given the default has been rectified.
- (b) To constitute and be effective as a Rent Default Notice for the purpose of **clause 9.2(a)**, the notice given must:-
  - (i) be signed by the Lessor and clearly dated;
  - (ii) specify the exact amount of Annual Rent overdue for payment;
  - (iii) specify the date the overdue amount should have been paid;
  - (iv) demand payment of the overdue amount within 30 days of the date of the notice being deemed given and state that the consequence of non-payment will be the issue of a Rent Termination Notice;
  - (v) be sent separately by registered post to the following persons at the following addresses or such other

person or addresses that the Lessee by written notice give in accordance with **clause 13.3** prescribes as the addressees and addresses for the Rent Default Notices:-

The Company Secretary  
Timbercorp Securities Limited  
8<sup>th</sup> Floor  
461 Bourke Street  
MELBOURNE VIC 3000; and

The General Manager  
Timbercorp Forestry  
Level 4  
50 Colin Street  
WEST PERTH WA 6005

- (c) To constitute and be effective as a Rent Termination Notice for the purpose of **clause 9.2(a)** the notice given must:-
  - (i) enclose an original copy signed by the Lessor or true photocopy of the signed Rent Default Notice given;
  - (ii) use clear words of termination; and

otherwise comply with the same requirements as are specified for a Rent Default Notice in accordance with clauses 9.2(b)(i) and (v).
- (d) The time at which a Rent Default Notice or a Rent Termination Notice will be deemed to have been given will be the same time as a notice given in accordance with **clause 13.3** is deemed to have been given.
- (e) If the Lessee breaches any of its covenants under the Lease other than its covenant to pay Annual Rent and:-
  - (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessee in accordance with **clause 9.2(f)** ("General Default Notice") or such other period as is determined to be the period within which it must be

remedied as determined in accordance with **clause 9.2(h)** ; or

- (ii) if the breach is one which is incapable of being remedied and the Lessee fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.2(h)** within a period of 30 days of the General Default Notice being given to the Lessee

then the Lessor may give to the Lessee a further written notice complying with **clause 9.2(g)** having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with **clause 9.2(h)** has been paid.

- (f) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-
  - (A) what the Lessor requires to be done to rectify the default; and
  - (B) such period as the Lessor acting reasonably considers having regard to the nature and extent of the default it is practicable for the Lessee to rectify the default within; or
- (iii) if the default is incapable of being remedied, the amount of compensation that the Lessor acting reasonably considers is proper and adequate compensation to the Lessor for the Lessor's loss or

damage suffered as a consequence of the unremediable default

and must otherwise comply with the provisions of **clause 9.2(b)(i)** and **(v)** as if the General Default Notice was a Rent Default Notice.

- (g) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.2(e)** the notice given must:-

- (i) enclose an original signed by the Lessor or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) otherwise comply with the provisions of **clause 9.2(b)(i)** and **(v)** as if the General Termination Notice was a Rent Default Notice.

- (h) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessee gives to the Lessor written notice ("**the Objection Notice**") claiming any one or more of the following things:-

- (i) the Lessee is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessor is incorrect; or
- (iv) the amount of compensation claimed by the Lessor is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of

Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (i) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessor and the Lessee or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.
- (j) Termination pursuant to the provisions of this **clause 9.2** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.
- (k) (i) If the Term is terminated by the Lessor in accordance with **clause 9.2(a)** or **clause 9.2(e)** then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.2(k)** becomes the absolute property of the Lessor at the end of that licence period.

### 9.3 Loss of Plantation Crop

- (a) If:
  - (i) the whole or a substantial part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
  - (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that the whole or a substantial part of the Plantation Crop is no longer commercially viable,

then the Lessee may terminate this Sub-Lease by giving not less than one (1) month's prior written notice of such termination to the Lessor. Termination under this clause shall take effect on and from the expiration of the period specified in the notice.

- (b) If the Lessee exercises its option to terminate this Sub-Lease pursuant to this clause, the Lessee shall not be entitled to reimbursement from the Lessor for any Yearly Rental which has been previously paid.
- (c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee shall at the Lessee's expense forthwith remove from the Leased Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop. The Lessor hereby indemnifies and holds free the Lessee from any Claim made against it by reason the Owner because of the carrying out the Lessor's directive under this **clause 9.3** in accordance with the Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default

or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.4 Reduction of the Leased Area**

(a) If:

(i) any part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and

(ii) an independent forestry consultant commissioned by the Lessee reasonably determines that any part of the Plantation Crop is no longer commercially viable;

the Lessee may terminate this Sub-Lease in respect of that portion of the Leased Area on which the affected part of the Plantation Crop is or was growing ("the Surrendered Area"), by giving not less than two (2) month's prior written notice of such termination to the Lessor, and reduce the Yearly Rental payable in proportion to the reduction in the Net Plantable Area. The termination and reduction to take effect from the expiration of the period specified in the notice.

(b) Where the Net Plantable Area is reduced in accordance with this clause, The Yearly Rental shall not be reduced until clause 9.4(c) has been complied with. Nor shall the Lessee be entitled to reimbursement of any of the Yearly Rental which fell due and was paid before compliance with clause 9.4(c).

(c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee shall at the Lessee's expense forthwith remove from the Surrendered Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and, provided it is reasonably practicable to do so, fence off the Surrendered Area from the remainder of the Leased Area, and provide the Lessor and the lessor or sub-lessor under the Head Lease with reasonable access to the Surrendered Area. The Lessor hereby indemnifies and holds free the Lessee from any

Claim made against it by reason of by the Owner because of the carrying out the Lessor's directive under this clause 9.4 in accordance with the Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.5 Effect of termination**

(a) Termination of the whole or any part of this Sub-Lease under clauses 9.1, 9.2, 9.3 or 9.4 shall be without prejudice to any rights or obligations which may have accrued prior to the date of termination.

(b) Termination of this Sub-Lease in respect of part of the Leased Area under clause 9.3 shall not affect the rights or obligations of the Parties in respect of any other part of the Leased Area.

#### **9.6 Limited right of termination**

Except as expressly provided in this Part, neither Party shall be entitled to terminate or rescind this Sub-Lease and the Lessor shall not be entitled to re-enter the Leased Area or forfeit this Lease, at any time prior to the expiration of the Term (as extended or renewed).

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### **Part 10**

#### **Rights and obligations on expiration or termination**

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##### **10.1 Removal of stumps, roads and tracks**

The Lessor acknowledges and agrees with the Lessee that, except to the extent that clauses 9.3(c) and 9.4(c) apply, the Lessee will not be liable to remove or to pay for the removal of:

- (a) any stumps from the Leased Area; or
- (b) any roads or tracks constructed on the Leased Area or on the Owner's Neighbouring Land under clause 6.4,

at the expiration or earlier termination of this Sub-Lease.

### 10.2 Removal of products and equipment

During the three (3) month period following the expiration of this Sub-Lease, the Lessee may enter upon the Leased Area and remove any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee during the Term.

### 10.3 Products and equipment left by the Lessee

- (a) Any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee, which are not removed by the Lessee within the three (3) month period referred to in **clause 10.2**; and
- (b) any part of the Plantation Crop not harvested by the Lessee during the Term (as extended or renewed),

shall to the extent permitted by law, be the property of the Lessor.

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## Part 11

### Ownership of the Plantation Crop

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#### 11.1 Ownership

The Lessor acknowledges and agrees with the Lessee that the Plantation Crop will be and shall remain the property of the Lessee (or, where applicable any other person who derives title to the Plantation Crop through the Lessee) for the period referred to in **clause 11.3**.

#### 11.2 Additional Rights

The Lessor hereby transfers and grants to the Lessee the following rights in addition to the other rights granted to the Lessee under this Sub-Lease:

- (a) to establish, prune, tend and manage the Plantation Crop and to cultivate and plant seedling trees as part of the Plantation Crop;
- (b) to enter upon the Leased Area with or without vehicles and, to the exclusion of the Lessor and all other persons, to harvest the Plantation Crop and remove and sell the products derived from the Plantation Crop; and
- (c) to exercise and enjoy such of the rights and powers granted to the Lessee under

this Lease as may be necessary to enable the Lessee to exercise the rights referred to in paragraphs (a) and (b) above.

### 11.3 Independent Proprietary Interest

- (a) The rights and interests granted to the Lessee under **clauses 11.1 and 11.2** constitute an independent and severable grant of a proprietary interest in the Leased Area by the Lessor to the Lessee.
- (b) In the event that the Term or the leasehold interest of the Lessee under this Sub-Lease:
  - (1) ends; or
  - (2) is terminated (other than by effluxion of time or by the operation of **Parts 2 or 9**); or
  - (3) becomes void whether by reason of some act or default of the Lessor or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of the Lessor, or for any other reason whatsoever,

the rights and interests granted to the Lessee under **clauses 11.1 and 11.2** shall, unless expressly surrendered by the Lessee, continue in full force and effect and may be exercised and enjoyed by the Lessee until the date on which the Term (as extended or renewed) would have ended by effluxion of time.

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## Part 12

### Mining and petroleum activities

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#### 12.1 Definitions

In this part, the following expressions have the following meanings:

"**Mining Activities**" means all activities that may be carried out pursuant to a Mining Tenement.

"**Mining Tenement**" means any right or title available under the Mining Act 1978, and includes a permit to enter on private land.

"**Petroleum Activities**" means all activities that may be carried out pursuant to a Petroleum Title.



such force majeure to the Head Lessor as required under the provisions of the Head Lease.

### 8.3 Definition of Force Majeure

In clause 8.2, "Event of Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightning, storm or tempest;
- (b) strikes, lockouts, stoppages, restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot, civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment except where such breakdown is due to a failure by the Lessee claiming Force Majeure to maintain the plant, machinery or equipment in a proper manner;
- (e) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

## Part 9

### Early termination and reduction of the Leased Area

#### 9.1 Termination during extended Term

If:-

- (a) the Term has been extended under clause 8.1; and

- (b) the Lessor under the terms of the Head Lease has a corresponding right of early termination of any extension of the Head Lease Term so that the Lessor can terminate the Head Lease Term at the same time as the extended Term is terminated under this clause

then the Lessee may elect to terminate this Sub-Lease during the extension of the Term granted pursuant to clause 8.1 by giving written notice of termination to the Lessor at least 4 months prior to commencement of harvesting of the Plantation Crop. If the Lessee gives notice of such termination to the Lessor under this clause, then this Sub-Lease will terminate on the earlier of the date on which harvesting is completed or the date that the extended Term (including further permitted extensions of it attributed to Force Majeure) would have expired by effluxion of time in any event.

#### 9.2 Termination by Lessee

- (a) If the Lessor breaches any of its covenants under this Sub-Lease and:-
  - (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessor in accordance with clause 9.2(b) ("General Default Notice") or such other period as is determined to be the period within which it must be remedied as determined in accordance with clause 9.2(d); or

- (ii) if the breach is one which is incapable of being remedied and the Lessor fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with clause 9.2(d) within a period of 30 days of the General Default Notice being given to the Lessor

then subject to clause 9.2(d) the Lessee may give to the Lessor a further written notice complying with clause 9.2(c) having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with clause 9.2(d) has been paid.

(b) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-
  - (A) what the Lessee requires to be done to rectify the default; and
  - (B) such period as the Lessee acting reasonably considers having regard to the nature

and extent of the default it is practicable for the Lessor to rectify the default within; or

- (iii) if the default is incapable of being remedied, the amount of compensation that the Lessee acting reasonably considers is proper and adequate compensation to the Lessee for the Lessee's loss or damage suffered as a consequence of the unremediable default.
- (iv) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with clause 13.3 prescribes as the addressees and addresses for notices under this clause 9.2:-

The General Manager

Finance & Administration

W.A. Chip & Pulp Co Pty  
Ltd

Level 5

28 The Esplanade

PERTH WA 6000

Attention: Chris Palmer; and

The Managing Director

W.A. Chip & Pulp Co Pty  
Ltd

Level 5

28 The Esplanade

PERTH WA 6000

(c) to constitute and be effective as a General Termination Notice for the purpose of clause 9.2(a) the notice given must:-

- (i) enclose an original signed by the Lessee or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with clause 13.3 prescribes as the addressees and addresses for notices under this clause 9.2:-

The General Manager

Finance & Administration

W.A. Chip & Pulp Co Pty  
Ltd

Level 5

28 The Esplanade

PERTH WA 6000

Attention: Chris Palmer; and

The Managing Director

W.A. Chip & Pulp Co Pty  
Ltd

Level 5

28 The Esplanade

PERTH WA 6000

(d) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessor gives to the Lessee written notice ("**the Objection Notice**") claiming any one or more of the following things:-

- (i) the Lessor is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessee is incorrect; or
- (iv) the amount of compensation claimed by the Lessee is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is

situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (e) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessee and the Lessor or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.
- (f) Termination pursuant to the provisions of this clause 9.2 will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

- (g) (i) If the Term is terminated by the Lessee in accordance with this clause 9.2 then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop as at the date of termination.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in clause 9.2(g) becomes the absolute property of the Lessor at the end of that licence period.

### **9.3 Termination by Lessor**

- (a) If the Lessee defaults in the payment of any instalment of Annual Rent and that default is not rectified within 30 days of the Lessor having given to the Lessee a default notice complying with clause

9.3(b) (“**Rent Default Notice**”) then the Lessor may give to the Lessee a further written notice complying with clause 9.3(b) having the immediate effect of terminating the Term upon it being given (“**Rent Termination Notice**”) unless prior to the Rent Termination Notice being given the default has been rectified.

(b) To constitute and be effective as a Rent Default Notice for the purpose of clause 9.3(a), the notice given must:-

- (i) be signed by the Lessor and clearly dated;
- (ii) specify the exact amount of Annual Rent overdue for payment;
- (iii) specify the date the overdue amount should have been paid;
- (iv) demand payment of the overdue amount within 30 days of the date of the notice being deemed given and state that the consequence of non-payment will be the issue of a Rent Termination Notice;
- (v) be sent separately by registered post to the following persons at the following addresses or such other person or addresses that the Lessee by written notice give in accordance with clause 13.3 prescribes as the addressees and addresses for the Rent Default Notices:-

The Company Secretary

Timbercorp Limited

8<sup>th</sup> Floor

461 Bourke Street

MELBOURNE VIC 3000; and

The General Manager

Timbercorp Forestry

Level 4

50 Colin Street

WEST PERTH WA 6005

(c) To constitute and be effective as a Rent Termination Notice for the purpose of clause 9.3(a) the notice given must:-

(i) enclose an original copy signed by the Lessor or true photocopy of the signed Rent Default Notice given;

(ii) use clear words of termination; and

otherwise comply with the same requirements as are specified for a Rent Default Notice in accordance with clauses 9.3(b)(i) and (v).

(d) The time at which a Rent Default Notice or a Rent Termination Notice will be deemed to have been given will be the same time as a notice given in accordance with clause 13.3 is deemed to have been given.

(e) If the Lessee breaches any of its covenants under the Lease other than its covenant to pay Annual Rent and:-

(i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessee in accordance with clause 9.3(f) ("**General Default Notice**") or such other period as is determined to be the period within which it must be remedied as determined in accordance with clause 9.3(h) ; or

(ii) if the breach is one which is incapable of being remedied and the Lessee fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with clause 9.3(h) within a period of 30 days of the General Default Notice being given to the Lessee

then the Lessor may give to the Lessee a further written notice complying with clause 9.3(g) having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been

rectified or the compensation demanded in the General Default Notice or determined in accordance with clause 9.3(h) has been paid.

(f) To constitute and be effective as a General Default Notice the notice given must specify:-

(i) the default;

(ii) if the default is capable of remedy:-

(A) what the Lessor requires to be done to rectify the default; and

(B) such period as the Lessor acting reasonably considers having regard to the nature and extent of the default it is practicable for the Lessee to rectify the default within; or

(iii) if the default is incapable of being remedied, the amount of compensation that the Lessor acting reasonably considers is proper and adequate compensation to the Lessor for the Lessor's loss or damage suffered as a consequence of the unremediable default

and must otherwise comply with the provisions of clause 9.3(b)(i) and (v) as if the General Default Notice was a Rent Default Notice.

(g) to constitute and be effective as a General Termination Notice for the purpose of clause 9.3(e) the notice given must:-

- (i) enclose an original signed by the Lessor or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) otherwise comply with the provisions of clause 9.3(b)(i) and (v) as if the General Termination Notice was a Rent Default Notice.

(h) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessee gives to the Lessor written notice ("**the Objection Notice**") claiming any one or more of the following things:-

- (i) the Lessee is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessor is incorrect; or
- (iv) the amount of compensation claimed by the Lessor is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (i) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessor and the Lessee or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.

(j) Termination pursuant to the provisions of this clause 9.3 will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

(k) (i) If the Term is terminated by the Lessor in accordance with clause 9.3(a) or clause 9.3(e) then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop.

(ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in clause 9.3(k) becomes the absolute property of the Lessor at the end of that licence period.

#### 9.4 Loss of Plantation Crop

(a) If:

(i) the whole or a substantial part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and

(ii) an independent forestry consultant commissioned by the Lessee reasonably determines that the whole or a substantial part of the Plantation Crop is no longer commercially viable,

then the Lessee may terminate this Sub-Lease by giving not less than one (1) month's prior written notice of such termination to the Lessor. Termination under this clause shall take effect on and from the expiration of the period specified in the notice.

(b) If the Lessee exercises its option to terminate this Sub-Lease pursuant to this clause, the Lessee shall not be entitled to reimbursement from the Lessor for any Yearly Rental which has been previously paid.

(c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, and notwithstanding the provisions of the covenant contained in clause 6(i) of the Head Lease, the Lessee shall at the Lessee's expense forthwith remove from the Leased Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop. The Lessor hereby indemnifies and holds free the Lessee from any Claim made against it



by reason the Owner because of the carrying out the Lessor's directive under this clause 9.4 in accordance with the Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.5 Reduction of the Leased Area**

(a) If:

- (i) any part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that any part of the Plantation Crop is no longer commercially viable;

the Lessee may terminate this Sub-Lease in respect of that portion of the Leased Area on which the affected part of the Plantation Crop is or was growing ("the Surrendered Area"), by giving not less than two (2) month's prior written notice of such termination to the Lessor, and reduce the Yearly Rental payable in proportion to the reduction in the Net Plantable Area. The termination and reduction to take effect from the expiration of the period specified in the notice.

(b) Where the Net Plantable Area is reduced in accordance with this clause,

The Yearly Rental shall not be reduced until clause 9.5(c) has been complied with. Nor shall the Lessee be entitled to reimbursement of any of the Yearly Rental which fell due and was paid before compliance with clause 9.5(c).

(c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, and notwithstanding the provisions of the covenant contained in clause 6(i) of the Head Lease, the Lessee shall at the Lessee's expense forthwith remove from the Surrendered Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and, provided it is reasonably practicable to do so, fence off the Surrendered Area from the remainder of the Leased Area, and provide the Lessor and the lessor or sub-lessor under the Head Lease with reasonable access to the Surrendered Area. The Lessor hereby indemnifies and holds free the Lessee from any Claim made against it by reason of by the Owner because of the carrying out the Lessor's directive under this clause 9.5 in accordance with the Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.6 Effect of termination**

- (a) Termination of the whole or any part of this Sub-Lease under clauses 9.1, 9.2, 9.3, 9.4 or 9.5 shall be without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of part of the Leased Area under clause 9.4 shall not affect the rights or obligations of the Parties in respect of any other part of the Leased Area.

#### **9.7 Limited right of termination**

Except as expressly provided in this Part, neither Party shall be entitled to terminate or rescind this Sub-Lease and the Lessor shall not be entitled to re-enter the Leased Area or forfeit this Lease, at any time prior to the expiration of the Term (as extended or renewed).

### **Part 10**

#### **Rights and obligations on expiration or termination**

##### **10.1 Removal of stumps, roads and tracks**

The Lessor acknowledges and agrees with the Lessee that, except to the extent that clauses 9.4(b) and 9.5(b) apply, the Lessee will not be liable to remove or to pay for the removal of:

- (a) any stumps from the Leased Area; or
- (b) any roads or tracks constructed on the Leased Area or on the Owner's Neighbouring Land under clause 6.4,

at the expiration or earlier termination of this Sub-Lease.

##### **10.2 Removal of products and equipment**

During the three (3) month period following the expiration of this Sub-Lease, the Lessee may enter upon the Leased Area and remove any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee during the Term.

##### **10.3 Products and equipment left by the Lessee**

- (a) Any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee, which are not removed by the Lessee within the three (3) month period referred to in clause 10.2; and
- (b) any part of the Plantation Crop not harvested by the Lessee during the Term (as extended or renewed),

shall to the extent permitted by law, be the property of the Lessor.

### **Part 11**

#### **Ownership of the Plantation Crop**

##### **11.1 Ownership**

The Lessor acknowledges and agrees with the Lessee that the Plantation Crop will be and shall remain the property of the Lessee (or, where applicable any other person who derives title to the Plantation Crop through the Lessee) for the period referred to in sub-clause 11.3.2.

### **11.2 Additional Rights**

The Lessor hereby transfers and grants to the Lessee the following rights in addition to the other rights granted to the Lessee under this Sub-Lease:

- (a) to establish, prune, tend and manage the Plantation Crop and to cultivate and plant seedling trees as part of the Plantation Crop;
- (b) to enter upon the Leased Area with or without vehicles and, to the exclusion of the Lessor and all other persons, to harvest the Plantation Crop and remove and sell the products derived from the Plantation Crop; and
- (c) to exercise and enjoy such of the rights and powers granted to the Lessee under this Lease as may be necessary to enable the Lessee to exercise the rights referred to in paragraphs (a) and (b) above.

### **11.3 Independent Proprietary Interest**

- (a) The rights and interests granted to the Lessee under clauses 11.1 and 11.2 constitute an independent and severable grant of a proprietary interest in the Leased Area by the Lessor to the Lessee.
- (b) In the event that the Term or the leasehold interest of the Lessee under this Sub-Lease:
  - (1) ends; or
  - (2) is terminated (other than by effluxion of time or by the operation of Parts 2 or 9); or

- (3) becomes void whether by reason of some act or default of the Lessor or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of the Lessor, or for any other reason whatsoever,

the rights and interests granted to the Lessee under clauses 11.1 and 11.2 shall, unless expressly surrendered by the Lessee, continue in full force and effect and may be exercised and enjoyed by the Lessee until the date on which the Term (as extended or renewed) would have ended by effluxion of time.

## **Part 12**

### **Mining and petroleum activities**

#### **12.1 Definitions**

In this part, the following expressions have the following meanings:

**"Mining Activities"** means all activities that may be carried out pursuant to a Mining Tenement.

**"Mining Tenement"** means any right or title available under the Mining Act 1978, and includes a permit to enter on private land.

**"Petroleum Activities"** means all activities that may be carried out pursuant to a Petroleum Title.

**"Petroleum Title"** means any right or title available under the Petroleum Act 1967, and includes a permit to enter on private land.

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- (c) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

### Part 9

## Early termination and reduction of the Leased Area

### 9.1 Termination by Lessee

- (a) If the Lessor breaches any of its covenants under this Sub-Lease and:-

- (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessor in accordance with **clause 9.1(b)** ("General Default Notice") or such other period as is determined to be the period within which it must be remedied as determined in accordance with **clause 9.1(d)** ; or
- (ii) if the breach is one which is incapable of being remedied and the Lessor fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.1(d)** within a period of 30 days of the General Default Notice being given to the Lessor

then subject to **clause 9.1(d)** the Lessee may give to the Lessor a further written notice complying with **clause 9.1(c)** having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with **clause 9.1(d)** has been paid.

- (b) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-

(A) what the Lessee requires to be done to rectify the default; and

(B) such period as the Lessee acting reasonably considers having regard to the nature and extent of the default it is practicable for the Lessor to rectify the default within; or

- (iii) if the default is incapable of being remedied, the amount of compensation that the Lessee acting reasonably considers is proper and adequate compensation to the Lessee for the Lessee's loss or damage suffered as a consequence of the unremediable default.

- (iv) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (c) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.1(a)** the notice given must:-

- (i) enclose an original signed by the Lessee or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (d) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessor gives to the Lessee written notice ("~~the~~ **Objection Notice**") claiming any one or more of the following things:-

- (i) the Lessor is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessee is incorrect; or
- (iv) the amount of compensation claimed by the Lessee is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute

is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (e) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessee and the Lessor or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.

- (f) Termination pursuant to the provisions of this **clause 9.1** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

- (g) (i) If the Term is terminated by the Lessee in accordance with this **clause 9.1** then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop as at the date of termination.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.1(g)** becomes the absolute property of the Lessor at the end of that licence period.

## 9.2 Termination by Lessor

- (a) If the Lessee defaults in the payment of any instalment of Annual Rent and that default is not rectified within 30 days of the Lessor having given to the Lessee a default notice complying with **clause 9.2(b)** ("Rent Default Notice") then the Lessor may give to the Lessee a further written notice complying with **clause 9.2(b)** having the immediate effect of terminating the Term upon it being given ("Rent Termination Notice") unless prior to the Rent Termination Notice being given the default has been rectified.
- (b) To constitute and be effective as a Rent Default Notice for the purpose of **clause 9.2(a)**, the notice given must:-
  - (i) be signed by the Lessor and clearly dated;
  - (ii) specify the exact amount of Annual Rent overdue for payment;
  - (iii) specify the date the overdue amount should have been paid;
  - (iv) demand payment of the overdue amount within 30 days of the date of the notice being deemed given and state that the consequence of non-payment will be the issue of a Rent Termination Notice;
- (v) be sent separately by registered post to the following persons at the following addresses or such other person or addresses that the Lessee by written notice give in accordance with **clause 13.3** prescribes as the addressees and addresses for the Rent Default Notices:-
 

The Company Secretary  
Timbercorp Securities Limited  
8<sup>th</sup> Floor  
461 Bourke Street  
MELBOURNE VIC 3000; and

The General Manager  
Timbercorp Forestry  
Level 4  
50 Colin Street  
WEST PERTH WA 6005
- (c) To constitute and be effective as a Rent Termination Notice for the purpose of **clause 9.2(a)** the notice given must:-
  - (i) enclose an original copy signed by the Lessor or true photocopy of the signed Rent Default Notice given;
  - (ii) use clear words of termination; and

otherwise comply with the same requirements as are specified for a Rent Default Notice in accordance with clauses 9.2(b)(i) and (v).
- (d) The time at which a Rent Default Notice or a Rent Termination Notice will be deemed to have been given will be the same time as a notice given in accordance with **clause 13.3** is deemed to have been given.
- (e) If the Lessee breaches any of its covenants under the Lease other than its covenant to pay Annual Rent and:-
  - (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessee in accordance with **clause 9.2(f)** ("General

**Default Notice**") or such other period as is determined to be the period within which it must be remedied as determined in accordance with **clause 9.2(h)** ; or

- (ii) if the breach is one which is incapable of being remedied and the Lessee fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.2(h)** within a period of 30 days of the General Default Notice being given to the Lessee

then the Lessor may give to the Lessee a further written notice complying with **clause 9.2(g)** having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with **clause 9.2(h)** has been paid.

- (f) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-
  - (A) what the Lessor requires to be done to rectify the default; and
  - (B) such period as the Lessor acting reasonably considers having regard to the nature and extent of the default it is practicable for the Lessee to rectify the default within; or
- (iii) if the default is incapable of being remedied, the amount of compensation that the Lessor acting

reasonably considers is proper and adequate compensation to the Lessor for the Lessor's loss or damage suffered as a consequence of the unremediable default

and must otherwise comply with the provisions of **clause 9.2(b)(i)** and (v) as if the General Default Notice was a Rent Default Notice.

- (g) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.2(e)** the notice given must:-

- (i) enclose an original signed by the Lessor or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) otherwise comply with the provisions of **clause 9.2(b)(i)** and (v) as if the General Termination Notice was a Rent Default Notice.

- (h) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessee gives to the Lessor written notice ("**the Objection Notice**") claiming any one or more of the following things:-

- (i) the Lessee is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessor is incorrect; or
- (iv) the amount of compensation claimed by the Lessor is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the

parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (i) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessor and the Lessee or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.

- (i) Termination pursuant to the provisions of this clause 9.2 will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

- (k) (i) If the Term is terminated by the Lessor in accordance with **clause 9.2(a)** or **clause 9.2(e)** then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.2(k)** becomes the absolute property of the Lessor at the end of that licence period.

### 9.3 Loss of Plantation Crop

- (a) If:

- (i) the whole or a substantial part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that the whole or a substantial part of the Plantation Crop is no longer commercially viable,

then the Lessee may terminate this Sub-Lease by giving not less than one (1) month's prior written notice of such termination to the Lessor. Termination under this clause shall take effect on and from the expiration of the period specified in the notice.

- (b) If the Lessee exercises its option to terminate this Sub-Lease pursuant to this clause, the Lessee shall not be entitled to reimbursement from the Lessor for any Annual Rental which has been previously paid.
- (c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee shall at the Lessee's expense forthwith remove from the Leased Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop. The Lessor hereby indemnifies and holds free the Lessee from any Claim made against it by the



Owner because of the carrying out the Lessor's directive under this **clause 9.3** in accordance with the Lessor's directions **PROVIDED THAT** the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.4 Reduction of the Leased Area**

(a) If:

- (i) any part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that any part of the Plantation Crop is no longer commercially viable;

the Lessee may terminate this Sub-Lease in respect of that portion of the Leased Area on which the affected part of the Plantation Crop is or was growing ("**the Surrendered Area**"), by giving not less than two (2) month's prior written notice of such termination to the Lessor, and reduce the Annual Rental payable in proportion to the reduction in the Net Plantable Area. The termination and reduction to take effect from the expiration of the period specified in the notice.

- (b) Where the Net Plantable Area is reduced in accordance with this clause, The Annual Rental shall not be reduced until **clause 9.4(c)** has been complied with. Nor shall the Lessee be entitled to reimbursement of any of the Annual Rental which fell due and was paid before compliance with **clause 9.4(c)**.
- (c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee shall at the Lessee's expense forthwith remove from the Surrendered Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and, provided it is reasonably practicable to do so, fence

off the Surrendered Area from the remainder of the Leased Area, and provide the Lessor and the lessor or sub-lessor under the Head Lease with reasonable access to the Surrendered Area. The Lessor hereby indemnifies and holds free the Lessee from any Claim made against it by the Owner because of the carrying out the Lessor's directive under this **clause 9.4** in accordance with the Lessor's directions **PROVIDED THAT** the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.5 Termination during last 2 years of the Term**

If the Head Lease contains a right of early termination in similar terms to the right granted to the Lessee under this clause, the Lessee may terminate this Sub-Lease at any time during the last 2 years of the Term by giving at least 9 months' prior written notice of such termination to the Lessor.

#### **9.6 Effect of termination**

- (a) Termination of the whole or any part of this Sub-Lease under **clauses 9.1, 9.2, 9.3, 9.4** or **9.5** shall be without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of part of the Leased Area under **clause 9.4** shall not affect the rights or obligations of the Parties in respect of any other part of the Leased Area.

#### **9.7 Limited right of termination**

Except as expressly provided in this Part, neither Party shall be entitled to terminate or rescind this Sub-Lease and the Lessor shall not be entitled to re-enter the Leased Area or forfeit this Lease, at any time prior to the expiration of the Term (as extended or renewed).

## Part 10

### Rights and obligations on expiration or termination

#### 10.1 Removal of stumps, roads and tracks

The Lessor acknowledges and agrees with the Lessee that, except to the extent that **clauses 9.3(c) and 9.4(c)** apply, the Lessee will not be liable to remove or to pay for the removal of:

- (a) any stumps from the Leased Area; or
- (b) any roads or tracks constructed on the Leased Area or on the Owner's Neighbouring Land under **clause 6.4**,

at the expiration or earlier termination of this Sub-Lease.

#### 10.2 Removal of products and equipment

During the three (3) month period following the expiration of this Sub-Lease, the Lessee may enter upon the Leased Area and remove any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee during the Term.

#### 10.3 Products and equipment left by the Lessee

- (a) Any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee, which are not removed by the Lessee within the three (3) month period referred to in **clause 10.2**; and
- (b) any part of the Plantation Crop not harvested by the Lessee during the Term (as extended or renewed),

shall to the extent permitted by law, be the property of the Lessor.

## Part 11

### Ownership of the Plantation Crop

#### 11.1 Ownership

The Lessor acknowledges and agrees with the Lessee that the Plantation Crop will be and shall remain the property of the Lessee (or, where applicable any other person who derives title to the Plantation Crop through the Lessee) for the period referred to in **clause 11.3**.

#### 11.2 Additional Rights

The Lessor hereby transfers and grants to the Lessee the following rights in addition to the other rights granted to the Lessee under this Sub-Lease:

- (a) to establish, prune, tend and manage the Plantation Crop and to cultivate and plant seedling trees as part of the Plantation Crop;
- (b) to enter upon the Leased Area with or without vehicles and, to the exclusion of the Lessor and all other persons, to harvest the Plantation Crop and remove and sell the products derived from the Plantation Crop; and
- (c) to exercise and enjoy such of the rights and powers granted to the Lessee under this Lease as may be necessary to enable the Lessee to exercise the rights referred to in paragraphs (a) and (b) above.

#### 11.3 Independent Proprietary Interest

- (a) The rights and interests granted to the Lessee under **clauses 11.1 and 11.2** constitute an independent and severable grant of a proprietary interest in the Leased Area by the Lessor to the Lessee.
- (b) In the event that the Term or the leasehold interest of the Lessee under this Sub-Lease:
  - (1) ends; or
  - (2) is terminated (other than by effluxion of time or by the operation of **Parts 2 or 9**); or
  - (3) becomes void whether by reason of some act or default of the Lessor or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of the Lessor, or for any other reason whatsoever,

the rights and interests granted to the Lessee under **clauses 11.1 and 11.2** shall, unless expressly surrendered by the Lessee, continue in full force and effect and may be exercised and enjoyed by the Lessee until the date on which the Term (as extended or renewed) would have ended by effluxion of time.

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## Part 8 Extension of the Term

### 8.1 Extension for late harvesting

If the Sub-Lessee is prevented from:

- (a) harvesting the Plantation Crop; or
- (b) processing the products derived from the Plantation Crop,

due to an Event of Force Majeure, the Sub-Lessee may by giving written notice to the Sub-Lessor elect to extend the Term for a period of time equal to the duration of the event of Force Majeure. Upon receipt of such notice from the Sub-Lessee, the Sub-Lessor shall forthwith give written notice of such force majeure to the Head Sub-Lessor as required under the provisions of the Head Sub-Lease. PROVIDED FURTHER THAT the maximum period for which the Sub-Lessee may extend the Term in accordance with this clause cannot exceed the maximum period for which the Sub-Lessor as sub-lessee under the Head Sub-Lease can extend the Term of the Head Sub-Lease

### 8.2 Definition of Force Majeure

In clause 8.2, "Event of Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightning, storm or tempest;
- (b) strikes, lockouts, stoppages, restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot, civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment except where such breakdown is due to a failure by the Sub-Lessee claiming Force Majeure to maintain the plant, machinery or equipment in a proper manner;
- (e) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

## Part 9 Early termination and reduction of the Leased Area

### 9.1 Termination by Sub-Lessee

- (a) If the Sub-Lessor breaches any of its covenants under this Sub-Lease and:-

- (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Sub-Lessor in accordance with clause 9.1(b) ("General Default Notice") or such other period as is determined to be the period within which it must be remedied as determined in accordance with clause 9.1(d); or

- (ii) if the breach is one which is incapable of being remedied and the Sub-Lessor fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with clause 9.1(d) within a period of 30 days of the General Default Notice being given to the Sub-Lessor

then subject to clause 9.1(d) the Sub-Lessee may give to the Sub-Lessor a further written notice complying with clause 9.1(c) having immediate effect terminating the Term ("General Termination Notice") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with clause 9.1(d) has been paid.

- (b) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;

- (ii) if the default is capable of remedy:-

- (A) what the Sub-Lessee requires to be done to rectify the default; and
- (B) such period as the Sub-Lessee acting reasonably considers having regard to the nature and extent of the default it is practicable for the Sub-Lessor to rectify the default within; or
- (iii) if the default is incapable of being remedied, the amount of compensation that the Sub-Lessee acting reasonably considers is proper and adequate compensation to the Sub-Lessee for the Sub-Lessee's loss or damage suffered as a consequence of the unremediable default.
- (iv) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-
 

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231
- (c) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.1(a)** the notice given must:-
  - (i) enclose an original signed by the Sub-Lessee or true photocopy of the signed General Default Notice given;
  - (ii) use clear words of termination; and

- (iii) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (d) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Sub-Lessor gives to the Sub-Lessee written notice ("**the Objection Notice**") claiming any one or more of the following things:-
  - (i) the Sub-Lessor is not in default or is not in default as claimed in the General Default Notice;
  - (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
  - (iii) the rectification prescribed by the Sub-Lessee is incorrect; or
  - (iv) the amount of compensation claimed by the Sub-Lessee is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of

Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (e) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Sub-Lessee and the Sub-Lessor or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.

- (f) Termination pursuant to the provisions of this **clause 9.1** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

- (g) (i) If the Term is terminated by the Sub-Lessee in accordance with this **clause 9.1** then the Sub-Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days

which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop as at the date of termination.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.1(g)** becomes the absolute property of the Sub-Lessor at the end of that licence period.

## 9.2 Termination by Sub-Lessor

- (a) If the Sub-Lessee defaults in the payment of any instalment of Annual Rent and that default is not rectified within 30 days of the Sub-Lessor having given to the Sub-Lessee a default notice complying with **clause 9.2(b)** ("Rent Default Notice") then the Sub-Lessor may give to the Sub-Lessee a further written notice complying with **clause 9.2(b)** having the immediate effect of terminating the Term upon it being given ("Rent Termination Notice") unless prior to the Rent Termination Notice being given the default has been rectified.
- (b) To constitute and be effective as a Rent Default Notice for the purpose of **clause 9.2(a)**, the notice given must:-
- (i) be signed by the Sub-Lessor and clearly dated;
  - (ii) specify the exact amount of Annual Rent overdue for payment;
  - (iii) specify the date the overdue amount should have been paid;
  - (iv) demand payment of the overdue amount within 30 days of the date of the notice being deemed given and state that the consequence of non-payment will be the issue of a Rent Termination Notice;
  - (v) be sent separately by registered post to the following persons at the following addresses or such other

person or addresses that the Sub-Lessee by written notice give in accordance with **clause 13.3** prescribes as the addressees and addresses for the Rent Default Notices:-

The Company Secretary  
Timbercorp Securities Limited  
8<sup>th</sup> Floor  
461 Bourke Street  
MELBOURNE VIC 3000; and /

The General Manager  
Timbercorp Forestry  
Level 4  
50 Colin Street  
WEST PERTH WA 6005

(c) To constitute and be effective as a Rent Termination Notice for the purpose of **clause 9.2(a)** the notice given must:-

- (i) enclose an original copy signed by the Sub-Lessor or true photocopy of the signed Rent Default Notice given;
- (ii) use clear words of termination; and

otherwise comply with the same requirements as are specified for a Rent Default Notice in accordance with **clauses 9.2(b)(i) and (v)**.

(d) The time at which a Rent Default Notice or a Rent Termination Notice will be deemed to have been given will be the same time as a notice given in accordance with **clause 13.3** is deemed to have been given.

(e) If the Sub-Lessee breaches any of its covenants under the Lease other than its covenant to pay Annual Rent and:-

- (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Sub-Lessee in accordance with **clause 9.2(f)** ("**General Default Notice**") or such other period as is determined

to be the period within which it must be remedied as determined in accordance with **clause 9.2(h)** ; or

- (ii) if the breach is one which is incapable of being remedied and the Sub-Lessee fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.2(h)** within a period of 30 days of the General Default Notice being given to the Sub-Lessee

then the Sub-Lessor may give to the Sub-Lessee a further written notice complying with **clause 9.2(g)** having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with **clause 9.2(h)** has been paid.

(f) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-
  - (A) what the Sub-Lessor requires to be done to rectify the default; and
  - (B) such period as the Sub-Lessor acting reasonably considers having regard to the nature and extent of the default it is practicable for the Sub-Lessee to rectify the default within; or

- (iii) if the default is incapable of being remedied, the amount of compensation that the Sub-Lessor acting reasonably considers is

proper and adequate compensation to the Sub-Lessor for the Sub-Lessor's loss or damage suffered as a consequence of the unremediable default

and must otherwise comply with the provisions of **clause 9.2(b)(i)** and **(v)** as if the General Default Notice was a Rent Default Notice.

- (g) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.2(e)** the notice given must:-

- (i) enclose an original signed by the Sub-Lessor or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) otherwise comply with the provisions of **clause 9.2(b)(i)** and **(v)** as if the General Termination Notice was a Rent Default Notice.

- (h) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Sub-Lessee gives to the Sub-Lessor written notice ("**the Objection Notice**") claiming any one or more of the following things:-

- (i) the Sub-Lessee is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Sub-Lessor is incorrect; or
- (iv) the amount of compensation claimed by the Sub-Lessor is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the

dispute is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (i) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Sub-Lessor and the Sub-Lessee or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.

- (j) Termination pursuant to the provisions of this **clause 9.2** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.

- (k) (i) If the Term is terminated by the Sub-Lessor in accordance with **clause 9.2(a)** or **clause 9.2(e)** then the Sub-Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.2(k)** becomes the absolute property of the Sub-Lessor at the end of that licence period.

### 9.3 Loss of Plantation Crop

(a) If:

- (i) the whole or a substantial part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Sub-Lessee reasonably determines that the whole or a substantial part of the Plantation Crop is no longer commercially viable,

then the Sub-Lessee may terminate this Sub-Lease by giving not less than one (1) month's prior written notice of such termination to the Sub-Lessor. Termination under this clause shall take effect on and from the expiration of the period specified in the notice.

- (b) If the Sub-Lessee exercises its option to terminate this Sub-Lease pursuant to this clause, the Sub-Lessee shall not be entitled to reimbursement from the Sub-Lessor for any Yearly Rental which has been previously paid.
- (c) If so directed by the Sub-Lessor in writing within two (2) months after receipt of the Sub-Lessee's notice of termination, the Sub-Lessee shall at the Sub-Lessee's expense forthwith remove from the Leased Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop. The

Sub-Lessor hereby indemnifies and holds free the Sub-Lessee from any Claim made against it by the Head Sub-Lessor because of the carrying out the Sub-Lessor's directive under this **clause 9.3** in accordance with the Sub-Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Sub-Lessee, its officers, employees, agents or contractors.

### 9.4 Reduction of the Leased Area

(a) If:

- (i) any part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Sub-Lessee reasonably determines that any part of the Plantation Crop is no longer commercially viable;

the Sub-Lessee may terminate this Sub-Lease in respect of that portion of the Leased Area on which the affected part of the Plantation Crop is or was growing ("the Surrendered Area"), by giving not less than two (2) month's prior written notice of such termination to the Sub-Lessor, and reduce the Yearly Rental payable in proportion to the reduction in the Net Plantable Area. The termination and reduction to take effect from the expiration of the period specified in the notice.

- (b) Where the Net Plantable Area is reduced in accordance with this clause, The Yearly Rental shall not be reduced until **clause 9.4(c)** has been complied with. Nor shall the Sub-Lessee be entitled to reimbursement of any of the Yearly Rental which fell due and was paid before compliance with **clause 9.4(c)**.
- (c) If so directed by the Sub-Lessor in writing within two (2) months after receipt of the Sub-Lessee's notice of termination, the Sub-Lessee shall at the



Sub-Lessee's expense forthwith remove from the Surrendered Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and, provided it is reasonably practicable to do so, fence off the Surrendered Area from the remainder of the Leased Area, and provide the Sub-Lessor and Head Sub-Lessor under the Head Sub-Lease with reasonable access to the Surrendered Area. The Sub-Lessor hereby indemnifies and holds free the Sub-Lessee from any Claim made against it by the Head Sub-Lessor because of the carrying out the Sub-Lessor's directive under this **clause 9.4** in accordance with the Sub-Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Sub-Lessee, its officers, employees, agents or contractors.

#### **9.5 Termination during last 2 years of the Term**

If the Head Lease contains a right of early termination in similar terms to the right granted to the Lessee under this clause, the Lessee may terminate this Sub-Lease at any time during the last 2 years of the Term by giving at least 9 months' written notice of such termination to the Lessor.

#### **9.6 Effect of termination**

- (a) Termination of the whole or any part of this Sub-Lease under **clauses 9.1, 9.2, 9.3, 9.4 or 9.5** shall be without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of part of the Leased Area under **clause 9.3** shall not affect the rights or obligations of the Parties in respect of any other part of the Leased Area.

#### **9.7 Limited right of termination**

Except as expressly provided in this Part, neither Party shall be entitled to terminate or rescind this Sub-Lease and the Sub-Lessor shall not be entitled to re-enter the Leased Area or

forfeit this Lease, at any time prior to the expiration of the Term (as extended or renewed).

### **Part 10**

#### **Rights and obligations on expiration or termination**

##### **10.1 Removal of stumps, roads and tracks**

The Sub-Lessor acknowledges and agrees with the Sub-Lessee that, except to the extent that **clauses 9.3(c) and 9.4(c)** apply, the Sub-Lessee will not be liable to remove or to pay for the removal of:

- (a) any stumps from the Leased Area; or
- (b) any roads or tracks constructed on the Leased Area or on the Head Sub-Lessor's Neighbouring Land under **clause 6.4**,

at the expiration or earlier termination of this Sub-Lease.

##### **10.2 Removal of products and equipment**

During the three (3) month period following the expiration of this Sub-Lease, the Sub-Lessee may enter upon the Leased Area and remove any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Sub-Lessee during the Term.

##### **10.3 Products and equipment left by the Sub-Lessee**

- (a) Any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Sub-Lessee, which are not removed by the Sub-Lessee within the three (3) month period referred to in **clause 10.2**; and
- (b) any part of the Plantation Crop not harvested by the Sub-Lessee during the Term (as extended or renewed),

shall to the extent permitted by law, be the property of the Sub-Lessor.

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## Part 11

### Ownership of the Plantation Crop

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#### 11.1 Ownership

The Sub-Lessor acknowledges and agrees with the Sub-Lessee that the Plantation Crop will be and shall remain the property of the Sub-Lessee (or, where applicable any other person who derives title to the Plantation Crop through the Sub-Lessee) for the period referred to in **clause 11.3**.

#### 11.2 Additional Rights

The Sub-Lessor hereby transfers and grants to the Sub-Lessee the following rights in addition to the other rights granted to the Sub-Lessee under this Sub-Lease:

- (a) to establish, prune, tend and manage the Plantation Crop and to cultivate and plant seedling trees as part of the Plantation Crop;
- (b) to enter upon the Leased Area with or without vehicles and, to the exclusion of the Sub-Lessor and all other persons, to harvest the Plantation Crop and remove and sell the products derived from the Plantation Crop; and
- (c) to exercise and enjoy such of the rights and powers granted to the Sub-Lessee under this Lease as may be necessary to enable the Sub-Lessee to exercise the rights referred to in paragraphs (a) and (b) above.

#### 11.3 Independent Proprietary Interest

- (a) The rights and interests granted to the Sub-Lessee under **clauses 11.1 and 11.2** constitute an independent and severable grant of a proprietary interest in the Leased Area by the Sub-Lessor to the Sub-Lessee.
- (b) In the event that the Term or the leasehold interest of the Sub-Lessee under this Sub-Lease:
  - (1) ends; or
  - (2) is terminated (other than by effluxion of time or by the operation of **Parts 2 or 9**); or

- (3) becomes void whether by reason of some act or default of the Sub-Lessor or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of the Sub-Lessor, or for any other reason whatsoever,

the rights and interests granted to the Sub-Lessee under **clauses 11.1 and 11.2** shall, unless expressly surrendered by the Sub-Lessee, continue in full force and effect and may be exercised and enjoyed by the Sub-Lessee until the date on which the Term (as extended or renewed) would have ended by effluxion of time.

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## Part 12

### Mining and petroleum activities

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#### 12.1 Definitions

In this part, the following expressions have the following meanings:

"**Mining Activities**" means all activities that may be carried out pursuant to a Mining Tenement.

"**Mining Tenement**" means any right or title available under the Mining Act 1978, and includes a permit to enter on private land.

"**Petroleum Activities**" means all activities that may be carried out pursuant to a Petroleum Title.

"**Petroleum Title**" means any right or title available under the Petroleum Act 1967, and includes a permit to enter on private land.

#### 12.2 Application for Mining Tenement or Petroleum Title

If any person applies for a Mining Tenement or a Petroleum Title over any part of the Leased Area, then the following provisions shall apply:

- (a) The Sub-Lessor shall promptly notify the Sub-Lessee.
- (b) Neither the Sub-Lessor nor the Sub-Lessee shall consent to the application or do any act or thing that may assist the grant of the application without the prior written consent of the other Party.

the Lessee claiming Force Majeure to maintain the plant, machinery or equipment in a proper manner;

- (e) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

### Part 9

### Early termination and reduction of the Leased Area

#### 9.1 Termination by Lessee

- (a) If the Lessor breaches any of its covenants under this Sub-Lease and:-
  - (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessor in accordance with **clause 9.1(b)** ("**General Default Notice**") or such other period as is determined to be the period within which it must be remedied as determined in accordance with **clause 9.1(d)**; or
  - (ii) if the breach is one which is incapable of being remedied and the Lessor fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with **clause 9.1(d)** within a period of 30 days of the General Default Notice being given to the Lessor

then subject to **clause 9.1(d)** the Lessee may give to the Lessor a further written notice complying with **clause 9.1(c)** having immediate effect terminating the Term ("**General Termination Notice**") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or

determined in accordance with **clause 9.1(d)** has been paid.

- (b) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-
  - (A) what the Lessee requires to be done to rectify the default; and
  - (B) such period as the Lessee acting reasonably considers having regard to the nature and extent of the default it is practicable for the Lessor to rectify the default within; or

- (iii) if the default is incapable of being remedied, the amount of compensation that the Lessee acting reasonably considers is proper and adequate compensation to the Lessee for the Lessee's loss or damage suffered as a consequence of the unremediable default.

- (iv) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (c) to constitute and be effective as a General Termination Notice for the purpose of **clause 9.1(a)** the notice given must:-

- (i) enclose an original signed by the Lessee or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) be sent separately by registered post to the following persons at the following addresses or such other persons or addresses by written notice given in accordance with **clause 13.3** prescribes as the addressees and addresses for notices under this **clause 9.1**:-

The Company Secretary  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231 ; and

The Managing Director  
W.A. Chip & Pulp Co Pty Ltd  
PO Box 2453  
BUNBURY WA 6231

- (d) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessor gives to the Lessee written notice ("**the Objection Notice**") claiming any one or more of the following things:-

- (i) the Lessor is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessee is incorrect; or
- (iv) the amount of compensation claimed by the Lessee is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the

parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (e) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessee and the Lessor or determined the operation of the General Default Notice, will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.
- (f) Termination pursuant to the provisions of this **clause 9.1** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.
- (g) (i) If the Term is terminated by the Lessee in accordance with this **clause 9.1** then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop as at the date of termination.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.1(g)** becomes the absolute property of the Lessor at the end of that licence period.

## 9.2 Termination by Lessor

- (a) If the Lessee defaults in the payment of any instalment of Annual Rent and that default is not rectified within 30 days of the Lessor having given to the Lessee a default notice complying with **clause 9.2(b)** ("Rent Default Notice") then the Lessor may give to the Lessee a further written notice complying with **clause 9.2(b)** having the immediate effect of terminating the Term upon it being given ("Rent Termination Notice") unless prior to the Rent Termination Notice being given the default has been rectified.
- (b) To constitute and be effective as a Rent Default Notice for the purpose of **clause 9.2(a)**, the notice given must:-
  - (i) be signed by the Lessor and clearly dated;
  - (ii) specify the exact amount of Annual Rent overdue for payment;
  - (iii) specify the date the overdue amount should have been paid;
  - (iv) demand payment of the overdue amount within 30 days of the date of the notice being deemed given and state that the consequence of non-payment will be the issue of a Rent Termination Notice;
  - (v) be sent separately by registered post to the following persons at the following addresses or such other

person or addresses that the Lessee by written notice give in accordance with **clause 13.3** prescribes as the addressees and addresses for the Rent Default Notices:-

The Company Secretary  
Timbercorp Securities Limited  
8<sup>th</sup> Floor  
461 Bourke Street  
MELBOURNE VIC 3000; and

The General Manager  
Timbercorp Forestry  
Level 4  
50 Colin Street  
WEST PERTH WA 6005

- (c) To constitute and be effective as a Rent Termination Notice for the purpose of **clause 9.2(a)** the notice given must:-
  - (i) enclose an original copy signed by the Lessor or true photocopy of the signed Rent Default Notice given;
  - (ii) use clear words of termination; and

otherwise comply with the same requirements as are specified for a Rent Default Notice in accordance with clauses 9.2(b)(i) and (v).
- (d) The time at which a Rent Default Notice or a Rent Termination Notice will be deemed to have been given will be the same time as a notice given in accordance with **clause 13.3** is deemed to have been given.
- (e) If the Lessee breaches any of its covenants under the Lease other than its covenant to pay Annual Rent and:-
  - (i) if that default is capable of being remedied and it is not remedied within the time required for it to be remedied specified in a notice given to the Lessee in accordance with **clause 9.2(f)** ("General Default Notice") or such other period as is determined to be the period within which it must be

remedied as determined in accordance with clause 9.2(h) ; or

- (ii) if the breach is one which is incapable of being remedied and the Lessee fails to pay the amount of compensation for the breach demanded in the General Default Notice or the amount determined in accordance with clause 9.2(h) within a period of 30 days of the General Default Notice being given to the Lessee

then the Lessor may give to the Lessee a further written notice complying with clause 9.2(g) having immediate effect terminating the Term ("General Termination Notice") unless prior to the General Termination Notice being given the default has been rectified or the compensation demanded in the General Default Notice or determined in accordance with clause 9.2(h) has been paid.

- (f) To constitute and be effective as a General Default Notice the notice given must specify:-

- (i) the default;
- (ii) if the default is capable of remedy:-
  - (A) what the Lessor requires to be done to rectify the default; and
  - (B) such period as the Lessor acting reasonably considers having regard to the nature and extent of the default it is practicable for the Lessee to rectify the default within; or
- (iii) if the default is incapable of being remedied, the amount of compensation that the Lessor acting reasonably considers is proper and adequate compensation to the Lessor for the Lessor's loss or

damage suffered as a consequence of the unremediable default

and must otherwise comply with the provisions of clause 9.2(b)(i) and (v) as if the General Default Notice was a Rent Default Notice.

- (g) to constitute and be effective as a General Termination Notice for the purpose of clause 9.2(e) the notice given must:-

- (i) enclose an original signed by the Lessor or true photocopy of the signed General Default Notice given;
- (ii) use clear words of termination; and
- (iii) otherwise comply with the provisions of clause 9.2(b)(i) and (v) as if the General Termination Notice was a Rent Default Notice.

- (h) If, prior to the expiration of the period of notice stipulated in the General Default Notice for the default to be rectified or the amount of compensation claimed paid, the Lessee gives to the Lessor written notice ("the Objection Notice") claiming any one or more of the following things:-

- (i) the Lessee is not in default or is not in default as claimed in the General Default Notice;
- (ii) the time prescribed for rectification of the default stated in the General Default Notice is inadequate;
- (iii) the rectification prescribed by the Lessor is incorrect; or
- (iv) the amount of compensation claimed by the Lessor is excessive

and the parties are unable to reach agreement as to all matters in dispute, the subject of the Objection Notice, then the dispute is to be referred by either of the parties who is the first to refer it, to the President or the Chapter Chairman of the Chapter of the State in which the Leased Area is situate of The Institute of

Arbitrators and Mediators Australia to nominate an expert to determine the dispute who will be acting as an expert not an arbitrator whose decision the parties agree to be bound by and whose fees the parties shall bear equally.

- (i) Until all matters, the subject of the dispute stated in the Objection Notice after either agreed in writing between the Lessor and the Lessee or determined the operation of the General Default Notice will be suspended and will only operate including the full period for rectification of default or payment of compensation (as determined by agreement or by the expert as abovementioned) recommencing afresh as and from the date the parties resolve their dispute by agreement in writing or the date that the expert has informed the parties in writing of his determination notwithstanding what period has expired between the General Default Notice first having been given and the date of the agreement or determination as to the matters the subject of the Objection Notice.
- (j) Termination pursuant to the provisions of this **clause 9.2** will be without prejudice to any other accrued rights existing as at the date of termination or any other consequences of breach of this Lease.
- (k) (i) If the Term is terminated by the Lessor in accordance with **clause 9.2(a)** or **clause 9.2(e)** then the Lessee is hereby licensed to enter the Leased Area with contractors, employees and agents and their vehicles and machinery to harvest and remove the Plantation Crop from the Leased Area within the number of Business Days following termination as is calculated as follows:-

$$RP = 2.0 \times NPA$$

where "RP" means the number of Business Days which is the period of the licence; and

"NPA" means Net Plantable Area of the Plantation Crop.

- (ii) Any part of the Plantation Crop not removed from the Leased Area within the licence period described in **clause 9.2(k)** becomes the absolute property of the Lessor at the end of that licence period.

### 9.3 Loss of Plantation Crop

- (a) If:
  - (i) the whole or a substantial part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
  - (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that the whole or a substantial part of the Plantation Crop is no longer commercially viable,

then the Lessee may terminate this Sub-Lease by giving not less than one (1) month's prior written notice of such termination to the Lessor. Termination under this clause shall take effect on and from the expiration of the period specified in the notice.

- (b) If the Lessee exercises its option to terminate this Sub-Lease pursuant to this clause, the Lessee shall not be entitled to reimbursement from the Lessor for any Yearly Rental which has been previously paid.
- (c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee shall at the Lessee's expense forthwith remove from the Leased Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop. The Lessor hereby indemnifies and holds free the Lessee from any Claim made against it by reason the Owner because of the carrying out the Lessor's directive under this **clause 9.3** in accordance with the Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default

or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.4 Reduction of the Leased Area**

(a) If:

- (i) any part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; and
- (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that any part of the Plantation Crop is no longer commercially viable;

the Lessee may terminate this Sub-Lease in respect of that portion of the Leased Area on which the affected part of the Plantation Crop is or was growing ("the Surrendered Area"), by giving not less than two (2) month's prior written notice of such termination to the Lessor, and reduce the Yearly Rental payable in proportion to the reduction in the Net Plantable Area. The termination and reduction to take effect from the expiration of the period specified in the notice.

- (b) Where the Net Plantable Area is reduced in accordance with this clause, The Yearly Rental shall not be reduced until clause 9.4(c) has been complied with. Nor shall the Lessee be entitled to reimbursement of any of the Yearly Rental which fell due and was paid before compliance with clause 9.4(c).
- (c) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee shall at the Lessee's expense forthwith remove from the Surrendered Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and, provided it is reasonably practicable to do so, fence off the Surrendered Area from the remainder of the Leased Area, and provide the Lessor and the lessor or sub-lessor under the Head Lease with reasonable access to the Surrendered Area. The Lessor hereby indemnifies and holds free the Lessee from any

Claim made against it by reason of by the Owner because of the carrying out the Lessor's directive under this clause 9.4 in accordance with the Lessor's directions PROVIDED THAT the indemnity does not extend to any Claim arising out of any neglect, default or omission by the Lessee, its officers, employees, agents or contractors.

#### **9.5 Effect of termination**

- (a) Termination of the whole or any part of this Sub-Lease under clauses 9.1, 9.2, 9.3 or 9.4 shall be without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of part of the Leased Area under clause 9.3 shall not affect the rights or obligations of the Parties in respect of any other part of the Leased Area.

#### **9.6 Limited right of termination**

Except as expressly provided in this Part, neither Party shall be entitled to terminate or rescind this Sub-Lease and the Lessor shall not be entitled to re-enter the Leased Area or forfeit this Lease, at any time prior to the expiration of the Term (as extended or renewed).

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### **Part 10**

#### **Rights and obligations on expiration or termination**

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##### **10.1 Removal of stumps, roads and tracks**

The Lessor acknowledges and agrees with the Lessee that, except to the extent that clauses 9.3(c) and 9.4(c) apply, the Lessee will not be liable to remove or to pay for the removal of:

- (a) any stumps from the Leased Area; or
- (b) any roads or tracks constructed on the Leased Area or on the Owner's Neighbouring Land under clause 6.4,

at the expiration or earlier termination of this Sub-Lease.



## 10.2 Removal of products and equipment

During the three (3) month period following the expiration of this Sub-Lease, the Lessee may enter upon the Leased Area and remove any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee during the Term.

## 10.3 Products and equipment left by the Lessee

- (a) Any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee, which are not removed by the Lessee within the three (3) month period referred to in **clause 10.2**; and
- (b) any part of the Plantation Crop not harvested by the Lessee during the Term (as extended or renewed),

shall to the extent permitted by law, be the property of the Lessor.

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## Part 11 Ownership of the Plantation Crop

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### 11.1 Ownership

The Lessor acknowledges and agrees with the Lessee that the Plantation Crop will be and shall remain the property of the Lessee (or, where applicable any other person who derives title to the Plantation Crop through the Lessee) for the period referred to in **clause 11.3**.

### 11.2 Additional Rights

The Lessor hereby transfers and grants to the Lessee the following rights in addition to the other rights granted to the Lessee under this Sub-Lease:

- (a) to establish, prune, tend and manage the Plantation Crop and to cultivate and plant seedling trees as part of the Plantation Crop;
- (b) to enter upon the Leased Area with or without vehicles and, to the exclusion of the Lessor and all other persons, to harvest the Plantation Crop and remove and sell the products derived from the Plantation Crop; and
- (c) to exercise and enjoy such of the rights and powers granted to the Lessee under

this Lease as may be necessary to enable the Lessee to exercise the rights referred to in paragraphs (a) and (b) above.

## 11.3 Independent Proprietary Interest

- (a) The rights and interests granted to the Lessee under **clauses 11.1 and 11.2** constitute an independent and severable grant of a proprietary interest in the Leased Area by the Lessor to the Lessee.
- (b) In the event that the Term or the leasehold interest of the Lessee under this Sub-Lease:
  - (1) ends; or
  - (2) is terminated (other than by effluxion of time or by the operation of **Parts 2 or 9**); or
  - (3) becomes void whether by reason of some act or default of the Lessor or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of the Lessor, or for any other reason whatsoever,

the rights and interests granted to the Lessee under **clauses 11.1 and 11.2** shall, unless expressly surrendered by the Lessee, continue in full force and effect and may be exercised and enjoyed by the Lessee until the date on which the Term (as extended or renewed) would have ended by effluxion of time.

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## Part 12 Mining and petroleum activities

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### 12.1 Definitions

In this part, the following expressions have the following meanings:

"**Mining Activities**" means all activities that may be carried out pursuant to a Mining Tenement.

"**Mining Tenement**" means any right or title available under the Mining Act 1978, and includes a permit to enter on private land.

"**Petroleum Activities**" means all activities that may be carried out pursuant to a Petroleum Title.

due to an Event of Force Majeure, the Lessee may by giving written notice to the Lessor elect to extend the Term for a period of time equal to the duration of the Event of Force Majeure.

## **7.2 Definition of Event of Force Majeure**

In clause 7.1, "Event of Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightning, storm or tempest;
- (b) Drought;
- (c) strikes, lockouts, stoppages, restraints of labour or other industrial disturbances;
- (d) war, acts of public enemies, riot, civil commotion or sabotage;
- (e) breakdown of or accident to plant, machinery or equipment (excluding a breakdown caused by any failure of the Lessee to maintain plant, machinery or equipment in a proper manner);
- (f) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (g) any Act of Parliament, regulation, by-law, order, ordinance or rule.

## **8. TERMINATION FOR DEFAULT**

### **8.1 Termination by Lessor**

The Lessor may terminate this Lease with immediate effect if:

- (a) the Lessee fails to pay any instalment of Annual Rent by the due date for payment and such amount is not paid in full within 2 months after the Lessor has served a written notice on the Lessee requesting payment; or
- (b) the Lessee commits a breach of this Lease and fails to remedy the breach or make reasonable compensation in money within 1 month after the Lessor has served a written notice on the Lessee requiring the Lessee to remedy the breach.

### **8.2 Termination by Lessee**

The Lessee may terminate this Lease with immediate effect if the Lessor commits a breach of this Lease and fails to remedy the breach or make reasonable compensation in money within one month after the Lessee has served a written notice on the Lessor requiring the Lessor to remedy the breach.

## **9. TERMINATION OF LEASE OR REDUCTION OF LEASED AREA**

### **9.1 Loss of Plantation Crop**

- (a) If:
- (i) the whole or a substantial part of the Plantation Crop is damaged or destroyed whether by fire or any other cause whatsoever; or
  - (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that the whole or a substantial part of the Plantation Crop is no longer commercially viable,

the Lessee may terminate this Lease by giving not less than one month written notice of such termination to the Lessor. Termination under this clause will take effect on and from the Rent Payment Date next following the expiration of the period of notice.

- (b) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee must forthwith remove from the Leased Area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and re-seed pasture on the Leased Area.

### **9.2 Reduction of the Leased Area**

- (a) If:
- (i) the whole or any part of the Plantation Crop on the Leased Area is damaged or destroyed whether by fire or any other cause whatsoever; or
  - (ii) an independent forestry consultant commissioned by the Lessee reasonably determines that the whole or any part of the Plantation Crop on the Leased Area is no longer commercially viable,

the Lessee may terminate this Lease in respect of that portion of the Leased Area on which the affected part of the Plantation Crop is or was growing ("the surrendered area"), by giving not less than one month written notice of such termination to the Lessor. Termination under this clause will take effect on and from the earlier of:

- (iii) the Rent Payment Date next following the expiration of the period of notice; and
- (iv) the date on which the Lessee has met all of its obligations under clause 9.2(b).

- (b) If so directed by the Lessor in writing within two (2) months after receipt of the Lessee's notice of termination, the Lessee must forthwith remove from the surrendered area all trees, logs, stumps and debris forming part of or derived from the Plantation Crop and, provided it is reasonably practicable to do so, fence off the surrendered area from the remainder of the Leased Area, re-seed pasture on the surrendered area and provide the Lessor with reasonable access to the surrendered area.

### **9.3 Effect of termination**

Termination of the whole or any part of this Lease under clause 8.1, 8.2, 9.1 or 9.2 will be without prejudice to any rights or obligations which may have accrued prior to the date of termination.

## **10. RIGHTS AND OBLIGATIONS ON EXPIRATION OR TERMINATION**

### **10.1 Removal of stumps, roads and tracks**

The Lessor acknowledges and agrees with the Lessee that except to the extent that Clauses 9.1(b) and 9.2(b) apply the Lessee will not be liable to remove or to pay for the removal of:

- (a) any stumps or debris from the Leased Area; or
- (b) any roads or tracks constructed on the Leased Area or on any neighbouring land under clause 6.4,

at the expiration or earlier termination of this Head Lease.

### **10.2 Removal of products and equipment**

During the three (3) month period following the expiration of this Lease, the Lessee and its employees, agents and contractors may enter upon the Leased Area and remove any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee during the Term.

### **10.3 Products and equipment left by the Lessee**

- (a) Any plant, equipment, implements or other things brought onto the Leased Area by or on behalf of the Lessee, which are not removed by the Lessee within the three (3) month period referred to in clause 10.2; and
- (b) any part of the Plantation Crop not harvested by the Lessee during the Term (as extended or renewed),

will be the property of the Lessor.

## 11. DEALINGS

### 11.1 By the Owner

- (a) The Owner may sell, transfer, assign, lease, licence, mortgage, charge or otherwise dispose of or part with possession of or encumber the whole or any part of the Leased Area or the Owner's interest in the Leased Area or agree to do the same provided that the Owner first arranges (at the Owner's cost) for the other party or parties to the transaction to enter into a deed of covenant with the Lessee under which such party or parties agree to comply with and be bound by the provisions of this Lease as if such party or parties were named in this Lease in place of the Owner.
- (b) The Owner agrees with the Lessee that the Owner will not create any encumbrances over the Leased Area or any part thereof ranking in priority to the interests of the Lessee under this Lease.

### 11.2 By the Lessee

- (a) Grants of sub-lease or licence

The Lessee may:

- (i) sub-lease or grant a licence to occupy the whole or any part of the Leased Area; or
- (ii) assign, transfer or deal with all or part of the Plantation Crop and all products, rights, benefits and credits derived from the Plantation Crop,

on such terms and conditions as the Lessee deems fit without having to obtain the consent of the Owner but no such sub-lease, licence or other dealing shall relieve the Lessee from any obligations under this Lease.

- (b) Assignment or transfer

Subject to clause 12.2(a) the Lessee may with the consent of the Owner (which consent must not be unreasonably withheld) assign or transfer this Lease upon the Lessee arranging (at the Lessee's cost) for the assignee to enter into a deed of covenant with the Owner under which the assignee agrees to comply with and be bound by the provisions of this Lease as if the assignee were named in this Lease in the place of the Lessee.

- (c) Ceasing to be responsible entity

The Owner covenants and agrees that, notwithstanding anything to the contrary express or implied in this Lease, if for any reason whatsoever the Lessee ceases to be the responsible entity under the constitution constituting any of the Timbercorp eucalypts/timberlot/forestry interest projects (as amended from time to time) ("the Constitution") the Owner will consent to the assignment of this Lease to any person fulfilling the position of responsible entity under the Constitution for the time being, subject to the proposed assignee assuming all of the obligations of the Lessee under this Lease.

## **12. MINING AND PETROLEUM ACTIVITIES**

### **12.1 Definitions**

In this clause, the following expressions have the following meanings:

"Mining Activities" means all activities that may be carried out pursuant to a Mining Tenement.

"Mining Tenement" means any right or title available under the Mining Act 1978, and includes a permit to enter on private land.

"Petroleum Activities" means all activities that may be carried out pursuant to a Petroleum Title.

"Petroleum Title" means any right or title available under the Petroleum Act 1967, and includes a permit to enter on private land.

### **12.2 Application for Mining Tenement or Petroleum Title**

If any person applies for a Mining Tenement or a Petroleum Title over any part of the Leased Area, then the following provisions apply:

- (a) The Lessor must promptly notify the Lessee.
- (b) The Lessor must not consent to the application or do any act or thing that may assist the grant of the application.
- (c) The Lessee will be entitled to object to or resist the application or to restrict the scope of the rights to be obtained by virtue of the grant of the application, to the fullest extent permitted by law.
- (d) For the purpose of giving full effect to paragraph (c) above, the Lessor must sign such documents as the Lessee may require, and the Lessee will be entitled to take such proceedings in the name of the Lessor as the Lessee considers appropriate.
- (e) The Lessor hereby appoints the Lessee its lawful attorney to execute the documents and to do the things referred to in paragraph (d) above.

### **12.3 Grant of Mining Tenement or Petroleum Title**

If a Mining Tenement or a Petroleum Title is granted over any part of the Leased Area, then the following provisions apply:

- (a) The Lessor must keep the Lessee informed as to the Mining Activities or Petroleum Activities carried out upon the Leased Area, and must forward copies of all communications with the persons carrying out or proposing to carry out such activities.
- (b) The Lessor must not consent to any use of water, felling of trees, stripping of bark or cutting of timber on the Leased Area.

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION

No. VID 541 of 2009

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

AND

IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)  
ACN: 055 185 067

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469  
and OTHERS

Plaintiffs

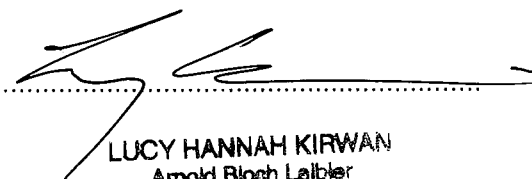
WA CHIP & PULP CO. PTY LTD  
and OTHERS  
ACN 008 720 518

Defendants

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-28**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 31 July 2009.

Before me: .....



LUCY HANNAH KIRWAN  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

Summary of Leases  
2005 Eucalypt Project

Document	Lessor	Lessee	Rent payable	Term	Rights of lessor and lessee to terminate and rights following termination	Sub lease with Grower
SP 2005 055 Townsend South A 689 Treefarm Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518 (WA)	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$234.41 per annum per hectare unit payable quarterly in advance on or before 30 June, 30 September, 31 December and 31 March during each year of the Term (Item 3, Sch).  Rent is to be adjusted at the same times and in the same manner as the Head Sub-Lease Rent is adjusted pursuant to the terms and conditions of the Head Sub-Lease so that the Annual Rent is at all times the same amount as the Head Sub-Lease Rent (cl. 3.2).	Commences 1 January 2007 and expires: (a) 18 May 2018; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE A	SUB LEASE 1
SP 2005 055A Townsend South B 689 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518 (WA)	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$227.08 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 27 February 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE A	SUB LEASE 1
SP 2005 056 Anning 659 Treefarm - Sub- Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518 (WA)	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$269.82 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 28 April 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE A	SUB LEASE 1
SP 2005 061 Carnarthen 638 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518 (WA)	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$264.73 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 27 February 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1



Summary of Leases  
2005 Eucalypt Project

SP 2005 062 Gindarra 662 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$230.01 per annum per hectare unit payable per SP 2005 055	\$230.01 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 29 March 201; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 063 Townsend North 688 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$234.41 per annum per hectare unit payable per SP 2005 055	\$234.41 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 29 March 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 064 Pavlovich 635 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$200.17 per annum per hectare unit payable per SP 2005 055	\$200.17 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 30 March 2018; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 066 Nekel 637 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$221.72 per annum per hectare unit payable per SP 2005 055	\$221.72 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 27 February 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 068 Lymon 667 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$244.76 per annum per hectare unit payable per SP 2005 055	\$244.76 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 15 February 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 069 Deternes 668 Treefarm - Sub-Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 518	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$214.67 per annum per hectare unit payable per SP 2005 055	\$214.67 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 27 February 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1

Summary of Leases  
2005 Eucalypt Project

SP 2005 071 Weber 677 Treefarm - Sub- Lease [of Crown land]	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 519	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$257.05 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 31 March 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 072 Field 686 Treefarm - Sub- lease (49Ha) [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 520	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$227.08 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 20 April 2019; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 072A Field 686 Treefarm - Sub- lease (57Ha) [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 521	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$212.43 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2007 and expires: (a) 22 May 2018; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 076 Duncan 630 Treefarm - Sub- Lease [of Crown land] (WA)	W.A. Chip & Pulp Co Pty Ltd ACN 008 720 529	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$75,350.68 per annum per hectare unit payable per SP 2005 055	Commences 1 January 2006 and expires: (a) 31 December 2016; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE B	SUB LEASE 1
SP 2005 081 Adams 569 Treefarm Sub- Lease (WA)	Timbercorp Plantations 2002 IAB Pty Ltd (In Liquidation) ACN 100 116 827	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$8,502.00 per annum payable per SP 2005 055	Commences 1 October 2004 and expires: (a) 28 February 2016; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE C	SUB LEASE 1

Summary of Leases  
2005 Eucalypt Project

<b>SP 2005 0082</b> Erskine 627 Treefarm Sub-Lease (WA)	Timbercorp Plantations 2002 IAB Pty Ltd (In Liquidation) ACN 100 116 827	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$29,256.00 per annum payable per SP 2005 055	Commences 1 October 2004 and expires: (a) 28 February 2016; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE C	SUB LEASE 1
<b>SP 2005 083</b> Grylls 625 Treefarm Lease (WA)	Timbercorp Plantations 2002 IAB Pty Ltd (In Liquidation) ACN 100 116 827	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$7,587.00 per annum payable per SP 2005 055	Commences 1 October 2004 and expires: (a) 28 February 2016; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE C	SUB LEASE 1
<b>SP 2005 084</b> Jones A 628 Treefarm Lease (WA)	Timbercorp Plantations 2002 IAB Pty Ltd (In Liquidation) ACN 100 116 827	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$20,624.00 per annum payable per SP 2005 055	Commences 1 October 2004 and expires: (a) 28 February 2016; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE C	SUB LEASE 1
<b>SP 2005 085</b> Jones B 628 Treefarm Lease (WA)	Timbercorp Plantations 2002 IAB Pty Ltd (In Liquidation) ACN 100 116 827	Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its personal capacity (cl. 1.3)	\$7,400.00 per annum payable per SP 2005 055	Commences 1 October 2004 and expires: (a) 28 February 2016; (b) the day immediately preceding the termination date of the Head Sub-Lease [Crown Lease]; and (c) such other date as is determined in accordance with this Sub-Lease.	LEASE C	SUB LEASE 1

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION

No. VID 541 of 2009

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

AND

IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)  
ACN: 055 185 067

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469  
and OTHERS

Plaintiffs

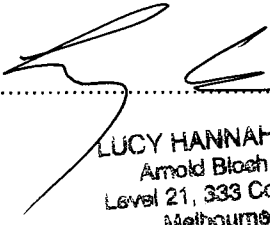
WA CHIP & PULP CO. PTY LTD  
and OTHERS  
ACN 008 720 518

Defendants

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-29**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 31 July 2009.

Before me: .....

  
LUCY HANNAH KIRWAN  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

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**DEED OF SUB-LEASE – WESTERN AUSTRALIA**  
**2007/2008 TIMBERCORP (SINGLE PAYMENT) TIMBERLOT PROJECT**  
**[Pre 30 June Growers]**  
**[Sub-Lease entered into pursuant to the Agreement for Sub-Lease]**

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**B E T W E E N**

**TIMBERCORP SECURITIES LIMITED**

**ACN. 092 311 469**

**("Timbercorp Securities")**

**- and -**

**EACH SEVERAL GROWER**

**(the "Grower")**

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**SUB-LEASE**

**DATE OF DEED:**

31 March 2008

**BETWEEN:**

**FIRST**

**PARTY:**

**TIMBERCORP SECURITIES LIMITED**, ACN. 092 311 469 of 8th Floor, 461 Bourke Street, Melbourne, Victoria ("**Timbercorp Securities**"); and

**SECOND**

**PARTY:**

Each several person who is named or otherwise described in Part 2 of the Schedule and their transferees and assigns (as permitted under the Constitution) with each several person being called a "**Grower**"; and a particular Grower in any circumstance is called "**the relevant Grower**", and "**relevant Growers**" means all such Growers.

**RECITALS:**

- A. Timbercorp Securities holds leases or sub-leases over the pieces of land described in Part 1 of the Schedule (each such piece of land being called in this Sub-Lease a "Plantation").
- B. Timbercorp Securities has agreed to sub-let to each relevant Grower one or more separate Timberlots as set out in Part 2 of the Schedule, each Timberlot comprising part of one of the Plantations, for the purpose of planting, tending and harvesting a plantation of eucalyptus trees on the basis that the relevant Grower will pay rent and upon the further terms and conditions set out in this Sub-Lease.
- C. Pursuant to the provisions of the Constitution each relevant Grower (or its predecessor in title) has engaged Timbercorp Securities to provide certain plantation services for the Grower.

**OPERATIVE PROVISIONS:**

**1. DEFINITIONS**

In this Sub-Lease unless the context otherwise requires:

"**Commencement Date**" means the date of this Sub-Lease.

"**Constitution**" means the deed made between Timbercorp Securities as Responsible Entity and each several Grower constituting the Project.

"**Debris**" means all those parts of Trees which are not Wood (including branches and treetops), but excluding stumps and roots, wire, rope and miscellaneous rubbish.

"**Delivery**" means the delivery of the Wood for the purpose of processing and sale.

"**Force Majeure**" has the meaning set out in clause 10.2.

"**GST**" means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (as amended).

"**Harvest**" means the cutting down, felling or logging of the Trees on the relevant Timberlots and the extraction and/or processing of the Trees so cut down, fallen or

logged to a loading point either on or adjacent to the relevant Plantation, whether conducted as one operation or more than one operation, and **"Harvested"** and **"Harvesting"** have a similar meaning.

**"Head Lease"** means the lease set out adjacent to the description of the Plantation in Part 1 of the Schedule and made between Timbercorp Securities (in its personal capacity, as lessee or sub-lessee, as the case may be) and the person listed as the proprietor (as lessor or sub-lessor as the case may be) whereby Timbercorp Securities has been, or will be, granted a lease or sub-lease over the Plantation.

**"Management Agreement [Pre 30 June Growers]"** means the agreement for the carrying out of certain plantation services on the relevant Timberlots and on the relevant Plantation between each several Grower as a Pre 30 June Grower and Timbercorp Securities, in its personal capacity.

**"Management Plan"** means the plan for the management of a Plantation (as varied by Timbercorp Securities) which plans are annexed to the Management Agreement [Pre 30 June Growers].

**"month"** means calendar month.

**"Net Proceeds"** means Proceeds after deduction of all costs of Harvesting and Delivery and sale of the Wood.

**"Party"** means a party to this Sub-Lease and includes the transferees, successors and permitted assigns of that party.

**"Plantation"** has the meaning set out in Recital A. The "relevant Plantation" is the Plantation which contains a relevant Timberlot.

**"Pre 30 June Growers"** has the same meaning as in the Constitution.

**"Proceeds"** has the same meaning as in sub-clause 1.1 of the Constitution.

**"Project"** means the 2007/2008 Timbercorp (Single Payment) Timberlot Project.

**"relevant Timberlots"** means the Timberlot or Timberlots to which the relevant Grower is entitled under the provisions of this Sub-Lease as specified in Part 2 of the Schedule and more particularly delineated on the maps in Part 1 of the Schedule, each Timberlot being an area of approximately 0.33 hectares of eucalyptus plantation land.

**"Rent"** has the meaning set out in clause 5 and the Schedule.

**"Responsible Entity"** means the responsible entity from time to time of the Project.

**"Schedule"** means the schedule appearing at the back of this Sub-Lease.

**"Term"** means the term of this Sub-Lease as specified in Part 3 of the Schedule and any extension under clause 10.1.

**"Trees"** means the Pre 30 June Growers' crop of eucalyptus trees the subject of the Management Plan planted and tended or to be planted and tended on the relevant Timberlots, or on the relevant Plantation, whichever is applicable.

**"Wood"** means any saleable wood derived from Trees grown pursuant to this Sub-Lease and the Management Agreement [Pre 30 June Growers] on the relevant Timberlots, or on



the relevant Plantation, whichever is applicable, whether in the form of trees, logs, timber or otherwise.

## **2. INTERPRETATION**

### **2.1 Interpretation**

In this Sub-Lease, unless the context otherwise requires:

- (a) The singular number includes the plural and vice versa and a word denoting one gender includes each of the other genders.
- (b) "person" includes a firm, corporation and any incorporated body.
- (c) Headings are for convenience only and do not affect the interpretation of this Sub-Lease.
- (d) A reference to an Act of Parliament will be read as a reference to that Act as amended, modified or replaced from time to time and includes any regulations, by-laws, orders, ordinances or rules made under that Act.
- (e) A reference to a Party to this Sub-Lease includes that Party's transferees, successors and permitted assigns.
- (f) If the relevant Grower comprises more than one person, this Sub-Lease binds all of them jointly and each of them severally. If any of the persons comprising the relevant Grower is a trustee, this Sub-Lease binds that person in its capacity as a trustee and personally.
- (g) Where the word "include" or "includes" is used, it is to be read as if the expression "(but is not limited to)" immediately followed such word and where the word "including" is used, it is to be read as if the expression "(but not limited to)" immediately followed such word.
- (h) Words and expressions used in this Sub-Lease have the same meaning as in the Constitution unless the contrary requires otherwise.

### **2.2 Capacity of Timbercorp Securities**

Timbercorp Securities enters into this Sub-Lease in its personal capacity.

### **2.3 Sub-Lease is not Scheme Property**

This Sub-Lease does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

## **3. GRANT OF SUB-LEASE**

Timbercorp Securities sub-leases to the relevant Grower the Timberlot or Timberlots described against the name of the relevant Grower in Part 2 of the Schedule for the Term for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees.

## **4. CONDITIONS**

### **4.1 Consents and approvals**

This Sub-Lease is subject to and conditional upon the obtaining of all local, State and Commonwealth government approvals, licences or permissions required for the establishment of the Trees within twelve (12) months after the date of execution of the Sub-Lease:

- (a) the approval of the Western Australian Planning Commission under section 138 of the Planning and Development Act 2005 (if such approval is required); and
- (b) all local, State and Commonwealth government approvals, licences or permissions required for the establishment of the Trees.

The condition referred to in paragraph 4.1(b) is deemed to be a condition subsequent.

### **4.2 Other agreements**

This Sub-Lease is subject to and conditional upon Timbercorp Securities entering into the Head Lease on or before the Commencement Date.

### **4.3 Use all reasonable endeavours to ensure conditions satisfied**

Each of Timbercorp Securities and the relevant Grower will use all reasonable endeavours to ensure that the conditions specified in clauses 4.1 and 4.2 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

### **4.4 Failure of conditions**

If any of the conditions referred to in clause 4.1 or clause 4.2 of this Sub-Lease or any like conditions referred to in the Head Lease are not obtained within the time limited in those clauses, this Sub-Lease will be at an end.

## **5. RENT**

### **5.1 Rent**

In consideration of the performance by Timbercorp Securities of its duties and obligations under this Sub-Lease, the relevant Grower agrees to pay to Timbercorp Securities Rent for the Term in the amount specified in Part 4 of the Schedule.

### **5.2 Payment of Rent**

The Rent payable under clause 5.1 must be paid by the Responsible Entity on behalf of the Grower, out of the Net Proceeds at the time the Net Proceeds (less any deductions permitted under this Sub-Lease and the Constitution) are paid by the Responsible Entity to the Grower. The Grower covenants that it has authorised and directed the Responsible Entity under the Constitution to make such payment of rent on behalf of the Grower.

### **5.3 Capacity**

All Rent and other amounts payable to Timbercorp Securities under this Sub-Lease are paid to Timbercorp Securities in its personal capacity.

## **6. RELEVANT GROWER'S OBLIGATIONS**

The relevant Grower agrees with Timbercorp Securities that the relevant Grower will at the relevant Grower's expense during the Term:

### **6.1 Permitted use**

Use the relevant Timberlots solely for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees.

### **6.2 Forestry practice**

Comply with sound silvicultural and environmental practices adopted within the forestry industry.

### **6.3 Comply with laws**

Comply with all laws and regulations relating to the use and occupancy of the relevant Timberlots.

### **6.4 Repairs**

Promptly repair any damage caused by the relevant Grower or its employees, agents or contractors to any roads, tracks or fences on the relevant Timberlots or on any neighbouring land.

### **6.5 Interference with activities**

Take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land.

### **6.6 Chemicals and dangerous substances**

Not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, livestock, crops or water reserves on any neighbouring land.

### **6.7 Buildings**

Not erect any buildings, structures or dwellings or use any caravans on the relevant Timberlots for accommodation purposes.

### **6.8 Permit Timbercorp Securities to enter**

Permit Timbercorp Securities to enter upon the relevant Timberlots from time to time with or without equipment for the purpose of performing Timbercorp Securities' obligations under this Sub-Lease.

## **6.9 Comply with other agreements**

Comply or procure compliance with the provisions of the Management Agreement [Pre 30 June Growers].

## **6.10 Give access to owners of adjoining Timberlots**

Give such rights of way and free access to the owners or occupiers of any Timberlot adjoining the relevant Timberlots as are necessary for their proper use and enjoyment of their Timberlots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about their Timberlot.

# **7. TIMBERCORP SECURITIES' OBLIGATIONS**

## **7.1 Construction of Boundary Fence prior to Commencement Date**

Timbercorp Securities agrees with the relevant Grower that Timbercorp Securities will at Timbercorp Securities' expense prior to the Commencement Date (or such later date as the relevant Grower may agree) construct or cause to be constructed a fence along the external boundary of the relevant Plantation, or in such other location as Timbercorp Securities deems fit, suitable to restrain livestock from straying onto the relevant Timberlots.

## **7.2 During the Term**

Timbercorp Securities agrees with the relevant Grower that Timbercorp Securities will at Timbercorp Securities' expense during the Term:

### **(a) Quiet enjoyment**

Allow the relevant Grower to peaceably and quietly hold and enjoy the relevant Timberlots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities.

### **(b) Maintain boundary fence**

Maintain or cause to be maintained the fence constructed pursuant to clause 7.1 in good and substantial repair and condition.

### **(c) Rates and taxes**

Duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or other authority in respect of the relevant Timberlots.

### **(d) Comply with laws**

Comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities.

### **(e) Chemicals and dangerous substances**

Not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, livestock, crops or water reserves on the relevant Timberlots.

- (f) Comply with Head Lease

Comply with the provisions of the Head Lease.

- (g) Control of fires

Take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised.

- (h) Not create any encumbrances

Not create any encumbrances over the relevant Plantation or the relevant Timberlots or any part thereof ranking in priority to the interests of the relevant Growers under this Sub-Lease other than the Management Agreement [Pre 30 June Growers].

## **8. RELEVANT GROWER'S RIGHTS**

### **8.1 General**

Timbercorp Securities grants to the relevant Grower the rights set out in this clause 8 to be exercised by the relevant Grower during the Term.

### **8.2 Harvest**

The relevant Grower is to harvest the Trees and to remove and sell the products derived from the Trees and to retain all income from such sale.

### **8.3 Trees are property of the relevant Grower**

The parties acknowledge and agree that the Trees are and will remain the property of the relevant Grower until the end of the Term.

### **8.4 Access**

The relevant Grower is entitled to full and free access for any purpose whatsoever to the relevant Timberlots along any road or track on any neighbouring land in respect of which Timbercorp Securities has similar rights and which gives access to the relevant Timberlots from a public road.

### **8.5 Construct roads and tracks**

The relevant Grower may with the prior written consent of Timbercorp Securities, which consent must not be unreasonably withheld, construct and maintain such roads and tracks (including, if necessary, bridges and culverts) on the relevant Timberlots or on any neighbouring land in respect of which Timbercorp Securities has similar rights, as are reasonably required by the relevant Grower to provide access to the relevant Timberlots from a public road for log haulage.

### **8.6 Use of sand and gravel**

For the purposes of constructing and maintaining the roads and tracks referred to in clause 8.5 the relevant Grower may take and use sand, gravel and other material available from a place approved by Timbercorp Securities on the relevant Timberlots or on any neighbouring land in respect of which Timbercorp Securities has similar rights, in such

quantities as the relevant Grower reasonably requires. If the relevant Grower exercises its rights under this clause, the relevant Grower must rehabilitate the surface of the land to an appearance as near as possible to the appearance of the surface of the surrounding land.

## **8.7 Security**

The relevant Grower may at its own expense padlock any gates on roads or tracks entering the relevant Timberlots and take such other measures to exclude trespassers as the relevant Grower reasonably considers appropriate. Upon request, the relevant Grower must provide Timbercorp Securities with a key to any padlocks, or if the relevant Grower has taken any other measures under this clause, such other means of entry, to the relevant Timberlots.

## **9. TIMBERCORP SECURITIES' RIGHTS**

### **9.1 General**

The Grower hereby grants to Timbercorp Securities the rights set out in this clause 9 to be exercised by Timbercorp Securities during the Term.

### **9.2 Graze livestock**

Timbercorp Securities or its invitees may graze livestock on the relevant Timberlots and retain all income derived from them.

### **9.3 Bees**

Timbercorp Securities or its invitees may keep bees on the relevant Timberlots and retain all income derived from them.

### **9.4 Access**

Timbercorp Securities is entitled to full and free access for the purposes of carrying out its rights and obligations with or without vehicles to the relevant Timberlots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities which gives access to the relevant Timberlots from a public road.

### **9.5 Further access**

Timbercorp Securities is entitled to full and free access with or without vehicles to the relevant Timberlots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities.

### **9.6 Use of sand and gravel**

Timbercorp Securities may with the approval of the Grower take and use sand, gravel and other material from a place on the relevant Timberlots which does not derogate from the productivity of the Trees. The Grower may withhold the approval in the event that it believes that the removal of the sand, gravel and other material will derogate from the productivity of the Trees.

### **9.7 Signs**

Timbercorp Securities may at its own expense erect and maintain a sign on the relevant Timberlots detailing such matters as Timbercorp Securities reasonably considers appropriate.

## **10. FORCE MAJEURE**

### **10.1 Extension for late harvesting**

If the relevant Grower is prevented from:

- (a) harvesting the Trees;
- (b) removing from the relevant Timberlots the products derived from the Trees;  
or
- (c) processing the products derived from the Trees,

due to an event of Force Majeure, the Grower may by giving written notice to Timbercorp Securities elect to extend the Term for a period of time equal to the duration of the event of Force Majeure.

### **10.2 Definition of Force Majeure**

In this clause 10 "Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightening, storm or tempest;
- (b) strikes, lockouts, stoppages, restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot, civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment (excluding a breakdown caused by any failure of the person claiming Force Majeure to maintain plant, machinery or equipment in a proper manner);
- (e) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

## **11. EARLY TERMINATION AND REDUCTION OF THE RELEVANT TIMBERLOTS**

### **11.1 Termination for default**

- (a) The relevant Grower may terminate this Sub-Lease in respect of the relevant Timberlots with immediate effect if Timbercorp Securities commits a material breach of this Sub-Lease and fails to remedy the breach or make reasonable compensation in money within thirty (30) days after the relevant Grower has served a written notice on Timbercorp Securities requiring Timbercorp Securities to remedy the breach.
- (b) Timbercorp Securities may terminate this Sub-Lease in respect of the relevant Timberlots with immediate effect if the relevant Grower commits a material breach of this Sub-Lease and fails to remedy the breach or make reasonable compensation in money within thirty (30) days after Timbercorp

Securities has served a written notice on the relevant Grower requiring the relevant Grower to remedy the breach.

## **11.2 Loss of Trees**

- (a) If, in respect of any of the relevant Timberlots:
- (i) the whole or a substantial part of the Trees is damaged or destroyed whether by fire or any other cause whatsoever; or
  - (ii) an independent forestry consultant commissioned by the relevant Grower and Timbercorp Securities jointly reasonably determines that the whole or a substantial part of the Trees is no longer commercially viable,

the relevant Grower may terminate this Sub-Lease in respect of the relevant Timberlots by giving not less than four (4) months' prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

- (b) If so directed by Timbercorp Securities in writing within two (2) months after receipt of the relevant Grower's notice of termination, the relevant Grower must, subject to clause 18.11, at the relevant Grower's expense forthwith remove from the relevant Timberlots all trees, logs, stumps and debris forming part of or derived from the Trees and re-seed pasture on the relevant Timberlots.

## **11.3 Reduction of the relevant Timberlots**

- (a) If in respect of any of the relevant Timberlots:
- (i) part of the Trees are damaged or destroyed whether by fire or any other cause whatsoever; or
  - (ii) an independent forestry consultant commissioned by the relevant Grower and Timbercorp Securities jointly reasonably determines that part of the Trees are no longer commercially viable,

the relevant Grower may terminate this Sub-Lease in respect of that portion of the relevant Timberlots on which the affected part of the Trees is or was, growing ("the surrendered area"), by giving not less than four (4) months prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the later of:

- (i) the 30 June next following the expiration of the period of notice; and
  - (ii) the date on which the relevant Grower has met all of its obligations under paragraph 11.3(b).
- (b) If so directed by Timbercorp Securities in writing within two (2) months after receipt of the relevant Grower's notice of termination, the relevant Grower must, subject to clause 18.11, at the relevant Grower's expense forthwith remove from the surrendered area all trees, logs, stumps and debris forming part of or derived from the Trees and, provided it is reasonably practicable to



do so, fence off the surrendered area from the remainder of the relevant Timberlots, re-seed pasture on the surrendered area and provide Timbercorp Securities and the lessor or sub-lessor under the Head Lease with reasonable access to the surrendered area.

#### **11.4 Effect of termination**

- (a) Termination of this Sub-Lease under clauses 11.1 or 11.2 or reduction of the relevant Timberlots under clause 11.3 is without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of a relevant Timberlot or part of a relevant Timberlot under this clause 11 does not affect the rights or obligations of the Parties in respect of any other relevant Timberlot or other part of the relevant Timberlot.

#### **11.5 Limited right of termination**

Except as expressly provided in this clause 11, neither Timbercorp Securities nor the relevant Grower is entitled to terminate or rescind this Sub-Lease and Timbercorp Securities is not entitled to re-enter the relevant Timberlots or forfeit this Sub-Lease, at any time prior to the expiration of the Term.

### **12. RIGHTS AND OBLIGATIONS ON EXPIRATION OR TERMINATION**

#### **12.1 Removal of stumps, roads and tracks**

Timbercorp Securities acknowledges and agrees with the relevant Grower that, except to the extent that paragraphs 11.2(b) and 11.3(b) apply, the relevant Grower will not be liable to remove or to pay for the removal of:

- (a) any stumps from the relevant Timberlots; or
- (b) any roads or tracks constructed on the relevant Timberlots or on any neighbouring land under clause 8.5,

at the expiration or earlier termination of this Sub-Lease.

#### **12.2 Removal of products and equipment**

During the three (3) month period following the expiration of this Sub-Lease, the relevant Grower may enter upon the relevant Timberlots and remove any products derived from the Trees and any plant, equipment, implements or other things brought onto the relevant Timberlots by or on behalf of the relevant Grower during the Term.

#### **12.3 Products and equipment left by the relevant Grower**

- (a) Any plant, equipment, implements or other things brought onto the relevant Timberlots by or on behalf of the relevant Grower, which are not removed by the relevant Grower within the three (3) month period referred to in clause 12.2; and
- (b) any part of the Trees not harvested by the relevant Grower during the Term (as extended or renewed),

will be the property of Timbercorp Securities.

### **13. OWNERSHIP OF THE TREES**

#### **13.1 Ownership**

Timbercorp Securities acknowledges and agrees with the relevant Grower the Trees will be and will remain the property of the relevant Grower for:

- (a) the Term; and
- (b) the period referred to in paragraph 13.3(b).

#### **13.2 Additional Rights**

Timbercorp Securities hereby transfers and grants to the relevant Grower the following rights in addition to the other rights granted to the relevant Grower under this Sub-Lease:

- (a) to establish, tend and manage the Trees and to cultivate and plant seedling trees as part of the Trees;
- (b) to enter upon the relevant Timberlots with or without vehicles and, to the exclusion of Timbercorp Securities and all other persons, to harvest the Trees and remove and sell the products derived from the Trees; and
- (c) to exercise and enjoy such of the rights and powers granted to the relevant Grower under this Sub-Lease as may be necessary to enable the relevant Grower to exercise the rights referred to in paragraphs 13.2(a) and (b) above.

#### **13.3 Independent Proprietary Interest**

- (a) The rights and interests granted to the relevant Grower under clauses 13.1 and 13.2 constitute an independent and severable grant of a proprietary interest in the relevant Timberlots by Timbercorp Securities to the relevant Grower.
- (b) In the event that the Term or the leasehold interest of the relevant Grower under this Sub-Lease:
  - (i) ends; or
  - (ii) is terminated (other than by effluxion of time or by the operation of clauses 4 or 11); or
  - (iii) becomes void whether by reason of some act or default of Timbercorp Securities or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of Timbercorp Securities, or for any other reason whatsoever,

the rights and interests granted to the relevant Grower under clauses 13.1 and 13.2, unless expressly surrendered by the relevant Grower, continue in full force and effect and may be exercised and enjoyed by the relevant Grower until the date on which the Term would have ended by effluxion of time.

## 14. **MINING AND PETROLEUM ACTIVITIES**

### 14.1 **Definitions**

In this clause 14, the following expressions have the following meanings:

**"Mining Activities"** means all activities that may be carried out pursuant to a Mining Tenement.

**"Mining Tenement"** means any right or title available under the Mining Act 1978 and includes a permit to enter on private land.

**"Petroleum Activities"** means all activities that may be carried out pursuant to a Petroleum Title.

**"Petroleum Title"** means any right or title available under the Petroleum Act 1967 and includes a permit to enter on private land.

### 14.2 **Application for Mining Tenement or Petroleum Title**

If any person applies for a Mining Tenement or a Petroleum Title over any part of the relevant Timberlots, then the following provisions will apply:

- (a) Timbercorp Securities must promptly notify the relevant Grower.
- (b) Neither Timbercorp Securities nor the Grower may consent to the application or do any act or thing that may assist the grant of the application.
- (c) The relevant Grower will be entitled to object to or resist the application or to restrict the scope of the rights to be obtained by virtue of the grant of the application, to the fullest extent permitted by law.
- (d) For the purpose of giving full effect to paragraph 14.2(c) above, Timbercorp Securities must sign such documents as the relevant Grower may require, and the relevant Grower will be entitled to take such proceedings in the name of Timbercorp Securities as the relevant Grower considers appropriate. The relevant Grower hereby indemnifies Timbercorp Securities for any loss suffered by Timbercorp Securities as a direct consequence of the relevant Grower exercising its rights under this paragraph 14.2(d).
- (e) Timbercorp Securities hereby appoints the relevant Grower its lawful attorney to execute the documents and to do the things referred to in paragraph 14.2(d).

### 14.3 **Grant of Mining Tenement or Petroleum Title**

If a Mining Tenement or a Petroleum Title is granted over any part of the relevant Timberlots, then the following provisions will apply:

- (a) Timbercorp Securities must keep the relevant Grower informed as to the Mining Activities or Petroleum Activities carried out upon the relevant Timberlots, and must forward copies of all communications with the persons carrying out or proposing to carry out such activities.
- (b) Timbercorp Securities must not consent to any use of water, felling of trees, stripping of bark or cutting of timber on the relevant Timberlots.

- (c) If any compensation becomes payable by virtue of or in respect of Mining Activities or Petroleum Activities on the relevant Timberlots, then Timbercorp Securities and the relevant Grower will be entitled to compensation according to their respective interests in the area affected by those activities. Timbercorp Securities and the relevant Grower will each be responsible for negotiating and recovering such compensation.
- (d) If this Sub-Lease is terminated under clause 11.2 or area of the relevant Timberlots is reduced under clause 11.3 as a result of Mining Activities or Petroleum Activities being carried out on the relevant Timberlots, the provisions of paragraphs 11.2(b) and 11.3(b) will not apply in respect of such termination or reduction.

## 15. **WARRANTIES**

Timbercorp Securities represents and warrants that:

- (a) as at the date of execution of this Sub-Lease, the Head Lease is valid and subsisting;
- (b) Timbercorp Securities is entitled under the Head Lease to grant this Sub-Lease to the relevant Grower; and
- (c) any consents which may be required to the granting of this Sub-Lease (other than those referred to in clause 4.1) have been obtained.

## 16. **NOTICES**

All notices, consents, approvals and other communications required or authorised to be given under this Sub-Lease ("Notices") must be in writing and may be personally delivered or sent by pre-paid post or facsimile to the addressee's address specified in this Sub-Lease or such other address as the addressee may have notified from time to time. A Notice shall be deemed to be received:

- (a) if personally delivered, upon receipt;
- (b) if sent by pre-paid post within Australia, on the third day after posting;
- (c) if sent by pre-paid post outside Australia, on the seventh day after posting; and
- (d) if sent by facsimile, upon production of a successful transmission report by the sender's facsimile machine.

## 17. **CAVEAT**

- (a) The relevant Grower may at its own expense lodge a subject to claim caveat at the Office of Titles, Midland in respect of its interest under this Sub-Lease.
- (b) Timbercorp Securities agrees to provide to the relevant Grower all plans and other details reasonably necessary to enable the relevant Grower to lodge a subject to claim caveat.

- (c) Upon the expiration or earlier termination of this Sub-Lease, the relevant Grower must promptly withdraw at its own expense any caveat lodged under this clause.
- (d) The relevant Grower irrevocably appoints Timbercorp Securities its attorney to execute a withdrawal of any caveat required to be withdrawn by the Grower pursuant to clause 17(c) in the event of the relevant Grower failing promptly to do so.
- (e) The relevant Grower agrees to ratify anything done by the attorney in accordance with clause 17(d).

## **18. GENERAL**

### **18.1 Further assurances**

Each Party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other Party to give effect to this Sub-Lease.

### **18.2 Voiding insurances**

Each Party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the relevant Timberlots or the Trees or result in the premiums for such insurances being increased.

### **18.3 Transfer of Land Act**

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1893 are expressly excluded from this Sub-Lease.

### **18.4 Property Law Act**

The provisions of section 80 and 82 of the Property Law Act 1969 do not apply to this Sub-Lease.

### **18.5 Proper law**

This Sub-Lease is governed by and construed in accordance with laws of the State of Western Australia and where applicable of the Commonwealth of Australia and the parties agree to submit to the jurisdiction of the courts of that State.

### **18.6 Severability**

If any provision of this Sub-Lease is or becomes void or unforeseeable, that provision will be severed from this Sub-Lease to the intent that the remaining provisions of this Sub-Lease will continue in full force and effect.

### **18.7 Parties may act through agents**

All rights granted to a Party and all obligations imposed on a Party under this Sub-Lease may be enjoyed or performed (as the case may be) by that Party's employees, agents and contractors.

**18.8 No Partnership**

Nothing contained in this Sub-Lease may constitute a partnership between the Parties to this Sub-Lease. No Party may hold itself out as the partner of the other of them. This Sub-Lease is not for the benefit of any person not a party to this Sub-Lease and is not to be deemed to give any right or remedy to any such party whether referred to in this Sub-Lease or not.

**18.9 Waivers**

No waiver by any Party of any breach of this Sub-Lease is to be deemed a waiver of any preceding or succeeding breach of this Sub-Lease.

**18.10 Assignment**

- (a) The relevant Grower covenants that Timbercorp Securities does have the full and free right to deal with any of its rights and interests under this Sub-Lease to such other parties and on such terms and conditions as Timbercorp Securities sees fit, providing at all times that Timbercorp Securities may not transfer, lease, mortgage, charge, assign, part with possession or otherwise dispose of its interest in the relevant Timberlots without first obtaining a deed of covenant by the proposed transferee, lessee, mortgagee, chargee, assignee, person who acquires possession or person who receives the disposal (the "Grantee") containing a covenant by the Grantee in favour of the relevant Grower that the Grantee will at all times during the Term observe and perform all or any of the covenants contained or implied in this Sub-Lease to be observed or performed by Timbercorp Securities.
- (b) All costs associated with the preparation, completion and stamping of any deed of covenant required by paragraph 18.10(a) must be paid by Timbercorp Securities or Grantee, and the relevant Grower will not be required to contribute in any way to such costs.
- (c) The relevant Grower may only transfer, mortgage, assign or otherwise dispose of this Sub-Lease or any of its rights or interests under this Sub-Lease in accordance with the provisions of the Constitution and otherwise may not assign sub-let or part with possession of the relevant Timberlots or any part thereof or otherwise by any act or deed to procure or allow or suffer (either voluntarily or involuntarily) the relevant Timberlots or any part thereof to be assigned transferred or sub-let or the possession thereof parted with and for all or any part of the term AND IT IS HEREBY DECLARED that nothing contained or implied in sections 80 and 82 of the Property Law Act 1969 applies to this Sub-Lease and both sections are hereby expressly excluded.

**18.11 Limitation of liability of relevant Grower**

- (a) Despite any other provision of this Sub-Lease (other than clause 18.13), in no circumstances is the relevant Grower obliged to contribute any money or incur any other liability under this Sub-Lease in excess of the aggregate of Rent, the amount of the fees set out in Part 1 of the Schedule to the Management Agreement [Pre 30 June Growers] and the Proceeds.
- (b) Once a transmission, transfer, mortgage, assignment or other disposal of the entire interest of the relevant Grower has been perfected in accordance with the provisions of the Constitution, then the relevant Grower no longer remains liable under this Sub-Lease.

**18.12 Delegation**

The relevant Grower may, for the better performance of its obligations under this Sub-Lease, employ any person as an agent and all rights granted and obligations imposed upon the relevant Grower (except the grant to the relevant Grower of the leasehold estate) may be enjoyed and performed by the relevant Grower's agent, contractors and their employees, but delegation of any of the relevant Grower's obligations under this Sub-Lease does not release it from liability under this Sub-Lease.

**18.13 Goods and Services Tax**

- (a) If any supply made by a party ("Supplier") to the other ("Recipient") under this Sub-Lease 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 Sub-Lease, 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) The GST payable under paragraph 18.13(b) is payable 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 Sub-Lease.
- (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 Sub-Lease, 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 18.13 (b).
- (f) If a party has a claim under or in connection with this Sub-Lease 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 Sub-Lease 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 the amount is separate or included as part of a larger amount.

**18.14 Constitution**

The rights and obligations of the parties under this Sub-Lease are subject to the terms and conditions of the Constitution.

**18.15 Amendment**

- (a) This Sub-Lease may be amended by another document in writing and duly signed by the parties to this Sub-Lease.

- (b) Subject to paragraph 18.15(c), Timbercorp Securities, may amend the provisions of this Sub-Lease 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 Sub-Lease, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Before Timbercorp Securities may amend this Sub-Lease as provided under paragraph 18.15(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Growers.
- (d) Timbercorp Securities may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Participant Growers. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Sub-Lease.
- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18.15(c), then amendments may only be made in accordance with paragraph 18.15(a).

## 19. **DISPUTE RESOLUTION**

### 19.1 **Referral by the Grower**

- (a) Any dispute or difference whatsoever in connection with this Sub-Lease must be dealt with by the Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Grower's satisfaction:
  - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
  - (ii) if:
    - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
    - (B) the Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),

the dispute or difference must be submitted by the Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:

    - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
    - (D) the arbitration will be conducted in Melbourne, Victoria.



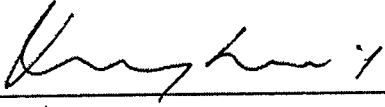
- (b) The Grower and Timbercorp Securities:
  - (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
  - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

## **19.2 Timbercorp Securities**

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
  - (i) commencing proceedings against the Grower in any relevant jurisdiction;
  - (ii) submitting any dispute or difference whatsoever with a Grower in connection with this Sub-Lease to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
    - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
    - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Grower and Timbercorp Securities:
  - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
  - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
- (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 24.2, 24.3 and 24.4 of the Constitution.

**EXECUTED as a Deed**

**EXECUTED by TIMBERCORP  
SECURITIES LIMITED in  
accordance with section 127 of the  
Corporations Act:**



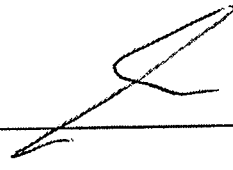
Signature

John Morton Vaughan

Full Name

Director

Signature

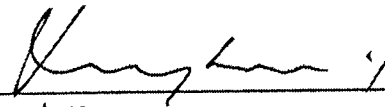


Mark Hamilton Pryn

Full Name

Director/ Secretary

**EXECUTED by TIMBERCORP  
SECURITIES LIMITED as agent and  
attorney for and on behalf of each  
several grower in accordance with  
section 127 of the Corporations  
Act:**




Signature

John Morton Vaughan

Full Name

Director

Signature



Mark Hamilton Pryn

Full Name

Director/ Secretary

## **SCHEDULE**

### **PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS**

**PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS (P2007-WA-SPSR)  
TIMBERLOT PROJECT - PRE-PAYMENT GROWERS**

<b>Plantation Name</b>	<b>Land Description</b>	<b>Head Lease Details</b>
Beames 636	Those parts of Certificate of Title Volume 1871 Folio 11 as are delineated into timberlots numbered 1 – 54 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Cameron A 744	Those parts of Certificates of Title Volume 1828 Folio 776, Volume 1612 Folio 599 and Volume LR3079 Folio 290 as are delineated into timberlots numbered 1 – 1,892 on the map annexed hereto.	Shaun Cameron and Joan Golda Cameron and Cameron Farms Pty Ltd
Chorkerup Siding 738	Those parts of Certificate of Title Volume 1726 Folio 428 as are delineated into timberlots numbered 1 – 337 on the map annexed hereto.	Nancy Cunningham
Deep Creek 719	Those parts of Certificate of Title Volume 1564 Folio 231 as are delineated into timberlots numbered 1 – 542 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Determes 715	Those parts of Certificate of Title Volume 2061 Folio 17 as are delineated into timberlots numbered 1 -135 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Erith 718	Those parts of Certificate of Title Volume 281 Folio 105A as are delineated into timberlots numbered 1 – 141 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Franklin 699	Those parts of Certificate of Title Volume LR3137 Folio 645 as are delineated into timberlots numbered 1 – 653 on the map annexed hereto.	Marsh John Franklin
Glen Elgin 720	Those parts of Certificates of Title Volume 1712 Folio 877 and Volume 1362 Folio 182 as are delineated into timberlots numbered 1 – 2,097 on the map annexed hereto.	Timbercorp Plantations 2002 IAB Pty Ltd

**PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS (P2007-WA-SPSR)  
TIMBERLOT PROJECT - PRE-PAYMENT GROWERS**

<b>Plantation Name</b>	<b>Land Description</b>	<b>Head Lease Details</b>
Grylls 710	Those parts of Certificate of Title Volume 3079 Folio 721 as are delineated into timberlots numbered 1 – 84 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Henwood 711	Those parts of Certificate of Title Volume 1118 Folio 615 as are delineated into timberlots numbered 1 – 89 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Kiddle 613	Those parts of Certificates of Title Volume 2036 Folio 498 and Volume 2036 Folio 497 as are delineated into timberlots numbered 1 – 239 on the map annexed hereto.	Timbercorp Plantations 2002 IAB Pty Ltd
Kelora 714	Those parts of Certificate of Title Volume 2629 Folio 247 as are delineated into timberlots numbered 1 – 474 on the map annexed hereto.	Kevin Philip Wallwork
Mountview 717	Those parts of Certificate of Title Volume 1977 Folio 242 as are delineated into timberlots numbered 1 – 1,267 on the map annexed hereto.	Timbercorp Plantations 2002 IAB Pty Ltd
Pavlovich 732	Those parts of Certificate of Title Volume 1150 Folio 947 as are delineated into timberlots numbered 1 – 890 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Powis 709	Those parts of Certificates of Title Volume 1368 Folios 124 and 125 as are delineated into timberlots numbered 1 – 583 on the map annexed hereto.	Ashley John Powis
South Sister 676	Those parts of Certificate of Title Volume 1586 Folio 189 as are delineated into timberlots numbered 1 – 176 on the map annexed hereto.	Timbercorp Plantations 2002 IAB Pty Ltd
Thomas 712	Those parts of Certificate of Title Volume 1035 Folio 635 as are delineated into timberlots numbered 1 – 91 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd

**PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS (P2007-WA-SPSR)  
TIMBERLOT PROJECT - PRE-PAYMENT GROWERS**

<b>Plantation Name</b>	<b>Land Description</b>	<b>Head Lease Details</b>
Weber 721	Those parts of Certificate of Title Volume 517 Folio 35A as are delineated into timberlots numbered 1 – 170 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
White Toro 713	Those parts of Certificate of Title Volume 1444 Folio 398 as are delineated into timberlots numbered 1 – 544 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Zambonetti 729	Those parts of Certificate of Title Volume 1694 Folio 351 as are delineated into timberlots numbered 1 – 246 on the map annexed hereto.	Frank Mario Zambonetti and Victoria Jeanette Zambonetti
Zambonetti 740	Those parts of Certificate of Title Volume 2091 Folio 988 as are delineated into timberlots numbered 1 – 245 on the map annexed hereto.	Angela Marie Zambonetti

**PART 2:** NAMES AND ADDRESSES OF GROWERS AND RELEVANT TIMBERLOTS

**PART 3: Term**

In respect of a relevant Grower, means the period commencing on the Commencement Date and expiring on the earliest of:

- (a) 30 June 2020;
- (b) the date Harvesting is completed; and
- (c) the day immediately preceding the termination date of the Head Lease.

**PART 4: Rent**

An amount equal to 3% of the Net Proceeds.



IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION

No. VID 541 of 2009

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

AND

IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)  
ACN: 055 185 067

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469  
and OTHERS

Plaintiffs

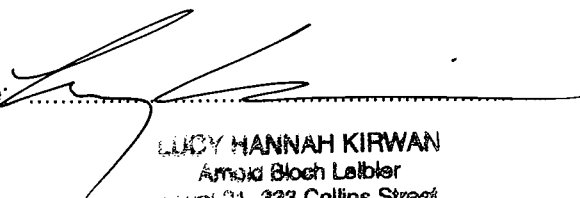
WA CHIP & PULP CO. PTY LTD  
and OTHERS  
ACN 008 720 518

Defendants

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-30**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 31 July 2009.

Before me:



LUCY HANNAH KIRWAN  
Amold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

---

**DEED OF SUB-LEASE – WESTERN AUSTRALIA**  
**2005 TIMBERCORP (SINGLE PAYMENT) TIMBERLOT PROJECT**  
**[Post 30 June Growers]**  
**[Sub-Lease entered into pursuant to the Agreement for Sub-Lease]**

---

**BETWEEN**

**TIMBERCORP SECURITIES LIMITED**

**ACN. 092 311 469**

**("Timbercorp Securities")**

**- and -**

**EACH SEVERAL GROWER**

**(the "Grower")**

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## SUB-LEASE

### DATE OF DEED:

### BETWEEN:

#### FIRST

**PARTY:** TIMBERCORP SECURITIES LIMITED, ACN. 092 311 469 of 8th Floor, 461 Bourke Street, Melbourne, Victoria ("**Timbercorp Securities**"); and

#### SECOND

**PARTY:** Each several person who is named or otherwise described in Part 2 of the Schedule and their transferees and assigns (as permitted under the Project Deed) with each several person being called a "**Grower**"; and a particular Grower in any circumstance is called "**the relevant Grower**", and "**relevant Growers**" means all such Growers.

### RECITALS:

- A. Timbercorp Securities holds leases or sub-leases over the pieces of land described in Part 1 of the Schedule (each such piece of land being called in this Sub-Lease a "Plantation").
- B. Timbercorp Securities has agreed to sub-let to each relevant Grower one or more separate Timberlots as set out in Part 2 of the Schedule, each Timberlot comprising part of one of the Plantations, for the purpose of planting, tending and harvesting a plantation of eucalyptus trees on the basis that the relevant Grower will pay rent and upon the further terms and conditions set out in this Sub-Lease.
- C. Pursuant to the provisions of the Project Deed each relevant Grower (or its predecessor in title) has engaged Timbercorp Securities to provide certain plantation services for the Grower.

### OPERATIVE PROVISIONS:

#### 1. DEFINITIONS

In this Sub-Lease unless the context otherwise requires:

"**Commencement Date**" means the date of this Sub-Lease.

"**Debris**" means all those parts of Trees which are not Wood (including branches and treetops), but excluding stumps and roots, wire, rope and miscellaneous rubbish.

"**Delivery**" means the delivery of the Wood for the purpose of processing and sale.

"**Force Majeure**" has the meaning set out in clause 10.2.

"**GST**" means GST within the meaning of A New Tax System (Goods and Services Tax) Act 1999 (as amended).

"**Harvest**" means the cutting down, felling or logging of the Trees on the relevant Timberlots and the extraction and/or processing of the Trees so cut down, fallen or logged to a loading point either on or adjacent to the relevant Plantation, whether conducted as one operation or more than one operation, and "**Harvested**" and "**Harvesting**" have a similar meaning.

**"Head Lease"** means the lease set out adjacent to the description of the Plantation in Part 1 of the Schedule and made between Timbercorp Securities (in its personal capacity, as lessee or sub-lessee, as the case may be) and the person listed as the proprietor (as lessor or sub-lessor as the case may be) whereby Timbercorp Securities has been, or will be, granted a lease or sub-lease over the Plantation.

**"Management Agreement [Post 30 June Growers]"** means the agreement for the carrying out of certain plantation services on the relevant Timberlots and on the relevant Plantation between each several Grower as a Post 30 June Grower and Timbercorp Securities, in its personal capacity.

**"Management Plan"** means the plan for the management of a Plantation (as varied by Timbercorp Securities) which plans are annexed to the Management Agreement [Post 30 June Growers].

**"month"** means calendar month.

**"Net Proceeds"** means Proceeds after deduction of all costs of Harvesting and Delivery and sale of the Wood.

**"Party"** means a party to this Sub-Lease and includes the transferees, successors and permitted assigns of that party.

**"Plantation"** has the meaning set out in Recital A. The "relevant Plantation" is the Plantation which contains a relevant Timberlot.

**"Post 30 June Growers"** has the same meaning as in the Project Deed.

**"Proceeds"** has the same meaning as in sub-clause 1.1 of the Project Deed.

**"Project"** means the 2005 Timbercorp (Single Payment) Timberlot Project.

**"Project Deed"** means the deed made between Timbercorp Securities as Responsible Entity and each several Grower constituting the Project.

**"relevant Timberlots"** means the Timberlot or Timberlots to which the relevant Grower is entitled under the provisions of this Sub-Lease as specified in Part 2 of the Schedule and more particularly delineated on the maps in Part 1 of the Schedule, each Timberlot being an area of approximately 0.33 hectares of eucalyptus plantation land.

**"Rent"** has the meaning set out in clause 5 and the Schedule.

**"Responsible Entity"** means the responsible entity from time to time of the Project.

**"Schedule"** means the schedule appearing at the back of this Sub-Lease.

**"Term"** means the term of this Sub-Lease as specified in Part 3 of the Schedule and any extension under clause 10.1.

**"Trees"** means the Post 30 June Growers' crop of eucalyptus trees the subject of the Management Plan planted and tended or to be planted and tended on the relevant Timberlots, or on the relevant Plantation, whichever is applicable.

**"Wood"** means any saleable wood derived from Trees grown pursuant to this Sub-Lease and the Management Agreement [Post 30 June Growers] on the relevant Timberlots, or on

the relevant Plantation, whichever is applicable, whether in the form of trees, logs, timber or otherwise.

## **2. INTERPRETATION**

### **2.1 Interpretation**

In this Sub-Lease, unless the context otherwise requires:

- (a) The singular number includes the plural and vice versa and a word denoting one gender includes each of the other genders.
- (b) "person" includes a firm, corporation and any incorporated body.
- (c) Headings are for convenience only and do not affect the interpretation of this Sub-Lease.
- (d) A reference to an Act of Parliament will be read as a reference to that Act as amended, modified or replaced from time to time and includes any regulations, by-laws, orders, ordinances or rules made under that Act.
- (e) A reference to a Party to this Sub-Lease includes that Party's transferees, successors and permitted assigns.
- (f) If the relevant Grower comprises more than one person, this Sub-Lease binds all of them jointly and each of them severally. If any of the persons comprising the relevant Grower is a trustee, this Sub-Lease binds that person in its capacity as a trustee and personally.
- (g) Where the word "include" or "includes" is used, it is to be read as if the expression "(but is not limited to)" immediately followed such word and where the word "including" is used, it is to be read as if the expression "(but not limited to)" immediately followed such word.
- (h) Words and expressions used in this Sub-Lease have the same meaning as in the Project Deed unless the contrary requires otherwise.

### **2.2 Capacity of Timbercorp Securities**

Timbercorp Securities enters into this Sub-Lease in its personal capacity.

### **2.3 Sub-Lease is not Scheme Property**

This Sub-Lease does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

## **3. GRANT OF SUB-LEASE**

Timbercorp Securities sub-leases to the relevant Grower the Timberlot or Timberlots described against the name of the relevant Grower in Part 2 of the Schedule for the Term for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees.

#### **4. CONDITIONS**

##### **4.1 Consents and approvals**

This Sub-Lease is subject to and conditional upon the obtaining of all local, State and Commonwealth government approvals, licences or permissions required for the establishment of the Trees within twelve (12) months after the date of execution of the Sub-Lease:

- (a) the approval of the Western Australian Planning Commission under section 20(1)(a) of the Town Planning and Development Act 1928 (if such approval is required); and
- (b) all local, State and Commonwealth government approvals, licences or permissions required for the establishment of the Trees.

The condition referred to in paragraph 4.1(b) is deemed to be a condition subsequent.

##### **4.2 Other agreements**

~~This Sub-Lease is subject to and conditional upon Timbercorp Securities entering into the Head Lease on or before the Commencement Date.~~

##### **4.3 Use all reasonable endeavours to ensure conditions satisfied**

Each of Timbercorp Securities and the relevant Grower will use all reasonable endeavours to ensure that the conditions specified in clauses 4.1 and 4.2 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

##### **4.4 Failure of conditions**

If any of the conditions referred to in clause 4.1 or clause 4.2 of this Sub-Lease or any like conditions referred to in the Head Lease are not obtained within the time limited in those clauses, this Sub-Lease will be at an end.

#### **5. RENT**

##### **5.1 Rent**

In consideration of the performance by Timbercorp Securities of its duties and obligations under this Sub-Lease, the relevant Grower agrees to pay to Timbercorp Securities Rent for the Term in the amount specified in Part 4 of the Schedule.

##### **5.2 Payment of Rent**

The Rent payable under clause 5.1 must be paid by the Responsible Entity on behalf of the Grower, out of the Net Proceeds at the time the Net Proceeds (less any deductions permitted under this Sub-Lease and the Constitution) are paid by the Responsible Entity to the Grower. The Grower covenants that it has authorised and directed the Responsible Entity under the Project Deed to make such payment of rent on behalf of the Grower.

### **5.3 Capacity**

All Rent and other amounts payable to Timbercorp Securities under this Sub-Lease are paid to Timbercorp Securities in its personal capacity.

## **6. RELEVANT GROWER'S OBLIGATIONS**

The relevant Grower agrees with Timbercorp Securities that the relevant Grower will at the relevant Grower's expense during the Term:

### **6.1 Permitted use**

Use the relevant Timberlots solely for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees.

### **6.2 Forestry practice**

Comply with sound silvicultural and environmental practices adopted within the forestry industry.

### **6.3 Comply with laws**

Comply with all laws and regulations relating to the use and occupancy of the relevant Timberlots.

### **6.4 Repairs**

Promptly repair any damage caused by the relevant Grower or its employees, agents or contractors to any roads, tracks or fences on the relevant Timberlots or on any neighbouring land.

### **6.5 Interference with activities**

Take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land.

### **6.6 Chemicals and dangerous substances**

Not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, livestock, crops or water reserves on any neighbouring land.

### **6.7 Buildings**

Not erect any buildings, structures or dwellings or use any caravans on the relevant Timberlots for accommodation purposes.

### **6.8 Permit Timbercorp Securities to enter**

Permit Timbercorp Securities to enter upon the relevant Timberlots from time to time with or without equipment for the purpose of performing Timbercorp Securities' obligations under this Sub-Lease.



## **6.9 Comply with other agreements**

Comply or procure compliance with the provisions of the Management Agreement [Post 30 June Growers].

## **6.10 Give access to owners of adjoining Timberlots**

Give such rights of way and free access to the owners or occupiers of any Timberlot adjoining the relevant Timberlots as are necessary for their proper use and enjoyment of their Timberlots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about their Timberlot.

## **7. TIMBERCORP SECURITIES' OBLIGATIONS**

### **7.1 Construction of Boundary Fence prior to Commencement Date**

Timbercorp Securities agrees with the relevant Grower that Timbercorp Securities will at Timbercorp Securities' expense prior to the Commencement Date (or such later date as the relevant Grower may agree) construct or cause to be constructed a fence along the external boundary of the relevant Plantation, or in such other location as Timbercorp Securities deems fit, suitable to restrain livestock from straying onto the relevant Timberlots.

### **7.2 During the Term**

Timbercorp Securities agrees with the relevant Grower that Timbercorp Securities will at Timbercorp Securities' expense during the Term:

(a) Quiet enjoyment

Allow the relevant Grower to peaceably and quietly hold and enjoy the relevant Timberlots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities.

(b) Maintain boundary fence

Maintain or cause to be maintained the fence constructed pursuant to clause 7.1 in good and substantial repair and condition.

(c) Rates and taxes

Duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or other authority in respect of the relevant Timberlots.

(d) Comply with laws

Comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities.

(e) Chemicals and dangerous substances

Not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, livestock, crops or water reserves on the relevant Timberlots.

- (f) Comply with Head Lease

Comply with the provisions of the Head Lease.

- (g) Control of fires

Take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised.

- (h) Not create any encumbrances

Not create any encumbrances over the relevant Plantation or the relevant Timberlots or any part thereof ranking in priority to the interests of the relevant Growers under this Sub-Lease other than the Management Agreement [Post 30 June Growers].

## **8. RELEVANT GROWER'S RIGHTS**

### **8.1 General**

Timbercorp Securities grants to the relevant Grower the rights set out in this clause 8 to be exercised by the relevant Grower during the Term.

### **8.2 Harvest**

The relevant Grower is to harvest the Trees and to remove and sell the products derived from the Trees and to retain all income from such sale.

### **8.3 Trees are property of the relevant Grower**

The parties acknowledge and agree that the Trees are and will remain the property of the relevant Grower until the end of the Term.

### **8.4 Access**

The relevant Grower is entitled to full and free access for any purpose whatsoever to the relevant Timberlots along any road or track on any neighbouring land in respect of which Timbercorp Securities has similar rights and which gives access to the relevant Timberlots from a public road.

### **8.5 Construct roads and tracks**

The relevant Grower may with the prior written consent of Timbercorp Securities, which consent must not be unreasonably withheld, construct and maintain such roads and tracks (including, if necessary, bridges and culverts) on the relevant Timberlots or on any neighbouring land in respect of which Timbercorp Securities has similar rights, as are reasonably required by the relevant Grower to provide access to the relevant Timberlots from a public road for log haulage.

### **8.6 Use of sand and gravel**

For the purposes of constructing and maintaining the roads and tracks referred to in clause 8.5 the relevant Grower may take and use sand, gravel and other material available from a place approved by Timbercorp Securities on the relevant Timberlots or on any neighbouring land in respect of which Timbercorp Securities has similar rights, in such

quantities as the relevant Grower reasonably requires. If the relevant Grower exercises its rights under this clause, the relevant Grower must rehabilitate the surface of the land to an appearance as near as possible to the appearance of the surface of the surrounding land.

## **8.7 Security**

The relevant Grower may at its own expense padlock any gates on roads or tracks entering the relevant Timberlots and take such other measures to exclude trespassers as the relevant Grower reasonably considers appropriate. Upon request, the relevant Grower must provide Timbercorp Securities with a key to any padlocks, or if the relevant Grower has taken any other measures under this clause, such other means of entry, to the relevant Timberlots.

## **9. TIMBERCORP SECURITIES' RIGHTS**

### **9.1 General**

The Grower hereby grants to Timbercorp Securities the rights set out in this clause 9 to be exercised by Timbercorp Securities during the Term.

### **9.2 Graze livestock**

Timbercorp Securities or its invitees may graze livestock on the relevant Timberlots and retain all income derived from them.

### **9.3 Bees**

Timbercorp Securities or its invitees may keep bees on the relevant Timberlots and retain all income derived from them.

### **9.4 Access**

Timbercorp Securities is entitled to full and free access for the purposes of carrying out its rights and obligations with or without vehicles to the relevant Timberlots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities which gives access to the relevant Timberlots from a public road.

### **9.5 Further access**

Timbercorp Securities is entitled to full and free access with or without vehicles to the relevant Timberlots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities.

### **9.6 Use of sand and gravel**

Timbercorp Securities may with the approval of the Grower take and use sand, gravel and other material from a place on the relevant Timberlots which does not derogate from the productivity of the Trees. The Grower may withhold the approval in the event that it believes that the removal of the sand, gravel and other material will derogate from the productivity of the Trees.

### **9.7 Signs**

Timbercorp Securities may at its own expense erect and maintain a sign on the relevant Timberlots detailing such matters as Timbercorp Securities reasonably considers appropriate.

## **10. FORCE MAJEURE**

### **10.1 Extension for late harvesting**

If the relevant Grower is prevented from:

- (a) harvesting the Trees;
- (b) removing from the relevant Timberlots the products derived from the Trees;  
or
- (c) processing the products derived from the Trees,

due to an event of Force Majeure, the Grower may by giving written notice to Timbercorp Securities elect to extend the Term for a period of time equal to the duration of the event of Force Majeure.

### **10.2 Definition of Force Majeure**

In this clause 10 "Force Majeure" means:

- (a) Act of God, fire, explosion, earthquake, landslide, flood, wash-out, lightning, storm or tempest;
- (b) strikes, lockouts, stoppages, restraints of labour or other industrial disturbances;
- (c) war, acts of public enemies, riot, civil commotion or sabotage;
- (d) breakdown of or accident to plant, machinery or equipment (excluding a breakdown caused by any failure of the person claiming Force Majeure to maintain plant, machinery or equipment in a proper manner);
- (e) restraints, embargoes or other unforeseeable actions by the government of Western Australia or the government of the Commonwealth of Australia; or
- (f) any Act of Parliament, regulation, by-law, order, ordinance or rule.

## **11. EARLY TERMINATION AND REDUCTION OF THE RELEVANT TIMBERLOTS**

### **11.1 Termination for default**

- (a) The relevant Grower may terminate this Sub-Lease in respect of the relevant Timberlots with immediate effect if Timbercorp Securities commits a material breach of this Sub-Lease and fails to remedy the breach or make reasonable compensation in money within thirty (30) days after the relevant Grower has served a written notice on Timbercorp Securities requiring Timbercorp Securities to remedy the breach.
- (b) Timbercorp Securities may terminate this Sub-Lease in respect of the relevant Timberlots with immediate effect if the relevant Grower commits a material breach of this Sub-Lease and fails to remedy the breach or make reasonable compensation in money within thirty (30) days after Timbercorp

Securities has served a written notice on the relevant Grower requiring the relevant Grower to remedy the breach.

## **11.2 Loss of Trees**

- (a) If, in respect of any of the relevant Timberlots:
  - (i) the whole or a substantial part of the Trees is damaged or destroyed whether by fire or any other cause whatsoever; or
  - (ii) an independent forestry consultant commissioned by the relevant Grower and Timbercorp Securities jointly reasonably determines that the whole or a substantial part of the Trees is no longer commercially viable,

the relevant Grower may terminate this Sub-Lease in respect of the relevant Timberlots by giving not less than four (4) months' prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

- (b) If so directed by Timbercorp Securities in writing within two (2) months after receipt of the relevant Grower's notice of termination, the relevant Grower must, subject to clause 18.11, at the relevant Grower's expense forthwith remove from the relevant Timberlots all trees, logs, stumps and debris forming part of or derived from the Trees and re-seed pasture on the relevant Timberlots.

## **11.3 Reduction of the relevant Timberlots**

- (a) If in respect of any of the relevant Timberlots:
  - (i) part of the Trees are damaged or destroyed whether by fire or any other cause whatsoever; or
  - (ii) an independent forestry consultant commissioned by the relevant Grower and Timbercorp Securities jointly reasonably determines that part of the Trees are no longer commercially viable,

the relevant Grower may terminate this Sub-Lease in respect of that portion of the relevant Timberlots on which the affected part of the Trees is or was, growing ("the surrendered area"), by giving not less than four (4) months prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the later of:

- (i) the 30 June next following the expiration of the period of notice; and
  - (ii) the date on which the relevant Grower has met all of its obligations under paragraph 11.3(b).
- (b) If so directed by Timbercorp Securities in writing within two (2) months after receipt of the relevant Grower's notice of termination, the relevant Grower must, subject to clause 18.11, at the relevant Grower's expense forthwith remove from the surrendered area all trees, logs, stumps and debris forming part of or derived from the Trees and, provided it is reasonably practicable to

do so, fence off the surrendered area from the remainder of the relevant Timberlots, re-seed pasture on the surrendered area and provide Timbercorp Securities and the lessor or sub-lessor under the Head Lease with reasonable access to the surrendered area.

#### **11.4 Effect of termination**

- (a) Termination of this Sub-Lease under clauses 11.1 or 11.2 or reduction of the relevant Timberlots under clause 11.3 is without prejudice to any rights or obligations which may have accrued prior to the date of termination.
- (b) Termination of this Sub-Lease in respect of a relevant Timberlot or part of a relevant Timberlot under this clause 11 does not affect the rights or obligations of the Parties in respect of any other relevant Timberlot or other part of the relevant Timberlot.

#### **11.5 Limited right of termination**

Except as expressly provided in this clause 11, neither Timbercorp Securities nor the relevant Grower is entitled to terminate or rescind this Sub-Lease and Timbercorp Securities is not entitled to re-enter the relevant Timberlots or forfeit this Sub-Lease, at any time prior to the expiration of the Term.

### **12. RIGHTS AND OBLIGATIONS ON EXPIRATION OR TERMINATION**

#### **12.1 Removal of stumps, roads and tracks**

Timbercorp Securities acknowledges and agrees with the relevant Grower that, except to the extent that paragraphs 11.2(b) and 11.3(b) apply, the relevant Grower will not be liable to remove or to pay for the removal of:

- (a) any stumps from the relevant Timberlots; or
- (b) any roads or tracks constructed on the relevant Timberlots or on any neighbouring land under clause 8.5,

at the expiration or earlier termination of this Sub-Lease.

#### **12.2 Removal of products and equipment**

During the three (3) month period following the expiration of this Sub-Lease, the relevant Grower may enter upon the relevant Timberlots and remove any products derived from the Trees and any plant, equipment, implements or other things brought onto the relevant Timberlots by or on behalf of the relevant Grower during the Term.

#### **12.3 Products and equipment left by the relevant Grower**

- (a) Any plant, equipment, implements or other things brought onto the relevant Timberlots by or on behalf of the relevant Grower, which are not removed by the relevant Grower within the three (3) month period referred to in clause 12.2; and
- (b) any part of the Trees not harvested by the relevant Grower during the Term (as extended or renewed),

will be the property of Timbercorp Securities.

### **13. OWNERSHIP OF THE TREES**

#### **13.1 Ownership**

Timbercorp Securities acknowledges and agrees with the relevant Grower the Trees will be and will remain the property of the relevant Grower for:

- (a) the Term; and
- (b) the period referred to in paragraph 13.3(b).

#### **13.2 Additional Rights**

Timbercorp Securities hereby transfers and grants to the relevant Grower the following rights in addition to the other rights granted to the relevant Grower under this Sub-Lease:

- (a) to establish, tend and manage the Trees and to cultivate and plant seedling trees as part of the Trees;
- (b) to enter upon the relevant Timberlots with or without vehicles and, to the exclusion of Timbercorp Securities and all other persons, to harvest the Trees and remove and sell the products derived from the Trees; and
- (c) to exercise and enjoy such of the rights and powers granted to the relevant Grower under this Sub-Lease as may be necessary to enable the relevant Grower to exercise the rights referred to in paragraphs 13.2(a) and (b) above.

#### **13.3 Independent Proprietary Interest**

- (a) The rights and interests granted to the relevant Grower under clauses 13.1 and 13.2 constitute an independent and severable grant of a proprietary interest in the relevant Timberlots by Timbercorp Securities to the relevant Grower.
- (b) In the event that the Term or the leasehold interest of the relevant Grower under this Sub-Lease:
  - (i) ends; or
  - (ii) is terminated (other than by effluxion of time or by the operation of clauses 4 or 11); or
  - (iii) becomes void whether by reason of some act or default of Timbercorp Securities or of the trustee in bankruptcy, receiver, receiver and manager, controller, administrator or liquidator of Timbercorp Securities, or for any other reason whatsoever,

the rights and interests granted to the relevant Grower under clauses 13.1 and 13.2, unless expressly surrendered by the relevant Grower, continue in full force and effect and may be exercised and enjoyed by the relevant Grower until the date on which the Term would have ended by effluxion of time.

## 14. MINING AND PETROLEUM ACTIVITIES

### 14.1 Definitions

In this clause 14, the following expressions have the following meanings:

**"Mining Activities"** means all activities that may be carried out pursuant to a Mining Tenement.

**"Mining Tenement"** means any right or title available under the Mining Act 1978 and includes a permit to enter on private land.

**"Petroleum Activities"** means all activities that may be carried out pursuant to a Petroleum Title.

**"Petroleum Title"** means any right or title available under the Petroleum Act 1967 and includes a permit to enter on private land.

### 14.2 Application for Mining Tenement or Petroleum Title

If any person applies for a Mining Tenement or a Petroleum Title over any part of the relevant Timberlots, then the following provisions will apply:

- (a) Timbercorp Securities must promptly notify the relevant Grower.
- (b) Neither Timbercorp Securities nor the Grower may consent to the application or do any act or thing that may assist the grant of the application.
- (c) The relevant Grower will be entitled to object to or resist the application or to restrict the scope of the rights to be obtained by virtue of the grant of the application, to the fullest extent permitted by law.
- (d) For the purpose of giving full effect to paragraph 14.2(c) above, Timbercorp Securities must sign such documents as the relevant Grower may require, and the relevant Grower will be entitled to take such proceedings in the name of Timbercorp Securities as the relevant Grower considers appropriate. The relevant Grower hereby indemnifies Timbercorp Securities for any loss suffered by Timbercorp Securities as a direct consequence of the relevant Grower exercising its rights under this paragraph 14.2(d).
- (e) Timbercorp Securities hereby appoints the relevant Grower its lawful attorney to execute the documents and to do the things referred to in paragraph 14.2(d).

### 14.3 Grant of Mining Tenement or Petroleum Title

If a Mining Tenement or a Petroleum Title is granted over any part of the relevant Timberlots, then the following provisions will apply:

- (a) Timbercorp Securities must keep the relevant Grower informed as to the Mining Activities or Petroleum Activities carried out upon the relevant Timberlots, and must forward copies of all communications with the persons carrying out or proposing to carry out such activities.
- (b) Timbercorp Securities must not consent to any use of water, felling of trees, stripping of bark or cutting of timber on the relevant Timberlots.



- (c) If any compensation becomes payable by virtue of or in respect of Mining Activities or Petroleum Activities on the relevant Timberlots, then Timbercorp Securities and the relevant Grower will be entitled to compensation according to their respective interests in the area affected by those activities. Timbercorp Securities and the relevant Grower will each be responsible for negotiating and recovering such compensation.
- (d) If this Sub-Lease is terminated under clause 11.2 or area of the relevant Timberlots is reduced under clause 11.3 as a result of Mining Activities or Petroleum Activities being carried out on the relevant Timberlots, the provisions of paragraphs 11.2(b) and 11.3(b) will not apply in respect of such termination or reduction.

## 15. **WARRANTIES**

Timbercorp Securities represents and warrants that:

- (a) as at the date of execution of this Sub-Lease, the Head Lease is valid and subsisting;
- (b) Timbercorp Securities is entitled under the Head Lease to grant this Sub-Lease to the relevant Grower; and
- (c) any consents which may be required to the granting of this Sub-Lease (other than those referred to in clause 4.1) have been obtained.

## 16. **NOTICES**

All notices, consents, approvals and other communications required or authorised to be given under this Sub-Lease ("Notices") must be in writing and may be personally delivered or sent by pre-paid post or facsimile to the addressee's address specified in this Sub-Lease or such other address as the addressee may have notified from time to time. A Notice shall be deemed to be received:

- (a) if personally delivered, upon receipt;
- (b) if sent by pre-paid post within Australia, on the third day after posting;
- (c) if sent by pre-paid post outside Australia, on the seventh day after posting; and
- (d) if sent by facsimile, upon production of a successful transmission report by the sender's facsimile machine.

## 17. **CAVEAT**

- (a) The relevant Grower may at its own expense lodge a subject to claim caveat at the Office of Titles, Midland in respect of its interest under this Sub-Lease.
- (b) Timbercorp Securities agrees to provide to the relevant Grower all plans and other details reasonably necessary to enable the relevant Grower to lodge a subject to claim caveat.

- (c) Upon the expiration or earlier termination of this Sub-Lease, the relevant Grower must promptly withdraw at its own expense any caveat lodged under this clause.
- (d) The relevant Grower irrevocably appoints Timbercorp Securities its attorney to execute a withdrawal of any caveat required to be withdrawn by the Grower pursuant to clause 17(c) in the event of the relevant Grower failing promptly to do so.
- (e) The relevant Grower agrees to ratify anything done by the attorney in accordance with clause 17(d).

## **18. GENERAL**

### **18.1 Further assurances**

Each Party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other Party to give effect to this Sub-Lease.

### **18.2 Voiding insurances**

Each Party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the relevant Timberlots or the Trees or result in the premiums for such insurances being increased.

### **18.3 Transfer of Land Act**

To the extent permitted by law, all provisions implied by the Transfer of Land Act 1893 are expressly excluded from this Sub-Lease.

### **18.4 Property Law Act**

The provisions of section 80 and 82 of the Property Law Act 1969 do not apply to this Sub-Lease.

### **18.5 Proper law**

This Sub-Lease is governed by and construed in accordance with laws of the State of Western Australia and where applicable of the Commonwealth of Australia and the parties agree to submit to the jurisdiction of the courts of that State.

### **18.6 Severability**

If any provision of this Sub-Lease is or becomes void or unforeseeable, that provision will be severed from this Sub-Lease to the intent that the remaining provisions of this Sub-Lease will continue in full force and effect.

### **18.7 Parties may act through agents**

All rights granted to a Party and all obligations imposed on a Party under this Sub-Lease may be enjoyed or performed (as the case may be) by that Party's employees, agents and contractors.

### **18.8 No Partnership**

Nothing contained in this Sub-Lease may constitute a partnership between the Parties to this Sub-Lease. No Party may hold itself out as the partner of the other of them. This Sub-Lease is not for the benefit of any person not a party to this Sub-Lease and is not to be deemed to give any right or remedy to any such party whether referred to in this Sub-Lease or not.

### **18.9 Waivers**

No waiver by any Party of any breach of this Sub-Lease is to be deemed a waiver of any preceding or succeeding breach of this Sub-Lease.

### **18.10 Assignment**

- (a) The relevant Grower covenants that Timbercorp Securities does have the full and free right to deal with any of its rights and interests under this Sub-Lease to such other parties and on such terms and conditions as Timbercorp Securities sees fit, providing at all times that Timbercorp Securities may not transfer, lease, mortgage, charge, assign, part with possession or otherwise dispose of its interest in the relevant Timberlots without first obtaining a deed of covenant by the proposed transferee, lessee, mortgagee, chargee, assignee, person who acquires possession or person who receives the disposal (the "Grantee") containing a covenant by the Grantee in favour of the relevant Grower that the Grantee will at all times during the Term observe and perform all or any of the covenants contained or implied in this Sub-Lease to be observed or performed by Timbercorp Securities.
- (b) All costs associated with the preparation, completion and stamping of any deed of covenant required by paragraph 18.10(a) must be paid by Timbercorp Securities or Grantee, and the relevant Grower will not be required to contribute in any way to such costs.
- (c) The relevant Grower may only transfer, mortgage, assign or otherwise dispose of this Sub-Lease or any of its rights or interests under this Sub-Lease in accordance with the provisions of the Project Deed and otherwise may not assign sub-let or part with possession of the relevant Timberlots or any part thereof or otherwise by any act or deed to procure or allow or suffer (either voluntarily or involuntarily) the relevant Timberlots or any part thereof to be assigned transferred or sub-let or the possession thereof parted with and for all or any part of the term AND IT IS HEREBY DECLARED that nothing contained or implied in sections 80 and 82 of the Property Law Act 1969 applies to this Sub-Lease and both sections are hereby expressly excluded.

### **18.11 Limitation of liability of relevant Grower**

- (a) Despite any other provision of this Sub-Lease (other than clause 18.13), in no circumstances is the relevant Grower obliged to contribute any money or incur any other liability under this Sub-Lease in excess of the aggregate of Rent, the amount of the fees set out in Part 1 of the Schedule to the Management Agreement [Post 30 June Growers] and the Proceeds.
- (b) Once a transmission, transfer, mortgage, assignment or other disposal of the entire interest of the relevant Grower has been perfected in accordance with the provisions of the Project Deed, then the relevant Grower no longer remains liable under this Sub-Lease.

**18.12 Delegation**

The relevant Grower may, for the better performance of its obligations under this Sub-Lease, employ any person as an agent and all rights granted and obligations imposed upon the relevant Grower (except the grant to the relevant Grower of the leasehold estate) may be enjoyed and performed by the relevant Grower's agent, contractors and their employees, but delegation of any of the relevant Grower's obligations under this Sub-Lease does not release it from liability under this Sub-Lease.

**18.13 Goods and Services Tax**

- (a) If any supply made by a party ("Supplier") to the other ("Recipient") under this Sub-Lease 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 Sub-Lease, 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) The GST payable under paragraph 18.13(b) is payable 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 Sub-Lease.
- (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 Sub-Lease, 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 18.13 (b).
- (f) If a party has a claim under or in connection with this Sub-Lease 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 Sub-Lease 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 the amount is separate or included as part of a larger amount.

**18.14 Project Deed**

The rights and obligations of the parties under this Sub-Lease are subject to the terms and conditions of the Project Deed.

**18.15 Amendment**

- (a) This Sub-Lease may be amended by another document in writing and duly signed by the parties to this Sub-Lease.

- (b) Subject to paragraph 18.15(c), Timbercorp Securities, may amend the provisions of this Sub-Lease 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 Sub-Lease, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Before Timbercorp Securities may amend this Sub-Lease as provided under paragraph 18.15(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Growers.
- (d) Timbercorp Securities may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Participant Growers. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Sub-Lease.
- (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18.15(c), then amendments may only be made in accordance with paragraph 18.15(a).

## 19. **DISPUTE RESOLUTION**

### 19.1 **Referral by the Grower**

- (a) Any dispute or difference whatsoever in connection with this Sub-Lease must be dealt with by the Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Grower's satisfaction:
  - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
  - (ii) if:
    - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
    - (B) the Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),

the dispute or difference must be submitted by the Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:

    - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
    - (D) the arbitration will be conducted in Melbourne, Victoria.

(b) The Grower and Timbercorp Securities:

- (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
- (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

## 19.2 Timbercorp Securities

(a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:

- (i) commencing proceedings against the Grower in any relevant jurisdiction;
- (ii) submitting any dispute or difference whatsoever with a Grower in connection with this Sub-Lease to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
  - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
  - (B) the arbitration will be conducted in Melbourne, Victoria.

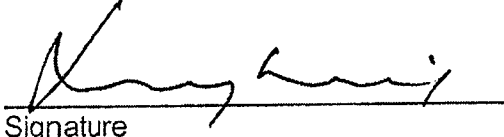
(b) The Grower and Timbercorp Securities:

- (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
- (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

(c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 24.2, 24.3 and 24.4 of the Project Deed.

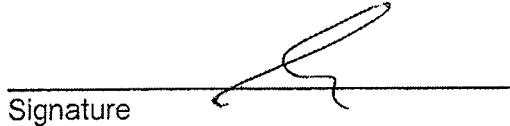
EXECUTED as a Deed

EXECUTED by TIMBERCORP )  
 SECURITIES LIMITED in )  
 accordance with section 127 of the )  
 Corporations Act: )

  
 Signature  
 John Vaughan

Full Name

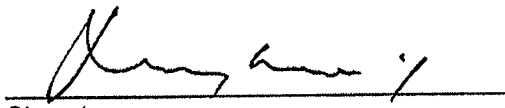
Director

  
 Signature  
 Mark Pryn

Full Name

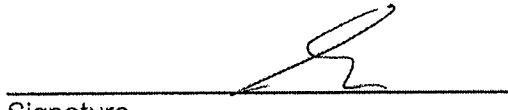
Director/ Secretary

EXECUTED by TIMBERCORP )  
 SECURITIES LIMITED as agent and )  
 attorney for and on behalf of each )  
 several grower in accordance with )  
 section 127 of the Corporations )  
 Act: )

  
 Signature  
 John Vaughan

Full Name

Director

  
 Signature  
 Mark Pryn

Full Name

Director/ Secretary

**SCHEDULE**

**PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS**



**PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS (P2005-WA-ZPSR)  
TIMBERLOT PROJECT – POST JUNE 30**

<b>Plantation Name</b>	<b>Land Description</b>	<b>Head Lease Details</b>
Adams 569	Those parts of Certificate of Title Volume 2052 Folio 982 as are delineated into timberlots numbered 1 – 157 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Anning 659	Those parts of Certificate of Title Volume 3136 Folio 186 as are delineated into timberlots numbered 1 – 580 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Carmarthen 638	Those parts of Certificate of Title Volume 1293 Folio 368 as are delineated into timberlots numbered 1 – 100 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Duncan 630	Those parts of Certificate of Title Volume 1511 Folio 580 as are delineated into timberlots numbered 1 – 774 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Doug's Block 683	Those parts of Certificates of Title Volume 1986 Folio 857 and Volume 610 Folio 187A as are delineated into timberlots numbered 1 – 338 on the map annexed hereto.	Douglas Fletcher Stan-Bishop
Driscoll 570	Those parts of Certificate of Title Volume 1692 Folio 500 as are delineated into timberlots numbered 1 – 232 on the map annexed hereto.	Timbercorp Properties Limited
Determes 658	Those parts of Certificate of Title Volume 2061 Folio 17 as are delineated into timberlots numbered 1 – 191 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd

**PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS (P2005-WA-ZPSR)  
TIMBERLOT PROJECT – POST JUNE 30**

<b>Plantation Name</b>	<b>Land Description</b>	<b>Head Lease Details</b>
Emu Downs 651	Those parts of Certificate of Title Volume 2623 Folio 694 as are delineated into timberlots numbered 1 – 325 on the map annexed hereto.	Rodney John Winston Hester
Erskine 627	Those parts of Certificate of Title Volume 1573 Folio 904 as are delineated into timberlots numbered 1 – 96 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Field 686	Those parts of Certificate of Title Volume 1726 Folio 61as are delineated into timberlots numbered 1 – 134 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Fishtrack 661	Those parts of Certificate of Title Volume LR3082 Folio 369as are delineated into timberlots numbered 1 – 808 on the map annexed hereto.	Kent Rochester and Michelle Lee Tysoe
Gindarra 662	Those parts of Certificates of Title Volume 1229 Folio 889 and Volume 1229 Folio 890 as are delineated into timberlots numbered 1 – 192 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Grylls 625	Those parts of Certificate of Title Volume 2115 Folio 211as are delineated into timberlots numbered 1 – 108 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Perillup 600	Those parts of Certificate of Title Volume 1655 Folio 744as are delineated into timberlots numbered 1 – 411 on the map annexed hereto.	Timbercorp Plantations 2002 IAB Pty Ltd

**PART 1: THE PLANTATIONS AND HEAD LEASE DETAILS (P2005-WA-ZPSR)**  
**TIMBERLOT PROJECT – POST JUNE 30**

Plantation Name	Land Description	Head Lease Details
Jones 628	Those parts of Certificate of Title Volume 1778 Folio 163 as are delineated into timberlots numbered 1 – 253 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Lockharts 571	Those parts of Certificate of Title Volume 1711 Folio 778 as are delineated into timberlots numbered 1 – 137 on the map annexed hereto.	Lois Doreen Drygan
Lymon 667	Those parts of Certificate of Title Volume 1928 Folio 976 as are delineated into timberlots numbered 1 – 112 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Nekel 637	Those parts of Certificates of Title Volume 1023 Folio 833, Volume 1436 Folio 532 and Volume 1021 Folio 194 as are delineated into timberlots numbered 1 – 323 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Pavlovich 635	Those parts of Certificate of Title Volume 1150 Folio 947 as are delineated into timberlots numbered 1 – 261 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Townsend Nth 688	Those parts of Certificate of Title Volume 2038 Folio 824 as are delineated into timberlots numbered 1 – 481 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Townsend Sth 689	Those parts of Certificate of Title Volume 3136 Folio 521 as are delineated into timberlots numbered 1 – 246 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd
Weber 677	Those parts of Certificate of Title Volume 517 Folio 35A as are delineated into timberlots numbered 1 – 126 on the map annexed hereto.	W.A. Chip & Pulp Co Pty Ltd

**PART 2:** NAMES AND ADDRESSES OF GROWERS AND RELEVANT TIMBERLOTS

**PART 3: Term**

In respect of a relevant Grower, means the period commencing on the Commencement Date and expiring on the earliest of:

- (a) 30 June 2019;
- (b) the date Harvesting is completed; and
- (c) the day immediately preceding the termination date of the Head Lease.

**PART 4: Rent**

An amount equal to 3% of the Net Proceeds.

**VICTORIA DISTRICT REGISTRY  
GENERAL DIVISION**

**No. VID 541 of 2009**

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

**AND**

**IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)  
ACN: 055 185 067**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469  
and OTHERS**

**Plaintiffs**

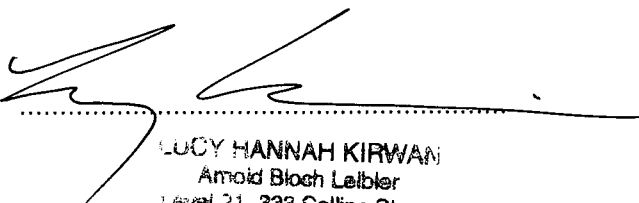
**WA CHIP & PULP CO. PTY LTD  
and OTHERS  
ACN 008 720 518**

**Defendants**

**CERTIFICATE IDENTIFYING EXHIBIT**

This is the exhibit marked "**MAK-31**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 31 July 2009.

Before me: .....

  
**LUCY HANNAH KIRWAN**  
Amold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

# Forestry Schemes Harvesting Schedule



## Timbercorp's Pre-appointment Harvesting Schedule

### Disclaimer:

The following summary of Timbercorp's Forestry Schemes is based on the Timbercorp internal harvest management program.

The Liquidators do not warrant or provide any guarantees in relation to the accuracy, appropriateness or underlying assumptions contained in the program.

Further and for the avoidance of any doubt, the Liquidators have not prepared, renewed or updated the harvesting program.

Project	No. of Growers	Hectares Planted	PDS Stated Completion Date	Expected Completion Date	No. of years costs to be incurred (including 2009)
1997 Eucalypts 1 <sup>st</sup> Rotation (2 <sup>nd</sup> )	604 (221)	1,249	2010 (2021)	2009 (2021)	1 (13)
1998 Eucalypts 1 <sup>st</sup> Rotation (2 <sup>nd</sup> )	1,264 (439)	16,334	2011 (2022)	2014 (2025)	6 (17)
1999 Eucalypts PO 1 <sup>st</sup> Rot. (2 <sup>nd</sup> )	10	948	2012 (2023)	2015 (2027)	19
1999 Eucalypts	3,243	28,010	2012	2017	9
2000 Eucalypts	1,186	10,323	2013	2018	10
2001 Eucalypts	523	4,112	2013	2018	10
2002 Eucalypts	520	3,567	2014	2019	11
2003 Eucalypts	540	5,791	2016	2020	12
2004 Eucalypts	169	1,741	2017	2020	12
2004 Timberlots	866	4,163	2017	2020	12
2005 Timberlots	2,420	11,582	2019	2022	14
2007/2008 Timberlots	1,967	Approx 9,000	2021	Not determined	Not determined

The above table sets out the expected harvesting completion dates for the twelve Timbercorp Forestry Schemes (eleven MIS and one Private Offer Scheme) currently on foot.

The harvest of each scheme is expected to take place over a number of years (e.g. the 1999 Eucalypts Scheme will be harvested over a period of eight years). Maintenance and rental costs associated with each scheme will reduce over time as the trees on the properties within each scheme are harvested.

The harvesting schedule is affected by several factors, including, but not limited to:

- Global demand for woodchips;
- Shipping schedules;
- Location;
- Site seasonality / weather; and
- Site access