

*C 2005 009*  
**Orchard Management  
Agreement**

**Timbercorp Securities Limited**

**Citruscorp Management Pty Ltd**

**2005 Timbercorp Citrus Project**

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## Details of this Orchard Management Agreement

### Date of the Agreement:

This Agreement is made on 19 May 2005.

### Parties to the Agreement:

1. **TIMBERCORP SECURITIES LIMITED**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne Victoria 3000

(Timbercorp Securities)

2. **CITRUSCORP MANAGEMENT PTY LTD**  
ACN 105 995 257  
Level 8, 461 Bourke Street  
Melbourne Victoria 3000

(Citruscorp)

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## Background to the Agreement

- A. Timbercorp Securities is the responsible entity of the 2005 Timbercorp Citrus Project.
- B. Under the Citruslot Management Agreement, Timbercorp Securities has been or will be appointed by the Growers to cultivate and maintain Citrus Trees on, and generally manage, the Citruslots in accordance with the Management Plan and to carry out and perform each Growers' obligations under the Licence Agreements.
- C. Timbercorp Securities wishes to engage Citruscorp to manage the Orchard.
- D. The parties have agreed that Citruscorp will manage the Orchard in accordance with the reasonable directions of Timbercorp Securities and subject to the terms and conditions of this Agreement.

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## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>Best Horticultural Practice:</b>	sound horticultural and environmental practices and industry practices that are adopted in Australia in relation to similar orchards;
<b>Business Day:</b>	a day other than a Saturday or Sunday or public holiday on which all trading banks are open for general banking business in Melbourne, Victoria;
<b>Capital Works:</b>	<p>(a) the infrastructure and capital works on the Orchard as at the date of this Agreement; and</p> <p>(b) the infrastructure and capital works that Timbercorp Securities has agreed with the Grower to procure the Land Owner to carry out, and any other works that Timbercorp Securities, Timbercorp or the Land Owner may be required in future to carry out, at their cost respectively, on the Orchard;</p>
<b>Chiquita:</b>	Chiquita Brands South Pacific Limited (ACN 002 687 961);
<b>Citrus:</b>	the Citrus grown or growing on the Grower's Citruslots or the Orchard, whichever is applicable and whether harvested or unharvested;
<b>Citrus Crop:</b>	the Citrus taken from the Citrus Trees grown on the Growers' Citruslots;
<b>Citrus Trees:</b>	the Citrus Trees planted or to be planted on the Orchard;
<b>Citruslot:</b>	an interest in the Project held or to be held by a Grower, including its interest in, and rights in relation to, each coupled Existing Citruslot and New Citruslot (being approximately 0.25 hectares of the Orchard), and which includes the Citrus Trees, the Capital Works and the Required Water Licences, attributed to the Project;
<b>Citruslot Management Agreement:</b>	an agreement for the management of the business of the Growers conducted on the Citruslots between Timbercorp Securities in its personal capacity and the Growers;
<b>Commencement Date:</b>	the date of this Agreement;
<b>Constitution:</b>	the constitution which governs the Project;
<b>Existing Citruslot:</b>	each separate and identifiable area of the Existing Orchard which in aggregate comprises approximately 0.15 hectares consisting of 14 young Citrus Trees, 16 intermediate Citrus Trees and 37 mature Citrus Trees (each individually numbered and separately identifiable) and the area of land immediately surrounding the Citrus Trees;
<b>Existing Orchard:</b>	all of the Existing Citruslots established on the Solora Estate comprising approximately 309 hectares;
<b>Financial Year:</b>	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2005 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
<b>Government</b>	a government or government department, a governmental, semi-

<b>Agency:</b>	governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law;
<b>Grower:</b>	a "Participant Grower" in the Project;
<b>GST:</b>	a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under GST Law;
<b>Kangara Undeveloped Land:</b>	those parts of the undeveloped land located on the Kangara estate near Renmark, South Australia, more particularly described in Allotment 9/FP 106444 on Certificate of Title 5171/43 on which the New Orchard will be established on or about 31 December 2005;
<b>Land:</b>	the land on which the Project will be conducted, as described in the PDS and includes the Solara Estate and the Kangara Undeveloped Land, or such other land which is used for the Project;
<b>Land Owner:</b>	(a) in respect of the Existing Orchard, OIM #2 and its permitted assigns and successors.  (b) in respect of the New Orchard, OIML and its permitted assigns and successors;
<b>Licence Agreements:</b>	the agreements of that name between Timbercorp Securities as licensor and the Grower as licensee in relation to the Growers' Citruslots;
<b>Management Plan:</b>	the management plan for a Financial Year prepared by or on behalf of Timbercorp Securities;
<b>New Citruslot</b>	each separate identifiable area of the New Orchard comprising approximately 0.10 hectares to be established by the Land Owner on the Kangara Undeveloped Land on or about 31 December 2005;
<b>New Orchard</b>	all of the New Citruslots to be established on the Kangara Undeveloped Land, comprising approximately 200 hectares;
<b>OIM #2:</b>	OIM #2 Pty Ltd (ACN 112 691 997 ) as trustee for the Timbercorp Orchard Trust #2, of Level 6, 505 St Kilda Road, Melbourne, Victoria;
<b>OIML:</b>	Orchard Investments Management Limited (ACN 105 684 231) as responsible entity for the Timbercorp Orchard Trust (ARSN 106 557 297), of Level 6, 505 St Kilda Road, Melbourne, Victoria;
<b>Orchard:</b>	all of the Existing Orchard and the New Orchard;
<b>Orchard Services:</b>	the services described in clauses 4 and 5;
<b>Participating Interest:</b>	has the same meaning as in the Constitution;

<b>PDS:</b>	the product disclosure statement issued by Timbercorp Securities under which Timbercorp Securities offers for subscription interests in the Project;
<b>Product:</b>	Citrus in a saleable condition;
<b>Project:</b>	the 2005 Timbercorp Citrus Project promoted by Timbercorp Securities involving the management of the Orchard, the cultivation and harvesting of Citrus Trees and the processing of Citrus for commercial gain;
<b>Project Documents:</b>	the agreements entered into by Timbercorp Securities under clauses 13.3 and 13.4 of the Constitution;
<b>Project Operations:</b>	the growing, cultivation and management of a commercial citrus orchard and includes the Orchard Services, the harvesting and processing of the Citrus, delivery of the Citrus for distribution to or on behalf of the Growers in accordance with their Participating Interests and procuring the sale of Citrus;
<b>Required Water Licences:</b>	<p>(a) the water licences that are, or will be, licensed to Timbercorp Securities under the Sub-lease and that are attributed to the Land as required from time to time, and</p> <p>(b) that provide for a maximum licence entitlement specified in paragraph 3.2(a) of the Licence Agreements, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;</p>
<b>Solora Estate:</b>	those parts of the land located at Bookpurnong near Renmark, South Australia, more particularly described in Certificate of Title Register Book Volume 5278 Folio 11, Volume 5278 Folio 12, Volume 5471 Folio 442, and Volume 5519 Folio 293 on which the Existing Orchard was established;
<b>Sub-Lease:</b>	the deeds (as amended) made or to be entered into between Timbercorp Securities, as sub-lessee, and Timbercorp, as sub-lessor, whereby Timbercorp Securities has been, or will be, granted sub-leases over the Land;
<b>Term:</b>	the term of this Agreement under clause 2; and
<b>Timbercorp:</b>	Timbercorp Limited (ACN 055 185 067).

## 1.2 Interpretation

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

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;

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- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
  - (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and assigns and transferees;
  - (g) a reference to a gender includes the other genders;
  - (h) a reference to "\$" or "dollars" is a reference to Australian dollars;
  - (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement; and
  - (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally and it also binds the executors, administrators and permitted assigns of them and of each of them and of any two or more of them jointly and each of them severally.

### **1.3 Headings**

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

### **1.4 Capacity of Timbercorp Securities**

Timbercorp Securities enters into this Agreement in its personal capacity.

### **1.5 Orchard Management Agreement is not Scheme Property**

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

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## **2. TERM**

### **2.1 Commencement Date**

This Agreement will commence on the Commencement Date.

### **2.2 Termination Date**

Subject to clause 12, this Agreement will terminate on the earlier of:

- (a) termination of the Project; and
- (b) 30 June 2027.

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## **3. APPOINTMENT OF CITRUSCORP**

### **3.1 Engagement of Citruscorp**

Timbercorp Securities engages Citruscorp on the terms and conditions set out in this Agreement generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Grower and perform the Orchard Services.

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### **3.2 Citruscorp to Carry Out Orchard Services as Independent Contractor**

The parties agree and acknowledge that:

- (a) Citruscorp will carry out the Orchard Services as an independent contractor and not as agent or contractor of the Grower;
- (b) Citruscorp has no recourse in any circumstances whatsoever to a Grower or to assets of the Grower or the Project, including the proceeds from the sale of the Citrus Crop or Product, for any fees, expenses or amounts due to Citruscorp from Timbercorp Securities under this Agreement.

### **3.3 Authority to Act**

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

### **3.4 Performance of Obligations**

- (a) Subject to this Agreement, Citruscorp must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and conduct the Project Operations:
  - (i) in a commercially reasonable manner;
  - (ii) honestly;
  - (iii) generally in accordance with Best Horticultural Practice; and
  - (iv) in the best interests of all the Growers and not in the interests of Citruscorp if those interests are not the same as those of the Growers.
- (b) The phrase "commercially reasonable manner" means, in any particular circumstances, a manner which Citruscorp honestly believes is commercially reasonable in those circumstances (having regard where appropriate to the fact that Citruscorp has to meet the costs of conducting the Project Operations out of the fees paid to it). Subject to paragraph 3.4(a)(iv), the phrase does not require Citruscorp to have regard to the interests of any person other than itself.

### **3.5 Additional Services**

In addition to the activities set out in clause 3.1 and without limiting the generality of clause 3.1, Citruscorp must, at its own expense, provide all necessary administrative, supervisory and consulting services.

### **3.6 Acceptance of Engagement**

Citruscorp accepts its engagement on the terms of this Agreement.

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## **4. ORCHARD MANAGEMENT**

### **4.1 Management Plan and Good Practice**

Citruscorp must cultivate and manage the Orchard in accordance with:



- (a) the Management Plan; and
- (b) Best Horticultural Practice.

The initial Management Plan for the Financial Year ending 30 June 2005 will be prepared within 30 days of the Commencement Date and attached to this Agreement as the First Schedule.

## **4.2 Services for period ending 30 June 2005**

Without limiting the generality of clause 4.1, Citruscorp will carry out the following services in the period ending 30 June 2005. Citruscorp may determine the most appropriate time to carry out the services provided that the services must be completed on or before 30 June 2005:

### **Infrastructure Management Services**

These services will be carried out from the Commencement Date until 30 June 2005 in respect of the Existing Orchard only:

- (a) undertake a comprehensive internal quality assurance audit in respect of the infrastructure situated on the Existing Orchard including but not limited to all irrigation infrastructure, valves, pumps, moisture monitoring equipment and other things;
- (b) keep the following in good repair and condition:
  - i. any access road or roads within the Existing Orchard, all waterways, dams, irrigation and pumping equipment within the Existing Orchard, as necessary;
  - ii. all fences, fire-breaks and other improvements within the Existing Orchard, as necessary;
  - iii. all farm equipment, plant and equipment, tractors, vehicles, protective gear and other things used to perform the services described in this clause;
- (c) as permitted by law, control or eradicate rabbits and other vermin which have caused or may cause damage to the Existing Orchard by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments) and any other statutes, rules, regulations and by-laws relating to or affecting the Citruslots or the Participant Grower;
- (d) to the extent that any fertilisers, nutrients and other chemicals are used, keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Existing Orchard and store the chemicals in accordance with all legal requirements;
- (e) use and apply appropriate soil management techniques and undertake or procure the carrying out of drainage works to reduce soil erosion, maintain soil quality and carry out or procure the carrying out of drainage work and other works to control salinity levels; and
- (f) carry out any other activity that may be required to generally maintain the Orchard in accordance with Best Horticultural Practice or in respect of the provision of the services listed in paragraphs (a)-(e) above including:
  - i. training of staff in the use of equipment, infrastructure and performance of duties;
  - ii. supervision of contractors performing any of the services; and
  - iii. obtaining professional services and advice which Citruscorp may consider

necessary or desirable in connection with the services.

### **Administrative and other Management Services**

The following services will be carried out by Citruscorp from the Commencement Date until 30 June 2005:

- (g) prepare a market report to the Participating Grower detailing the following:
  - (i) world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
  - (ii) the Australian supply situation (covering the expected crop size for Australia);
  - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
  - (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
  - (v) information on Project crop (covering new or potential supply contracts and markets, key customers, promotional activities and other relevant matters);
  - (vi) a 12-month outlook (covering available information on the expected supply/demand and price trends over upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters ); medium-term outlook (covering a 2-5 year period);
  - (vii) any new articles in relation to the supply, consumption and pricing of citrus; and
  - (viii) any other relevant market information;
- (h) carry out any other obligation to be performed by Timbercorp Securities and Citruscorp pursuant to the terms of any agreement entered into by Timbercorp Securities and Citruscorp, respectively;
- (i) procure on behalf of the Participant Grower and keep current with a reputable insurer the insurance policies described in clause 12 of the Citruslot Management Agreement and all other activities in respect of the Grower's Citrus growing activities;
- (j) prepare the reports and statements described in clauses 8 and 13 of the Citruslot Management Agreement and provide the administrative services required to perform the above services;
- (k) comply with the Participant Grower's obligations under the Licence Agreements (except for those relating to payment of fees) by ensuring that the Participant Grower carries out on the Land only those activities he or she is entitled to carry out under the Licence Agreements and then only subject to the terms of the Licence Agreements;
- (l) review the Management Plan and, if necessary, make amendments to it in accordance with this Agreement; and
- (m) in accordance with clause 6, undertake all marketing activities in respect of the future sale of Citrus Crop or Product, including without limitation entering into forward sales agreements in respect of Citrus Crop or Product and foreign exchange hedging agreements, as required and monitor and supervise the performance of all contractors in that regard.

### **Existing Orchard – Citrus Tree Management Services**

These services will be carried out by Citruscorp from the Commencement Date until 30 June 2005. The services relate to the maintenance of Citrus Trees on the Existing Orchard. The services are:

- (n) undertake a comprehensive internal quality assurance audit in respect of the Citrus Trees, their general health and growth rates, and all infrastructure associated with the application of fertiliser and water to the Citrus Trees including valves, dripper lines and other things;
- (o) obtain a formal verification by 30 June 2005 from an expert that the Existing Orchard is of an appropriate standard and all required services have been performed are to an appropriate standard;
- (p) cultivate, tend, cull, replant, spray and otherwise care for the Citrus Trees, as necessary;
- (q) prune the Citrus Trees by mechanical or other methods;
- (r) conduct tests to ascertain the availability of nutrients in the soil and, based on the results, take whatever action is required to maintain the growth rate and productivity of the Citrus Trees;
- (s) undertake pest control, fungicide control and other Citrus Tree disease preventative measures, as necessary;
- (t) operate the irrigation system at various times in order to irrigate the Citruslots;
- (u) not discriminate between Participant Growers in the supply of water under the Required Water Licences;
- (v) fertilise the Existing Orchard and the Existing Citruslots as required, in accordance with Best Horticultural Practices, to maintain satisfactory rates of growth and productivity of the Citrus Trees;
- (w) in its absolute discretion and without needing the Participant Grower's consent, destroy any of the Citrus Trees which are damaged or which have contracted an exotic, noxious or incurable disease, and replant any of the Citrus Trees in need of replacement in accordance with the terms of any agreement made with suppliers of the Citrus Trees;
- (x) as far as reasonably possible, keep the Existing Orchard free from competitive weeds or other vegetation which may affect the growth or yield of the Citrus Trees;
- (y) protect the Citrus Trees from insect infestation, disease and other matters using Best Horticultural Practices, including (as necessary) applying herbicides or pesticides and spraying under the Citrus Trees as permitted by law;
- (z) regularly inspect and repair all stakes, fences and other equipment including plant and machinery such as tractors and other vehicles used during the period ending 30 June 2005 to carry out tree maintenance services on the Existing Citruslots;
- (aa) inspect and, where appropriate, retie the Citrus Trees to stakes in accordance with Best Horticultural Practices; and
- (bb) any other activity that may be required to generally maintain the Existing Orchard in accordance with Best Horticultural Practice or in respect of the provision of the services listed in paragraphs (n)-(aa) above including:
  - (i) training of staff in the use of equipment, infrastructure and performance of duties;

- (ii) supervision of contractors performing any of the services; and
- (iii) obtaining professional services and advice which Citruscorp may consider necessary or desirable in connection with the services.

## **5.2A Subsequent Year Services**

Without limiting the generality of clause 5.1, commencing on 1 July 2005 and thereafter during each subsequent Financial Year during the term of the Project, Citruscorp will carry out the following services on the Participant Grower's Citruslots. Citruscorp may determine the most appropriate time to carry out the services. The services are:

- (a) intentionally left blank;
- (b) prepare a market report to the Participating Grower detailing the following:
  - (i) the world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
  - (ii) the Australian supply situation (covering the expected crop size for Australia);
  - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
  - (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
  - (v) information on project crop (covering new or potential supply contracts and markets, key customers, promotional activities and other relevant matters);
  - (vi) a 12-month outlook (covering expected supply/demand and price trends over upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters); medium-term outlook (covering a 2-5 year period);
  - (vii) any new articles in relation to the supply, consumption and pricing of Citrus; and
  - (viii) other relevant market information.
- (c) in respect of the 2006 Financial Year only, following the completion of planting of all Citrus Trees on the New Orchard:
  - (i) undertake an internal quality assurance audit in respect of the Citrus Trees and stakes, and all infrastructure associated with the application of fertiliser and water including valves, pumps, dripper lines, moisture monitoring equipment; and
  - (ii) obtain a formal verification from an expert that the New Orchard is of an appropriate standard and all required services have been performed and to an appropriate standard;
- (d) prune the Citrus Trees by mechanical or other methods;
- (e) as permitted by law, control or eradicate rabbits and other vermin which have caused or may cause damage to the Citrus Trees or the relevant Citruslots by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments), and any other statutes, rules, regulations and by-laws relating to or affecting the Citruslots or the Participant Grower;

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- (f) undertake pest control, fungicide control and other Citrus Tree disease preventative measures, as necessary;
  - (g) operate the irrigation system at various times in order to irrigate the relevant Citruslots;
  - (h) at its discretion, conduct tests to ascertain the availability of nutrients in the soil on the Citruslots and, based on the results, take whatever action is required to maintain the growth rate and productivity of the Citrus Trees;
  - (i) fertilise the Citruslots as required, in accordance with Best Horticultural Practices;
  - (j) in its absolute discretion and without needing the Participant Grower's consent, destroy any of the Citrus Trees or Citrus which have contracted an exotic, noxious or incurable disease;
  - (k) as necessary, keep in good repair and condition all fences, irrigation and adequate fire-breaks and other improvements within the Orchard, and keep the improvements on the Citruslots in good and substantial repair;
  - (l) maintain fire breaks in accordance with regulatory and insurance requirements and Best Horticultural Practice;
  - (m) maintain the Citruslots in accordance with Best Horticultural Practice including using soil management technique methods to reduce erosion and maintain soil quality;
  - (n) as far as reasonably possible, keep the relevant Citruslots free from competitive weeds or other vegetation which may affect the growth or yield of the Citrus Trees;
  - (o) protect the Citrus Trees from insect infestation, disease and competition from competing growth using Best Horticultural Practice, including applying herbicides or pesticides to the relevant Citruslots and spraying under the Citrus Trees as permitted by law;
  - (p) keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the relevant Citruslots or Citrus Trees;
  - (q) regularly inspect and repair all stakes, fences and irrigation equipment on the relevant Citruslots;
  - (r) properly maintain all plant and machinery used in the performance of the services;
  - (s) inspect and, where appropriate, retie the Citrus Trees to stakes and attach Citrus Trees to stakes in accordance with Best Horticultural Practices;
  - (t) replant any of the Citrus Trees in need of replacement in accordance with the terms of any agreement made with suppliers of the Citrus Trees;
  - (u) comply with the Participant Grower's obligations under the Licence Agreements (except for those relating to payment of fees);
  - (v) keep current with a reputable insurer the insurance policies described in clause 12 of the Citruslot Management Agreement and carry out all other activities in respect of arranging insurance of the Citrus;
  - (w) carry out any other obligation to be performed by Timbercorp Securities and Citruscorp pursuant to the terms of any agreement entered into by Timbercorp Securities and Citruscorp, respectively;
  - (x) not discriminate between Participant Growers in the supply of water under the Required Water Licences;

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- (y) if additional water in excess of the amounts described in the Licence Agreements is required from time to time in order to irrigate the Orchard and such additional water can be reasonably procured by way of temporary water rights, procure such additional water and supply it to all Participant Growers, at a cost to the Participant Growers under clause 11.3 of the Citruslot Management Agreement, calculated and to be taken into account as reasonable costs of procuring the additional water in operating the relevant Citruslots;
  - (z) review and update the Management Plan for the Project, including a horticultural plan for the Orchard, horticultural program, operational plan and annual financial and operational budgets in relation to these horticultural matters, review the Management Plan and, if necessary, make amendments to it;
  - (aa) obtain professional services and advice which Citruscorp may consider necessary or desirable in connection with the maintenance of the Citruslots and the Citrus Trees;
  - (bb) prepare the reports and statements described in clauses 8 and 13 of the Citruslot Management Agreement and provide the administrative services required to perform the above services;
  - (cc) in accordance with clause 6, undertake all marketing activities in respect of the sale or future sale of Citrus, including without limitations entering into forward sales agreements in respect of Citrus and foreign exchange hedging agreements, as required, and monitor and supervise the performance of contractors in that regard;
  - (dd) provide any other service or thing which, in the reasonable opinion of Citruscorp, is incidental or ancillary to the ongoing management of the Citruslots; and
  - (ee) comply with all laws and regulations relating to the use of the relevant Citruslots.

### **4.3 No Unlawful Acts**

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

### **4.4 Notify Timbercorp Securities of Notices**

Citruscorp must give the Timbercorp Securities a copy of any notice (other than rates notices), which it receives from any Government Agency with respect to the Grower's Citruslots or the Orchard within seven days after receipt of the notice.

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## **5. HARVESTING**

### **5.1 Harvesting**

Each year during the Term Citruscorp will, in accordance with Best Horticultural Practice, test the maturity of the Citrus to determine whether the Citrus Trees are ready for harvesting and, having done so, will harvest the mature Citrus Trees.

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## **5.2 Harvesting Method**

Harvesting must be conducted by Citruscorp in accordance with Best Horticultural Practices by any method (including machine harvesting) agreed with by Timbercorp Securities.

## **5.3 Delivery**

Citruscorp will promptly deliver all harvested Citrus to a delivery point or points nominated from time to time by Timbercorp Securities to enable the Citrus to be processed or sold.

## **5.4 Storage**

Until the harvested Citrus are delivered, Citruscorp will store them in an appropriate manner to minimise the deterioration of the Citrus' quality. The Citrus may be stored on the Land or any other premises whether or not owned or operated by Timbercorp Securities or Citruscorp.

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# **6. PROCESSING AND SALE**

## **6.1 Processing of Citrus**

Timbercorp Securities authorises and directs Citruscorp to procure the processing of the Citrus Crop into Product and enter into a Project Document as agent and attorney for the Grower.

## **6.2 Marketing and Sale**

Timbercorp Securities authorises and directs Citruscorp to:

- (a) sell the Product, using its reasonable endeavours to seek to maximise returns, and on such terms and conditions as Citruscorp in its absolute discretion determines and, for this purpose to enter into a Project Document for the sale of the Product as agent and attorney for the Grower, either itself or through sales agents appointed by Citruscorp with the prior written consent of Timbercorp Securities; and
- (b) appoint Chiquita as sales agent of all the Product.

## **6.3 Gather In Product**

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

## **6.4 Lien**

- (a) Citruscorp acknowledges that Timbercorp Securities can call for a first and paramount lien at any time in respect of the Grower's Participating Interest in the Citrus until such time as any outstanding fees or expenses due and payable to Timbercorp Securities under the Citruslot Management Agreement have been paid.

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- (b) Citruscorp further acknowledges that Timbercorp Securities is authorised to sell or cause to be sold any of the Growers' Participating Interest in the Citrus over which Timbercorp Securities has the lien for the purpose of applying the sale proceeds in payment of any outstanding fees or expenses due to Timbercorp Securities.

## **6.5 Action for Recovery of Sale Proceeds**

In the event that a payment due by a purchaser of the Product or Citrus Crop under an agreement for the sale of the Product or Citrus Crop is overdue, Timbercorp Securities authorises Citruscorp to take any action which it reasonably considers to be necessary for the purpose of recovering any such outstanding payments or any Product or Citrus Crop from the purchaser.

## **6.6 Payment of Sale Proceeds**

- (a) Where it is commercially practicable to do so, Citruscorp must direct the purchaser of the Product or Citrus Crop under an agreement for the sale of the Product or Citrus Crop to make any payments for the Product or Citrus Crop directly to Timbercorp Securities or if Timbercorp Securities directs Citruscorp, directly to the custodian for the time being of the Project.
- (b) Where it is commercially impracticable for payments to be made directly to Timbercorp Securities in accordance with paragraph 6.6(a), Citruscorp must:
  - (i) hold the proceeds on bare trust for Timbercorp Securities as responsible entity of the Project, pay them into a separate bank account opened for the purpose and not mix the proceeds with any other moneys, including Citruscorp's moneys so that the moneys are clearly identified; and
  - (ii) pay the proceeds to Timbercorp Securities, or if Timbercorp Securities directs Citruscorp, to the custodian for the time being of the Project, within 2 Business Days of Citruscorp receiving the proceeds.
- (c) Proceeds from the sale of the Product or Citrus Crop are subject to any first and paramount lien that Timbercorp Securities has in accordance with clause 6.4.

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# **7. ADMINISTRATIVE SERVICES**

## **7.1 Services**

Citruscorp agrees to provide the following administrative services throughout the term of the Agreement:

- (a) prepare reports to Growers on the allocation and location of Growers' Citruslots;
- (b) prepare reports to Growers detailing the work to be done on each Grower's Citruslot;
- (c) prepare reports to Growers on the matters described in clauses 12.1 and 12.3;
- (d) prepare a statement to the Grower to assist with the preparation of income tax returns;
- (e) record the Grower's transactions and make payments on behalf of the Grower;
- (f) provide general administrative management of the Project;



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- (g) review the sales and marketing plan for the Project; and
  - (h) co-ordinate visits of Growers to inspect their Citruslots.
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## **8. DELEGATION OF RESPONSIBILITIES**

In carrying out and performing its duties and obligations under this Agreement, Citruscorp may appoint agents and sub-contractors, engage such personnel and acquire and utilise materials necessary, usual or desirable for the purposes of exercising its powers or performing its obligations under this Agreement, subject to Citruscorp at all times remaining primarily responsible to Timbercorp Securities for the carrying out and performance of those duties and responsibilities.

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## **9. ACCESS TO ORCHARD**

### **9.1 Citruscorp has Access**

Citruscorp and its invitees will be entitled to such access to the Orchard as is necessary or desirable to perform Citruscorp's obligations under this Agreement.

### **9.2 Removal of Citruscorp's Property after Termination**

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

### **9.3 Roads and Tracks**

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

### **9.4 Grower's Access**

Citruscorp acknowledges that, provided the Grower gives Timbercorp Securities seven days' prior notice in writing, Timbercorp Securities must permit the Grower or its duly authorised representatives to have access, at the Grower's expense and risk, at all reasonable times to the Grower's Citruslots and the facilities located on them.

### **9.5 Warranty as to Access**

Timbercorp Securities warrants that it has the right to grant access to the Orchard for the performance by Citruscorp of its obligations, and the exercise by Citruscorp of its

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rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the Land Owner, Timbercorp Securities, any of the Growers or any person who derives title through or under the Land Owner.

## **9.6 Failure to Perform if Access Denied**

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

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## **10. NO LEASE OR LICENCE**

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of Citruscorp concerning the Orchard.

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## **11. RECORDS**

Citruscorp will, during the currency of this Agreement, maintain records of the works carried out by Citruscorp on the Orchard in respect of all matters considered by Citruscorp from time to time to be desirable in the interests of Timbercorp Securities.

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## **12. REPORTING**

### **12.1 Annual Report**

Within 90 days from the end of each Financial Year during this Agreement Citruscorp will prepare and send a report (**Annual Report**) to Timbercorp Securities that addresses and contains information concerning the following matters:

- (a) the results of the harvest of Citrus;
- (b) the condition of the Orchard, the Grower's Citruslots and Citrus Trees;
- (c) any other matters which Citruscorp considers material concerning the Orchard, the Grower's Citruslots or the Project and which ought reasonably to be made known to Timbercorp Securities; and
- (d) any other matter reasonably requested by Timbercorp Securities.

### **12.2 Certification**

In the Annual Report Citruscorp will certify whether it has performed and observed its obligations under this Agreement.

### **12.3 Statement of Income and Expenses**

Within 90 days after the end of each Financial Year, commencing at the end of the Financial Year in which the Citrus Trees start to produce Citrus Crop, Citruscorp will prepare and provide to Timbercorp Securities an annual statement of income and expenses relating to the management of the Orchard and the sale of each Grower's Product or Citrus Crop during the relevant Financial Year.

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## **13. COMPLIANCE WITH MANAGEMENT PLAN**

### **13.1 Management Plan**

In performing its obligations under this Agreement, Citruscorp must observe and act in accordance with, the Management Plan.

### **13.2 No Obligation to Comply with Management Plan**

Despite the preceding clause, Citruscorp is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from Timbercorp Securities under clause 13.3 requires Citruscorp to do something which is not in accordance with the Management Plan.

### **13.3 Recommendation or Direction by Timbercorp Securities**

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

### **13.4 Changes to Management Plan**

At any time during the Financial Year to which a Management Plan relates, Citruscorp, with the consent of Timbercorp Securities, may make changes to that Management Plan.

### **13.5 Performance of Management Services**

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

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## **14. ORCHARD MANAGEMENT FEES**

### **14.1 Fees Payable to Citruscorp**

In consideration of the Orchard Services and all other services to be provided by Citruscorp under this Agreement, Timbercorp Securities will pay to Citruscorp the following fees

- (a) in respect of the period commencing on the Commencement Date and ending on 30 June 2005, an amount per Citruslot to be agreed between the parties payable on or before 30 June 2005 provided that the fee must be no less than \$2,550 per Citruslot; and
- (b) in respect of the period 1 July 2005 to 30 June 2006, an amount per Citruslot to be agreed between the parties and payable on or before 30 June 2006; and
- (c) thereafter, in respect of each subsequent Financial Year during the Term, an amount per Citruslot calculated by Citruscorp on [ ] as the reasonable cost of managing the Citruslot and payable on or before 30 June during that Financial Year.

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## **14.2 Determination of Actual Costs**

After the actual costs for a Financial Year referred to in paragraph 14.1(c) have been determined by Citruscorp, Citruscorp will, when notifying Timbercorp Securities under paragraph 14.1(c) of the projected costs for the succeeding Financial Year, notify Timbercorp Securities of those actual costs and either deduct the surplus from, or add the excess to, the fees payable for the next Financial Year, depending on whether they are more or less than the costs calculated by Citruscorp under paragraph 14.1(c).

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## **15. TERMINATION**

### **15.1 Termination of Agreement by Timbercorp Securities or Citruscorp**

Either party may terminate this Agreement if the other party commits a breach of any of its obligations under this Agreement and the default has not been remedied within 30 days after receiving notice notifying it of the breach and requesting it to be remedied.

### **15.2 Termination by Timbercorp Securities**

Timbercorp Securities may terminate this Agreement without notice in its absolute discretion if at any time it considers such termination to be in the interests of the Growers of the Project.

### **15.3 Change of Responsible Entity**

- (a) This Agreement will terminate immediately if Timbercorp Securities ceases to be the single responsible entity of the Project for any reason.
- (b) Immediately prior to:
  - (i) a meeting of Growers being called relating to the retirement or removal of Timbercorp Securities from the office of single responsible entity of the Project and a resolution being passed to that effect;
  - (ii) an application being made to the court for the appointment of a temporary responsible entity to replace Timbercorp Securities; or
  - (iii) this Agreement being terminated under this clause 15,

Timbercorp Securities will be deemed to have exercised any rights of step-in which it is entitled to exercise under any contract between Citruscorp and Chiquita, Chiquita Agribusiness Pty Ltd ACN 093 583 049 or any other contractor relating to the Orchard Services and other services under this Agreement.

### **15.4 Effect of Termination**

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

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## **16. INDEMNITY**

Subject to this Agreement and the law, Citruscorp must indemnify continuously

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Timbercorp Securities against any liability, demand, loss (including consequential loss), costs, charges and expenses which may be incurred by Timbercorp Securities as a result of any breach of Citruscorp's obligations under this Agreement, or any neglect or fraud on the part of Citruscorp or any of its employees, servants or agents.

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## 17. GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate in force from time to time.
- (c) The GST payable under paragraph 17(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 Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 17(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit.
- (h) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

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## 18. DISPUTES

### 18.1 Procedure Must Be Followed

- (a) If there is a dispute between the parties arising from or connected with any provision of this Agreement, the parties must follow the following dispute

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resolution procedure before commencing legal proceedings, other than proceedings seeking interlocutory relief.

- (b) Either party may give a notice of dispute to the other party if there is a dispute arising out of this Agreement.

## **18.2 Parties Must Attempt to Resolve**

- (a) Upon one party giving a notice of dispute to the other party, both parties must meet within 10 Business Days of the date of that notice in order to try to resolve the dispute.
- (b) If the parties cannot resolve the dispute within 10 Business Days of the date of notice of dispute, either party may refer the matter to mediation.

## **18.3 Mediation**

- (a) Both parties agree to mediate if a dispute is referred to mediation by either one of the parties.
- (b) The mediator will be agreed by the parties.
- (c) If the parties cannot agree to a mediator within a further 5 Business Days, a mediator will be chosen by the President for the time being of the Law Institute of Victoria Limited.
- (d) The parties will equally bear any costs associated with the mediator's fees and will bear their own costs in relation to preparation or representation at the mediation.
- (e) The mediator will provide a certificate of mediation which sets out the result of the mediation.
- (f) Subject to clause 18.1, a party may issue legal proceedings only after the mediator has provided a certificate of mediation.

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## **19. NOTICE**

### **19.1 Form of Notice**

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

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

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

### **19.2 Receipt of Notice**

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

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

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

The relationship between Citruscorp and Timbercorp Securities is not, is not intended to be, is not deemed to be and is not to be treated as, a partnership or association or a joint venture.

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## **21. COSTS**

The parties will bear their own costs of negotiating and preparing this Agreement.

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## **22. AGREEMENT WILL BIND SUCCESSORS**

Subject to clause 15.3, this Agreement will bind and enure for the benefit of the parties and their respective executors, administrators and assigns.

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## **23. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and no warranties, representations, terms, conditions, obligations or other provisions of any nature not contained in it will be of any effect.

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## **24. SEVERANCE**

If the term of any provision of this Agreement is invalid or unenforceable, it will be read down to the extent of that invalidity or unenforceability. If the clause is incapable of being read down, any invalid or unenforceable provision will be severed and all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable provisions will continue to be valid and enforceable.

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## **25. WAIVER**

No failure, delay or indulgence on the part of any party in exercising any power or right conferred upon that party under this Agreement will operate as a waiver of that power or right, nor will any single or partial exercise of such a power or right preclude any future exercise of it or any exercise of any other power or right under this Agreement.

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## **26. AMENDMENTS**

This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.

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## **27. GOVERNING LAW**

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

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## **28. METHODS FOR ASSESSING CITRUSCORP'S PERFORMANCE**

### **28.1 Meetings**

The First Compliance Officer of Timbercorp Securities, as appointed under the Compliance Plan for the Project, and a senior representative of Citruscorp will meet every six months to discuss the operation and workability of this Agreement and other issues which either party considers relevant. Meetings between Timbercorp Securities and Citruscorp may also take place at any other times as are determined by the parties.

### **28.2 Reports and Statements**

The reports and statements described in clause 12 which Citruscorp is required to provide to Timbercorp Securities, must be prepared in a timely manner and will be used by Timbercorp Securities as a method of assessing Citruscorp's performance.

### **28.3 Appointment of Representative**

Citruscorp must nominate an officer to act as its representative in relation to the performance of Citruscorp's duties under this Agreement, and to be readily available to communicate directly with, and provide any information required by, Timbercorp Securities in relation to Citruscorp's functions under this Agreement.

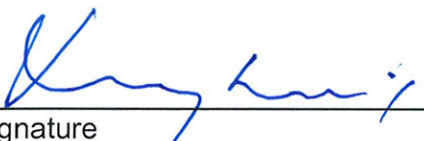
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**Executed as an Agreement**




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

  
Signature  
**John Vaughan**

Full Name  
**Director**

Director

  
Signature  
**Mark H Pryn**

Full Name  
**Secretary**

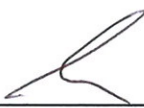
~~Director~~/ Secretary

EXECUTED by CITRUSCORP )  
MANAGEMENT PTY LTD in )  
accordance with section 127 of )  
the Corporations Act: )

  
Signature  
**John Vaughan**

Full Name  
**Director**

Director

  
Signature  
**Mark H Pryn**

Full Name  
**Secretary**

~~Director~~/ Secretary

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## **FIRST SCHEDULE**

### **INITIAL MANAGEMENT PLAN**

**(Clause 4.1)**

***[To be prepared within 30 days of the Commencement Date]***