

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

List B

S CI 2013 01477

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS  
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN  
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST  
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

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Date of document: 21 March 2014

Filed on behalf of: The plaintiff

Prepared by:

**Allens**

Lawyers

101 Collins Street

Melbourne VIC 3000

Solicitor code: 21455

DX 30999 Melbourne

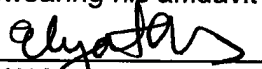
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120339854

(Clint.Hinchen@allens.com.au)

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This is the Exhibit marked 'CCH-10' now produced and shown to Clinton Charles Hinchen at the time of swearing his affidavit on 21 March 2014.

Before me   
**ELYSE KATE ADAMS**  
of 101 Collins Street, Melbourne  
Victoria 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

**'CCH-10': a true copy of the  
Bella Vista Land Sale Contract**

## Contract for the sale of land – 2005 edition

TERM	MEANING OF TERM
Vendor's agent	NIL
Co-agent	
Vendor	<b>ALIGN FUNDS MANAGEMENT LIMITED (ABN 34 105 684 231)</b> (formerly known as Orchard Investments Management Limited) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 657 297) (Receivers and Managers Appointed) c/- Pricewaterhouse Coopers, Freshwater Place, 2 Southbank Boulevard, Southbank VIC 3006
Vendor's Solicitor	<b>ALLENS ARTHUR ROBINSON</b> Level 27, 530 Collins Street Melbourne VIC 3000 DX 30669 Melbourne Tel (03) 9614 1011 Fax (03) 9614 4681 Attention: David McLellan
Completion date	Refer to Special Condition 16
Land	Start Highway and Pringle Road, Euston
(Address, plan details and title reference)	being Lot 22 in Deposited Plan 1093662 and comprised in Certificate of Title Folio Identifier 22/1093662, Lot 2 in Deposited Plan 1046695 and comprised in Certificate of Title Folio Identifier 2/1046695 and Lot 1 in DP1067588 and comprised in Certificate of Title Folio Identifier 1/1067588
Improvements	<input checked="" type="checkbox"/> VACANT POSSESSION <input type="checkbox"/> subject to existing tenancies <input type="checkbox"/> HOUSE <input type="checkbox"/> garage <input type="checkbox"/> carport <input type="checkbox"/> home unit <input type="checkbox"/> carspace <input type="checkbox"/> none <input checked="" type="checkbox"/> other: Table grapes vines, irrigation and sheds on site
Attached copies	<input checked="" type="checkbox"/> Documents in the List of Documents as marked or as numbered: <input type="checkbox"/> Other documents:

A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.

Inclusions	<input type="checkbox"/> blinds <input type="checkbox"/> curtains <input type="checkbox"/> insect screens <input type="checkbox"/> stove <input type="checkbox"/> built-in wardrobes <input type="checkbox"/> dishwasher <input type="checkbox"/> light fittings <input type="checkbox"/> pool equipment <input type="checkbox"/> clothes line <input type="checkbox"/> fixed floor coverings <input type="checkbox"/> range hood <input type="checkbox"/> TV antenna <input checked="" type="checkbox"/> other: See Special Conditions
Exclusions	Excluded Assets (as defined in the Special Conditions)
Purchaser	50% as to Costa Holdings Investments Pty. Ltd. as trustee for Charlie Costa Investments Trust, and 50% as to Costa Holdings Investments Pty. Ltd. as trustee for Paul Costa Investments Trust
Purchaser's solicitor	<b>Goldsmiths Lawyers</b> 613 King Street Melbourne VIC 3003 Tel (03) 9322 2777 Fax (03) 9329 1543 Attention: Darren Goldsmith
Price	\$2,900,000
Deposit	\$290,000 (10% of the price, unless otherwise stated)
Balance	\$2,610,000
Contract date	(If not stated, the date this contract was made)

SEE EXECUTION PAGE

Vendor

Witness

SEE EXECUTION PAGE

GST AMOUNT (optional)  
The price includes  
GST of: \$0

Purchaser ☐ JOINT TENANTS ☒ tenants in common ☐ in unequal shares Witness

Tax Information (the parties promise this is correct as far as each party is aware)

Vendor duty is payable	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes in full <input type="checkbox"/> yes to an extent
Deposit can be used to pay vendor duty	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes
Land tax is adjustable	<input type="checkbox"/> NO <input checked="" type="checkbox"/> yes
GST: Taxable supply	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes in full <input type="checkbox"/> yes to an extent
Margin scheme will be used in making the taxable supply	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- ☐ not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- ☐ by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- ☐ GST-free because the sale is the supply of a going concern under section 38-325
- ☒ GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O
- ☐ input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

HOLDER OF STRATA OR COMMUNITY TITLE RECORDS – Name, address and telephone number

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> 1 property certificate for the land	<input type="checkbox"/> 24 property certificate for strata common property
<input checked="" type="checkbox"/> 2 plan of the land	<input type="checkbox"/> 25 plan creating strata common property
<input type="checkbox"/> 3 unregistered plan of the land	<input type="checkbox"/> 26 strata by-laws not set out in legislation
<input type="checkbox"/> 4 plan of land to be subdivided	<input type="checkbox"/> 27 strata development contract or statement
<input type="checkbox"/> 5 document that is to be lodged with a relevant plan	<input type="checkbox"/> 28 strata management statement
<input checked="" type="checkbox"/> 6 section 149(2) certificate (Environmental Planning and Assessment Act 1979)	<input type="checkbox"/> 29 leasehold strata - lease of lot and common property
<input checked="" type="checkbox"/> 7 section 149(5) information included in that certificate	<input type="checkbox"/> 30 property certificate for neighbourhood property
<input type="checkbox"/> 8 sewerage connections diagram	<input type="checkbox"/> 31 plan creating neighbourhood property
<input type="checkbox"/> 9 sewer mains diagram	<input type="checkbox"/> 32 neighbourhood development contract
<input checked="" type="checkbox"/> 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> 33 neighbourhood management statement
<input type="checkbox"/> 11 section 88G certificate (positive covenant)	<input type="checkbox"/> 34 property certificate for precinct property
<input type="checkbox"/> 12 survey report	<input type="checkbox"/> 35 plan creating precinct property
<input type="checkbox"/> 13 section 317A certificate (certificate of compliance)	<input type="checkbox"/> 36 precinct development contract
<input type="checkbox"/> 14 building certificate given under legislation	<input type="checkbox"/> 37 precinct management statement
<input type="checkbox"/> 15 insurance certificate (Home Building Act 1989)	<input type="checkbox"/> 38 property certificate for community property
<input type="checkbox"/> 16 brochure or note (Home Building Act 1989)	<input type="checkbox"/> 39 plan creating community property
<input type="checkbox"/> 17 section 24 certificate (Swimming Pools Act 1982)	<input type="checkbox"/> 40 community development contract
<input checked="" type="checkbox"/> 18 lease (with every relevant memorandum or variation)	<input type="checkbox"/> 41 community management statement
<input type="checkbox"/> 19 other document relevant to tenancies	<input type="checkbox"/> 42 document disclosing a change of by-laws
<input type="checkbox"/> 20 old system document	<input type="checkbox"/> 43 document disclosing a change in a development or management contract or statement
<input type="checkbox"/> 21 Crown tenure card	<input type="checkbox"/> 44 document disclosing a change in boundaries
<input type="checkbox"/> 22 Crown purchase statement of account	<input type="checkbox"/> 45 certificate under Management Act – section 109 (Strata Schemes) or section 28 (Community Land)
<input type="checkbox"/> 23 Statutory declaration regarding vendor duty	

#### WARNINGS

- Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving
 

AGL Gas Networks Limited	Government Business & Government Procurement	Public Works Dept
Council	Heritage Office	Roads & Traffic Authority
County Council	Infrastructure Planning and Natural Resources	Rural Lands Protection Board
East Australian Pipeline Limited	Land & Housing Corporation	Sustainable Energy Development
Education & Training Dept	Mine Subsidence Board	Telecommunications authority
Electricity authority	Owner of adjoining land	Water, sewerage or drainage authority
Environment & Conservation Dept	Primary Industries Department	
Fair Trading	RailCorp	

 If you think that any of these matters affects the property, tell your solicitor.
- A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 1987 or the Residential Leases Act 1994.
- If any purchase money is owing to the Crown, it may become payable when the transfer is registered.
- If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
- The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
- The purchaser will usually have to pay stamp duty on this contract. The sale will also usually be a vendor duty transaction. If duty is not paid on time, a party may incur penalties.
- If the purchaser agrees to the release of deposit any rights in relation to the land (for example, the rights mentioned in clause 2.8) may be subject to the rights of other persons such as the vendor's mortgagee.
- The purchaser should arrange insurance as appropriate.

#### DISPUTES

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example mediation under the Law Society Mediation Guidelines).

#### AUCTIONS

Regulations made under the Property Stock and Business Agents Act 2002 prescribe a number of conditions applying to sales by auction.

**IMPORTANT NOTICE TO VENDORS AND PURCHASERS**

Before signing this contract you should ensure that you understand your rights and obligations, some of which are not written in this contract but are implied by law.

For example, as purchaser you should be satisfied that finance will be available at the time of completing the purchase (even if settlement might occur many months after signing this contract - in particular, if you are buying off the plan).

**COOLING OFF PERIOD (PURCHASER'S RIGHTS)**

1. This is the statement required by section 66X of the Conveyancing Act 1919 and applies to a contract for the sale of residential property.
2. The purchaser may rescind the contract at any time before 5 p.m. on the fifth business day after the day on which the contract was made, EXCEPT in the circumstances listed in paragraph 3.
3. There is NO COOLING OFF PERIOD:
  - (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act; or
  - (b) if the property is sold by public auction; or
  - (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in; or
  - (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.
4. A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

The vendor sells and the purchaser buys the property for the price under these provisions instead of Schedule 3 Conveyancing Act 1919, subject to any legislation that cannot be excluded.

**1 Definitions (a term in *italics* is a defined term)**

In this contract, these terms (in any form) mean -

<i>adjustment date</i>	the earlier of the giving of possession to the purchaser or completion;
<i>bank</i>	a bank as defined in the Banking Act 1959, the Reserve Bank or a State bank;
<i>business day</i>	any day except a bank or public holiday throughout NSW or a Saturday or Sunday;
<i>cheque</i>	a cheque that is not postdated or stale;
<i>depositholder</i>	vendor's agent (or if no vendor's agent is named in this contract, the vendor's solicitor);
<i>document of title</i>	document relevant to the title or the passing of title;
<i>GST Act</i>	A New Tax System (Goods and Services Tax) Act 1999;
<i>GST rate</i>	the rate mentioned in section 4 of A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (10% as at 1 July 2000);
<i>legislation</i>	an Act or a by-law, ordinance, regulation or rule made under an Act;
<i>normally</i>	subject to any other provision of this contract;
<i>party</i>	each of the vendor and the purchaser;
<i>property</i>	the land, the improvements, all fixtures and the inclusions, but not the exclusions;
<i>requisition</i>	an objection, question or requisition (but the term does not include a claim);
<i>rescind</i>	rescind this contract from the beginning;
<i>serve</i>	serve in writing on the other party;
<i>settlement cheque</i>	an unendorsed cheque made payable to the person to be paid and drawn on its own funds by - • a bank; or • a building society, credit union or other FCA institution as defined in Cheques Act 1986; that carries on business in Australia; or if authorised in writing by the vendor or the vendor's solicitor, some other cheque;
<i>solicitor</i>	in relation to a party, the party's solicitor or licensed conveyancer named in this contract or in a notice served by the party;
<i>terminate</i>	terminate this contract for breach;
<i>vendor duty</i>	vendor duty imposed under Chapter 4 of the Duties Act 1997;
<i>within</i>	in relation to a period, at any time before or during the period;
<i>work order</i>	a valid direction, notice or order that requires work to be done or money to be spent on or in relation to the property or any adjoining footpath or road.

**2 Deposit and other payments before completion**

2.1 The purchaser must pay the deposit to the depositholder as stakeholder.

2.2 Normally, the purchaser must pay the deposit on the making of this contract, and this time is essential.

2.3 If this contract requires the purchaser to pay any of the deposit by a later time, that time is also essential.

- 2.4 The purchaser can pay any of the deposit only by unconditionally giving cash (up to \$2,000) or a cheque to the depositholder or to the vendor, vendor's agent or vendor's solicitor for sending to the depositholder.
- 2.5 If any of the deposit is not paid on time or a cheque for any of the deposit is not honoured on presentation, the vendor can terminate. This right to terminate is lost as soon as the deposit is paid in full.
- 2.6 If the vendor accepts a bond or guarantee for the deposit, clauses 2.1 to 2.5 and 3 do not apply.
- 2.7 If the vendor accepts a bond or guarantee for part of the deposit, clauses 2.1 to 2.5 and 3 apply only to the balance.
- 2.8 If any of the deposit or of the balance of the price is paid before completion to the vendor or as the vendor directs, it is a charge on the land in favour of the purchaser until termination by the vendor or completion, subject to any existing right.
- 2.9 If each party tells the depositholder that the deposit is to be invested, the depositholder is to invest the deposit (at the risk of the party who becomes entitled to it) with a bank, credit union or permanent building society, in an interest-bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the parties equally, after deduction of all proper government taxes and financial institution charges and other charges.
- 3 Payment of vendor duty out of the deposit**
- 3.1 This clause applies only if this contract says the deposit can be used to pay vendor duty.
- 3.2 If the amount held by the depositholder (disregarding the value of any bond or guarantee) exceeds the amount of vendor duty, the parties direct the depositholder to release the amount of vendor duty on the following terms -
- 3.2.1 the depositholder is to draw a cheque ("the vendor duty cheque") in favour of the Office of State Revenue and in a form acceptable to the Office of State Revenue for payment of vendor duty;
- 3.2.2 the depositholder is not to draw that cheque earlier than 14 days before the completion date; and
- 3.2.3 the receipt of a letter from the vendor's solicitor requesting the vendor duty cheque will be sufficient authority for the depositholder to draw and release that cheque.
- 3.3 The vendor's solicitor will use the vendor duty cheque for the sole purpose of payment of the vendor duty relating to this transaction.
- 3.4 If this contract is not completed in circumstances that there is, or may be, no liability for vendor duty -
- 3.4.1 if the vendor duty cheque has been forwarded to the vendor's solicitor but has not been used to pay vendor duty, that cheque must be returned immediately to the depositholder for cancellation;
- 3.4.2 if the vendor duty cheque has been used to pay vendor duty -
- the amount of vendor duty is repayable upon demand;
  - the vendor must lodge an application for refund of vendor duty; and
  - the vendor irrevocably authorises the Office of State Revenue to pay to the depositholder the refund of vendor duty;
- 3.4.3 each party must do whatever else is necessary to ensure that the party whose funds were used to pay vendor duty receives the refund; and
- 3.4.4 rights under this clause continue even if the contract has been rescinded or terminated.
- 4 Transfer**
- 4.1 Normally, the purchaser must serve the form of transfer at least 14 days before the completion date.
- 4.2 If any information needed for the form of transfer is not disclosed in this contract, the vendor must serve it.
- 4.3 If the purchaser serves a form of transfer and the transferee is not the purchaser, the purchaser must give the vendor a direction signed by the purchaser personally for this form of transfer.
- 4.4 The vendor can require the purchaser to include a form of covenant or easement in the transfer only if this contract contains the wording of the proposed covenant or easement, and a description of the land benefited.
- 4.5 If this sale is exempt from vendor duty -
- 4.5.1 the vendor can (but does not have to) serve an application for exemption from vendor duty in the form satisfactory to the Office of State Revenue within 7 days after the contract date;
- 4.5.2 if that application is attached to this contract or has been provided to the purchaser before the contract date, the application is served on the contract date; and
- 4.5.3 if the vendor complies with clause 4.5.1 -
- the purchaser must have the form of transfer marked by the Office of State Revenue in relation to vendor duty before serving the form of transfer; and
  - on completion the vendor must pay to the purchaser \$33.
- 5 Requisitions**
- If the purchaser is or becomes entitled to make a requisition, the purchaser can make it only by serving it -
- 5.1 if it arises out of this contract or it is a general question about the property or title - within 21 days after the contract date;
- 5.2 if it arises out of anything served by the vendor - within 21 days after the later of the contract date and that service; and
- 5.3 in any other case - within a reasonable time.
- 6 Error or misdescription**
- 6.1 The purchaser can (but only before completion) claim compensation for an error or misdescription in this contract (as to the property, the title or anything else and whether substantial or not).
- 6.2 This clause applies even if the purchaser did not take notice of or rely on anything in this contract containing or giving rise to the error or misdescription.
- 6.3 However, this clause does not apply to the extent the purchaser knows the true position.

## 7 Claims by purchaser

The purchaser can make a claim (including a claim under clause 6) before completion only by serving it with a statement of the amount claimed, and if the purchaser makes one or more claims before completion -

- 7.1 the vendor can rescind if in the case of claims that are not claims for delay -
  - 7.1.1 the total amount claimed exceeds 5% of the price;
  - 7.1.2 the vendor serves notice of intention to rescind; and
  - 7.1.3 the purchaser does not serve notice waiving the claims within 14 days after that service; and
- 7.2 if the vendor does not rescind, the parties must complete and if this contract is completed -
  - 7.2.1 the lesser of the total amount claimed and 10% of the price must be paid out of the price to and held by the depositholder until the claims are finalised or lapse;
  - 7.2.2 the amount held is to be invested in accordance with clause 2.9;
  - 7.2.3 the claims must be finalised by an arbitrator appointed by the parties or, if an appointment is not made within 1 month of completion, by an arbitrator appointed by the President of the Law Society at the request of a party (in the latter case the parties are bound by the terms of the Conveyancing Arbitration Rules approved by the Law Society as at the date of the appointment);
  - 7.2.4 the purchaser is not entitled, in respect of the claims, to more than the total amount claimed and the costs of the purchaser;
  - 7.2.5 net interest on the amount held must be paid to the parties in the same proportion as the amount held; and
  - 7.2.6 if the parties do not appoint an arbitrator and neither party requests the President to appoint an arbitrator within 3 months after completion, the claims lapse.

## 8 Vendor's right to rescind

The vendor can rescind if -

- 8.1 the vendor is, on reasonable grounds, unable or unwilling to comply with a requisition;
- 8.2 the vendor serves a notice of intention to rescind that specifies the requisition and those grounds; and
- 8.3 the purchaser does not serve a notice waiving the requisition within 14 days after that service.

## 9 Purchaser's default

If the purchaser does not comply with this contract (or a notice under or relating to it) in an essential respect, the vendor can terminate by serving a notice. After the termination the vendor can -

- 9.1 keep or recover the deposit (to a maximum of 10% of the price);
- 9.2 hold any other money paid by the purchaser under this contract as security for anything recoverable under this clause -
  - 9.2.1 for 12 months after the termination; or
  - 9.2.2 if the vendor commences proceedings under this clause within 12 months, until those proceedings are concluded; and
- 9.3 sue the purchaser either -
  - 9.3.1 where the vendor has resold the property under a contract made within 12 months after the termination, to recover -
    - the deficiency on resale (with credit for any of the deposit kept or recovered and after allowance for any capital gains tax or goods and services tax payable on anything recovered under this clause); and
    - the reasonable costs and expenses arising out of the purchaser's non-compliance with this contract or the notice and of resale and any attempted resale; or
  - 9.3.2 to recover damages for breach of contract.

## 10 Restrictions on rights of purchaser

10.1 The purchaser cannot make a claim or requisition or rescind or terminate in respect of -

- 10.1.1 the ownership or location of any fence as defined in the Dividing Fences Act 1991;
  - 10.1.2 a service for the property being a joint service or passing through another property, or any service for another property passing through the property ('service' includes air, communication, drainage, electricity, garbage, gas, oil, radio, sewerage, telephone, television or water service);
  - 10.1.3 a wall being or not being a party wall in any sense of that term or the property being affected by an easement for support or not having the benefit of an easement for support;
  - 10.1.4 any change in the property due to fair wear and tear before completion;
  - 10.1.5 a promise, representation or statement about this contract, the property or the title, not set out or referred to in this contract;
  - 10.1.6 a condition, exception, reservation or restriction in a Crown grant;
  - 10.1.7 the existence of any authority or licence to explore or prospect for gas, minerals or petroleum;
  - 10.1.8 any easement or restriction on use the substance of either of which is disclosed in this contract or any non-compliance with the easement or restriction on use; or
  - 10.1.9 anything the substance of which is disclosed in this contract (except a caveat, charge, mortgage or writ).
- 10.2 The purchaser cannot rescind or terminate only because of a defect in title to or quality of the inclusions.
- 10.3 Normally, the purchaser cannot make a claim or requisition or rescind or terminate or require the vendor to change the nature of the title disclosed in this contract (for example, to remove a caution evidencing qualified title, or to lodge a plan of survey as regards limited title).

- 11 Compliance with work orders**
- 11.1** *Normally*, the vendor must by completion comply with a work order made on or before the contract date and if this contract is completed the purchaser must comply with any other work order.
- 11.2** If the purchaser complies with a work order, and this contract is rescinded or terminated, the vendor must pay the expense of compliance to the purchaser.
- 12 Certificates and inspections**
- The vendor must do everything reasonable to enable the purchaser, subject to the rights of any tenant -
- 12.1** to have the property inspected to obtain any certificate or report reasonably required;
- 12.2** to apply (if necessary in the name of the vendor) for -
- 12.2.1** any certificate that can be given in respect of the property under legislation; or
- 12.2.2** a copy of any approval, certificate, consent, direction, notice or order in respect of the property given under legislation, even if given after the contract date; and
- 12.3** to make 1 inspection of the property in the 3 days before a time appointed for completion.
- 13 Goods and services tax (GST)**
- 13.1** In this clause, enterprise, input tax credit, margin scheme, supply of a going concern, tax invoice and taxable supply have the same meanings as in the GST Act.
- 13.2** *Normally*, if a party must pay the price or any other amount to the other party under this contract, GST is not to be added to the price or amount.
- 13.3** If under this contract a party must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party (for example, under clauses 14 or 20.7) -
- 13.3.1** the party must adjust or pay on completion any GST added to or included in the amount; but
- 13.3.2** if this contract says this sale is a taxable supply, and payment would entitle the party to an input tax credit, the adjustment or payment is to be worked out by deducting any input tax credit to which the party receiving the adjustment is or was entitled and adding the GST rate.
- 13.4** If this contract says this sale is the supply of a going concern -
- 13.4.1** the parties agree the supply of the property is a supply of a going concern;
- 13.4.2** the vendor must, between the contract date and completion, carry on the enterprise conducted on the land in a proper and business-like way;
- 13.4.3** if the purchaser is not registered by the completion date, the parties must complete and the purchaser must pay on completion, in addition to the price, an amount being the price multiplied by the GST rate ("the retention sum"). The retention sum is to be held by the depositholder and dealt with as follows:
- if within 3 months of completion the purchaser serves a letter from the Australian Taxation Office stating the purchaser is registered, the depositholder is to pay the retention sum to the purchaser; but
  - if the purchaser does not serve that letter within 3 months of completion, the depositholder is to pay the retention sum to the vendor; and
- 13.4.4** if the vendor, despite clause 13.4.1, serves a letter from the Australian Taxation Office stating the vendor has to pay GST on the supply, the purchaser must pay to the vendor on demand the amount of GST assessed.
- 13.5** *Normally*, the vendor promises the margin scheme will not apply to the supply of the property.
- 13.6** If this contract says the margin scheme is to apply in making the taxable supply, the parties agree that the margin scheme is to apply to the sale of the property.
- 13.7** If this contract says the sale is not a taxable supply -
- 13.7.1** the purchaser promises that the property will not be used and represents that the purchaser does not intend the property (or any part of the property) to be used in a way that could make the sale a taxable supply to any extent; and
- 13.7.2** the purchaser must pay the vendor on completion in addition to the price an amount calculated by multiplying the price by the GST rate if this sale is a taxable supply to any extent because of -
- a breach of clause 13.7.1; or
  - something else known to the purchaser but not the vendor.
- 13.8** If this contract says this sale is a taxable supply in full and does not say the margin scheme applies to the property, the vendor must pay the purchaser on completion an amount of one-eleventh of the price if -
- 13.8.1** this sale is not a taxable supply in full; or
- 13.8.2** the margin scheme applies to the property (or any part of the property).
- 13.9** If this contract says this sale is a taxable supply to an extent -
- 13.9.1** clause 13.7.1 does not apply to any part of the property which is identified as being a taxable supply; and
- 13.9.2** the payments mentioned in clauses 13.7 and 13.8 are to be recalculated by multiplying the relevant payment by the proportion of the price which represents the value of that part of the property to which the clause applies (the proportion to be expressed as a number between 0 and 1). Any evidence of value must be obtained at the expense of the vendor.
- 13.10** *Normally*, on completion the vendor must give the recipient of the supply a tax invoice for any taxable supply by the vendor by or under this contract.
- 13.11** The vendor does not have to give the purchaser a tax invoice if the margin scheme applies to a taxable supply.

**14 Adjustments**

- 14.1 *Normally*, the vendor is entitled to the rents and profits and will be liable for all rates, water, sewerage and drainage service and usage charges, land tax and all other periodic outgoings up to and including the *adjustment date* after which the purchaser will be entitled and liable.
- 14.2 The parties must make any necessary adjustment on completion.
- 14.3 If an amount that is adjustable under this contract has been reduced under legislation, the parties must on completion adjust the reduced amount.
- 14.4 The parties must adjust land tax for the year current at the *adjustment date* -
- 14.4.1 only if land tax has been paid or is payable for the year (whether by the vendor or by a predecessor in title) and this contract says that land tax is adjustable;
  - 14.4.2 by adjusting the amount that would have been payable if at the start of the year -
    - the person who owned the land owned no other land;
    - the land was not subject to a special trust or owned by a non-concessional company; and
    - if the land (or part of it) had no separate taxable value, by calculating its separate taxable value on a proportional area basis.
- 14.5 If any other amount that is adjustable under this contract relates partly to the land and partly to other land, the parties must adjust it on a proportional area basis.
- 14.6 *Normally*, the vendor can direct the purchaser to produce a *settlement cheque* on completion to pay an amount adjustable under this contract and if so -
- 14.6.1 the amount is to be treated as if it were paid; and
  - 14.6.2 the cheque must be forwarded to the payee immediately after completion (by the purchaser if the cheque relates only to the property or by the vendor in any other case).
- 14.7 If on completion the last bill for a water, sewerage or drainage usage charge is for a period ending before the *adjustment date*, the vendor is liable for an amount calculated by dividing the bill by the number of days in the period then multiplying by the number of unbilled days up to and including the *adjustment date*.
- 14.8 The vendor is liable for any amount recoverable for work started on or before the contract date on the property or any adjoining footpath or road.

**15 Completion date**

The parties must complete by the completion date and, if they do not, a party can serve a notice to complete if that party is otherwise entitled to do so.

**16 Completion****• Vendor**

- 16.1 On completion the vendor must give the purchaser any *document of title* that relates only to the property.
- 16.2 If on completion the vendor has possession or control of a *document of title* that relates also to other property, the vendor must produce it as and where necessary.
- 16.3 *Normally*, on completion the vendor must cause the legal title to the property (being an estate in fee simple) to pass to the purchaser free of any mortgage or other interest, subject to any necessary registration.
- 16.4 The legal title to the property does not pass before completion.
- 16.5 If the vendor gives the purchaser a document (other than the transfer) that needs to be lodged for registration, the vendor must pay the lodgment fee to the purchaser, plus another 20% of that fee.
- 16.6 If the purchaser serves a land tax certificate showing a charge on any of the land, on completion the vendor must give the purchaser a land tax certificate showing the charge is no longer effective against the land.
- Purchaser
- 16.7 On completion the purchaser must pay to the vendor, by cash (up to \$2,000) or *settlement cheque*, the price (less any deposit paid) and any other amount payable by the purchaser under this contract (less any amount payable by the vendor to the purchaser under this contract).
- 16.8 If the vendor requires more than 5 *settlement cheques*, the vendor must pay \$10 for each extra *cheque*.
- 16.9 If any of the deposit is not covered by a bond or guarantee, on completion the purchaser must give the vendor an order signed by the purchaser authorising the *depositholder* to account to the vendor for the deposit.
- 16.10 On completion the deposit belongs to the vendor.

**• Place for completion**

- 16.11 *Normally*, the parties must complete at the completion address, which is -
- 16.11.1 if a special completion address is stated in this contract - that address; or
  - 16.11.2 if none is stated, but a first mortgagee is disclosed in this contract and the mortgagee would usually discharge the mortgage at a particular place - that place; or
  - 16.11.3 in any other case - the vendor's solicitor's address stated in this contract.
- 16.12 The vendor by reasonable notice can require completion at another place, if it is in NSW, but the vendor must pay the purchaser's additional expenses, including any agency or mortgagee fee.
- 16.13 If the purchaser requests completion at a place that is not the completion address, and the vendor agrees, the purchaser must pay the vendor's additional expenses, including any agency or mortgagee fee.

**17 Possession**

- 17.1 *Normally*, the vendor must give the purchaser vacant possession of the property on completion.
- 17.2 The vendor does not have to give vacant possession if -



- 17.2.1 this contract says that the sale is subject to existing tenancies; and  
 17.2.2 the contract discloses the provisions of the tenancy (for example, by attaching a copy of the lease and any relevant memorandum or variation).
- 17.3 *Normally*, the purchaser can claim compensation (before or after completion) or rescind if any of the land is affected by a protected tenancy (a tenancy affected by Part 2, 3, 4 or 5 Landlord and Tenant (Amendment) Act 1948).
- 18 **Possession before completion**
- 18.1 This clause applies only if the vendor gives the purchaser possession of the property before completion.
- 18.2 The purchaser must not before completion -  
 18.2.1 let or part with possession of any of the property;  
 18.2.2 make any change or structural alteration or addition to the property; or  
 18.2.3 contravene any agreement between the parties or any direction, document, legislation, notice or order affecting the property.
- 18.3 The purchaser must until completion -  
 18.3.1 keep the property in good condition and repair having regard to its condition at the giving of possession; and  
 18.3.2 allow the vendor or the vendor's authorised representative to enter and inspect it at all reasonable times.
- 18.4 The risk as to damage to the property passes to the purchaser immediately after the purchaser enters into possession.
- 18.5 If the purchaser does not comply with this clause, then without affecting any other right of the vendor -  
 18.5.1 the vendor can before completion, without notice, remedy the non-compliance; and  
 18.5.2 if the vendor pays the expense of doing this, the purchaser must pay it to the vendor with interest at the rate mentioned in Schedule J of the Supreme Court Rules 1970.
- 18.6 If this contract is rescinded or terminated the purchaser must immediately vacate the property.
- 18.7 If the parties or their solicitors on their behalf do not agree in writing to a fee or rent, none is payable.
- 19 **Rescission of contract**
- 19.1 If this contract expressly gives a party a right to rescind, the party can exercise the right -  
 19.1.1 only by serving a notice before completion; and  
 19.1.2 in spite of any making of a claim or requisition, any attempt to satisfy a claim or requisition, any arbitration, litigation, mediation or negotiation or any giving or taking of possession.
- 19.2 *Normally*, if a party exercises a right to rescind expressly given by this contract or any legislation -  
 19.2.1 the deposit and any other money paid by the purchaser under this contract must be refunded;  
 19.2.2 a party can claim for a reasonable adjustment if the purchaser has been in possession;  
 19.2.3 a party can claim for damages, costs or expenses arising out of a breach of this contract; and  
 19.2.4 a party will not otherwise be liable to pay the other party any damages, costs or expenses.
- 20 **Miscellaneous**
- 20.1 The parties acknowledge that anything stated in this contract to be attached was attached to this contract by the vendor before the purchaser signed it and is part of this contract.
- 20.2 Anything attached to this contract is part of this contract.
- 20.3 An area, bearing or dimension in this contract is only approximate.
- 20.4 If a party consists of 2 or more persons, this contract benefits and binds them separately and together.
- 20.5 A party's solicitor can receive any amount payable to the party under this contract or direct in writing that it is to be paid to another person.
- 20.6 A document under or relating to this contract is -  
 20.6.1 signed by a party if it is signed by the party or the party's solicitor (apart from a direction under clause 4.3);  
 20.6.2 served if it is served by the party or the party's solicitor;  
 20.6.3 served if it is served on the party's solicitor, even if the party has died or any of them has died;  
 20.6.4 served if it is served in any manner provided in s170 of the Conveyancing Act 1919;  
 20.6.5 served if it is sent by fax to the party's solicitor, unless it is not received;  
 20.6.6 served on a person if it (or a copy of it) comes into the possession of the person; and  
 20.6.7 served at the earliest time it is served, if it is served more than once.
- 20.7 An obligation to pay an expense of another party of doing something is an obligation to pay -  
 20.7.1 if the party does the thing personally - the reasonable cost of getting someone else to do it; or  
 20.7.2 if the party pays someone else to do the thing - the amount paid, to the extent it is reasonable.
- 20.8 Rights under clauses 11, 13, 14, and 17 continue after completion, whether or not other rights continue.
- 20.9 The vendor does not promise, represent or state that the purchaser has any cooling off rights.
- 20.10 The vendor does not promise, represent or state that any attached survey report is accurate or current.
- 20.11 A reference to any legislation includes a reference to any corresponding later legislation.
- 20.12 Each party must do whatever is necessary after completion to carry out the party's obligations under this contract.
- 20.13 Neither taking possession nor serving a transfer of itself implies acceptance of the property or the title.
- 20.14 The details and information provided in this contract (for example, on page 1) are, to the extent of each party's knowledge, true, and are part of this contract.
- 20.15 Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked.
- 21 **Time limits in these provisions**
- 21.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.
- 21.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.

- 21.3 The time for one thing to be done or to happen does not extend the time for another thing to be done or to happen.
- 21.4 If the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and the day does not exist, the time is instead the last day of the month.
- 21.5 If the time for something to be done or to happen is a day that is not a *business day*, the time is extended to the next *business day*, except in the case of clause 2 (deposit).
- 21.6 *Normally*, the time by which something must be done is fixed but not essential.
- 22 **Foreign Acquisitions and Takeovers Act 1975**
- 22.1 The purchaser promises that the Commonwealth Treasurer cannot prohibit and has not prohibited the transfer under the Foreign Acquisitions and Takeovers Act 1975.
- 22.2 This promise is essential and a breach of it entitles the vendor to *terminate*.
- 23 **Strata or community title**
- 23.1 This clause applies only if the land (or part of it) is a lot in a strata, neighbourhood, precinct or community scheme (or on completion is to be a lot in a scheme of that kind).
- 23.2 In this contract -
- 'change', in relation to a scheme, means -
    - a registered or registrable change from by-laws set out in this contract or set out in *legislation* and specified in this contract;
    - a change from a development or management contract or statement set out in this contract; or
    - a change in the boundaries of common property;
  - 'common property' includes association property for the scheme or any higher scheme;
  - 'contribution' includes an amount payable under a by-law;
  - 'normal expenses', in relation to an owners corporation for a scheme, means normal operating expenses usually payable from the administrative fund of an owners corporation for a scheme of the same kind;
  - 'owners corporation' means the owners corporation or the association for the scheme or any higher scheme;
  - 'the property' includes any interest in common property for the scheme associated with the lot;
  - 'special expenses', in relation to an owners corporation, means its actual, contingent or expected expenses, except to the extent they are normal expenses, due to fair wear and tear, disclosed in this contract or covered by moneys held in the sinking fund.
- 23.3 Clauses 11, 14.8 and 18.4 do not apply to an obligation of the owners corporation, or to property insurable by it.
- 23.4 Clauses 14.4.2 and 14.5 apply but on a unit entitlement basis instead of an area basis.
- 23.5 The parties must adjust under clause 14.1 -
- 23.5.1 a regular periodic contribution;
  - 23.5.2 a contribution which is not a regular periodic contribution but is disclosed in this contract; and
  - 23.5.3 on a unit entitlement basis, any amount paid by the vendor for a normal expense of the owners corporation to the extent the owners corporation has not paid the amount to the vendor.
- 23.6 If a contribution is not a regular periodic contribution and is not disclosed in this contract -
- 23.6.1 the vendor is liable for it if it was levied before the contract date (unless it relates to work not started by that date), even if it is payable by instalments;
  - 23.6.2 the vendor is also liable for it to the extent it relates to work started by the owners corporation before the contract date; and
  - 23.6.3 the purchaser is liable for all other contributions levied after the *contract date*.
- 23.7 The vendor must pay or allow to the purchaser on completion the amount of any unpaid contributions for which the vendor is liable under clause 23.6.
- 23.8 *Normally*, the purchaser cannot make a claim or *requisition* or *rescind* or *terminate* in respect of -
- 23.8.1 an existing or future actual, contingent or expected expense of the owners corporation;
  - 23.8.2 a proportional unit entitlement of the lot or a relevant lot or former lot, apart from a claim under clause 6; or
  - 23.8.3 a past or future change in the scheme or a higher scheme.
- 23.9 However, the purchaser can *rescind* if -
- 23.9.1 the special expenses of the owners corporation at the later of the contract date and the creation of the owners corporation when calculated on a unit entitlement basis (and, if more than one lot or a higher scheme is involved, added together), less any contribution paid by the vendor, are more than 1% of the price;
  - 23.9.2 in the case of the lot or a relevant lot or former lot in a higher scheme -
    - a proportional unit entitlement for the lot is not disclosed in this contract; or
    - a proportional unit entitlement for the lot is disclosed in this contract but the lot has a different proportional unit entitlement at the contract date or at any time before completion; or
  - 23.9.3 a change before the contract date or before completion in the scheme or a higher scheme substantially disadvantages the purchaser and is not disclosed in this contract.
- 23.10 The purchaser must give the vendor 2 copies of a proper form of notice of the transfer of the lot addressed to the owners corporation and signed by the purchaser.
- 23.11 The vendor must complete and sign 1 copy of the notice and give it to the purchaser on completion.
- 23.12 Each party can sign and give the notice as agent for the other.
- 23.13 The vendor must serve a certificate under section 109 Strata Schemes Management Act 1996 or section 26 Community Land Management Act 1989 in relation to the lot, the scheme or any higher scheme at least 7 days before the completion date.

- 23.14 The purchaser does not have to complete earlier than 7 days after service of the certificate and clause 21.3 does not apply to this provision.
- 23.15 On completion the purchaser must pay the vendor the prescribed fee for the certificate.
- 23.16 The vendor authorises the purchaser to apply for the purchaser's own certificate.
- 23.17 The vendor authorises the purchaser to apply for and make an inspection of any record or other document in the custody or control of the owners corporation or relating to the scheme or any higher scheme.
- 23.18 If a general meeting of the owners corporation is convened before completion -
- 23.18.1 If the vendor receives notice of it, the vendor must immediately notify the purchaser of it; and
- 23.18.2 the purchaser can require the vendor to appoint the purchaser (or the purchaser's nominee) to exercise any voting rights of the vendor in respect of the lot at the meeting.
- 24 Tenancies**
- 24.1 If a tenant has not made a payment for a period preceding or current at the *adjustment date* -
- 24.1.1 for the purposes of clause 14.2, the amount is to be treated as if it were paid; and
- 24.1.2 the purchaser assigns the debt to the vendor on completion and will if required give a further assignment at the vendor's expense.
- 24.2 If a tenant has paid in advance of the *adjustment date* any periodic payment in addition to rent, it must be adjusted as if it were rent for the period to which it relates.
- 24.3 If the property is to be subject to a tenancy on completion or is subject to a tenancy on completion -
- 24.3.1 the vendor authorises the purchaser to have any accounting records relating to the tenancy inspected and audited and to have any other document relating to the tenancy inspected;
- 24.3.2 the vendor must serve any information about the tenancy reasonably requested by the purchaser before or after completion; and
- 24.3.3 normally, the purchaser can claim compensation (before or after completion) if -
- any of Parts 2 to 7 of the Retail Leases Act 1994 applies to the tenancy, unless this contract discloses that the tenancy commenced on or after 1 August 1994;
  - a disclosure statement required by the Act was not given when required;
  - such a statement contained information that was materially false or misleading;
  - a provision of the lease is not enforceable because of a non-disclosure in such a statement; or
  - the lease was entered into in contravention of the Act.
- 24.4 If the property is subject to a tenancy on completion -
- 24.4.1 the vendor must allow or transfer -
- any remaining bond money or any other security against the tenant's default (to the extent the security is transferable);
  - any money in a fund established under the lease for a purpose and compensation for any money in the fund or interest earned by the fund that has been applied for any other purpose;
  - any money paid by the tenant for a purpose that has not been applied for that purpose and compensation for any of the money that has been applied for any other purpose; and
- 24.4.2 if the security is not transferable, each party must do everything reasonable to cause a replacement security to issue for the benefit of the purchaser and the vendor must hold the original security on trust for the benefit of the purchaser until the replacement security issues;
- 24.4.3 the vendor must give to the purchaser -
- a proper notice of the transfer addressed to the tenant;
  - any certificate given under the Retail Leases Act 1994 in relation to the tenancy;
  - a copy of any disclosure statement given to the tenant under the Retail Leases Act 1994;
  - a copy of any document served on the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion; and
  - any document served by the tenant under the lease and written details of its service, if the document concerns the rights of the landlord or the tenant after completion;
- 24.4.4 the vendor must comply with any obligation to the tenant under the lease, to the extent it is to be complied with by completion; and
- 24.4.5 the purchaser must comply with any obligation to the tenant under the lease, to the extent that the obligation is disclosed in this contract and is to be complied with after completion.
- 24.5 Rights under this clause continue after completion, whether or not other rights continue.

**25 Qualified title, limited title and old system title**

25.1 This clause applies only if the land (or part of it) –

25.1.1 is under qualified, limited or old system title; or

25.1.2 on completion is to be under one of those titles.

25.2 The vendor must serve a proper abstract of title *within 7 days* after the contract date.

25.3 If an abstract of title or part of an abstract of title is attached to this contract or has been lent by the vendor to the purchaser before the contract date, the abstract or part is served on the contract date.

25.4 An abstract of title can be or include a list of documents, events and facts arranged (apart from a will or codicil) in date order, if the list in respect of each document –

25.4.1 shows its date, general nature, names of parties and any registration number; and

25.4.2 has attached a legible photocopy of it or of an official or registration copy of it.

25.5 An abstract of title –

25.5.1 must start with a good root of title (if the good root of title must be at least 30 years old, this means 30 years old at the contract date);

25.5.2 in the case of a leasehold interest, must include an abstract of the lease and any higher lease;

25.5.3 normally, need not include a Crown grant; and

25.5.4 need not include anything evidenced by the Register kept under the Real Property Act 1900.

25.6 In the case of land under old system title –

25.6.1 In this contract 'transfer' means conveyance;

25.6.2 the purchaser does not have to serve the form of transfer until after the vendor has served a proper abstract of title; and

25.6.3 each vendor must give proper covenants for title as regards that vendor's interest.

25.7 In the case of land under limited title but not under qualified title –

25.7.1 normally, the abstract of title need not include any document which does not show the location, area or dimensions of the land (for example, by including a metes and bounds description or a plan of the land);

25.7.2 clause 25.7.1 does not apply to a document which is the good root of title; and

25.7.3 the vendor does not have to provide an abstract if this contract contains a delimitation plan (whether in registrable form or not).

25.8 The vendor must give a proper covenant to produce where relevant.

25.9 The vendor does not have to produce or covenant to produce a document that is not in the possession of the vendor or a mortgagee.

25.10 If the vendor is unable to produce an original document in the chain of title, the purchaser will accept a photocopy from the Registrar General of the registration copy of that document.

**26 Crown purchase money**

26.1 This clause applies only if purchase money is payable to the Crown, whether or not due for payment.

26.2 The vendor is liable for the money, except to the extent this contract says the purchaser is liable for it.

26.3 To the extent the vendor is liable for it, the vendor is liable for any interest until completion.

26.4 To the extent the purchaser is liable for it, the parties must adjust any interest under clause 14.1.

**27 Consent to transfer**

27.1 This clause applies only if the land (or part of it) is restricted title land (land that cannot be transferred without consent under legislation).

27.2 The purchaser must properly complete and then serve the purchaser's part of an application for consent to transfer of the land (or part of it) *within 7 days* after the contract date.

27.3 The vendor must apply for consent *within 7 days* after service of the purchaser's part.

27.4 If consent is refused, either party can rescind.

27.5 If consent is given subject to one or more conditions that will substantially disadvantage a party, then that party can rescind *within 7 days* after receipt by or service upon the party of written notice of the conditions.

27.6 If consent is not given or refused –

27.6.1 *within 42 days* after the purchaser serves the purchaser's part of the application, the purchaser can rescind, or

27.6.2 *within 30 days* after the application is made, either party can rescind.

27.7 If the legislation is the Western Lands Act 1901 each period in clause 27.6 becomes 90 days.

27.8 If the land or part is described as a lot in an unregistered plan, each time in clause 27.6 becomes the later of the time and 35 days after creation of a separate folio for the lot.

27.9 The completion date becomes the later of the completion date and 14 days after service of the notice granting consent to transfer.

**28 Unregistered plan**

28.1 This clause applies only if some of the land is described as a lot in an unregistered plan.

28.2 The vendor must do everything reasonable to have the plan registered *within 6 months* after the contract date, with or without any minor alteration to the plan or any document to be lodged with the plan validly required or made under legislation.

- 28.3 If the plan is not registered *within* that time and in that manner -  
 28.3.1 the purchaser can *rescind*; and  
 28.3.2 the vendor can *rescind*, but only if the vendor has complied with clause 28.2.
- 28.4 Either party can serve notice of the registration of the plan and every relevant lot and plan number.
- 28.5 The completion date becomes the later of the completion date and 21 days after service of the notice.
- 28.6 Clauses 28.2 and 28.3 apply to a plan that is to be registered before the plan is registered.
- 29 Conditional contract
- 29.1 This clause applies only if a provision says this contract or completion is conditional on an event.
- 29.2 If the time for the event to happen is not stated, the time is 42 days after the contract date.
- 29.3 If this contract says the provision is for the benefit of a party, then it benefits only that party.
- 29.4 If anything is necessary to make the event happen, each party must do whatever is reasonably necessary to cause the event to happen.
- 29.5 A party can *rescind* under this clause only if the party has substantially complied with clause 29.4.
- 29.6 If the event involves an approval and the approval is given subject to a condition that will substantially disadvantage a party who has the benefit of the provision, the party can *rescind* *within* 7 days after either party serves notice of the condition.
- 29.7 If the parties can lawfully complete without the event happening -  
 29.7.1 if the event does not happen *within* the time for it to happen, a party who has the benefit of the provision can *rescind* *within* 7 days after the end of that time;  
 29.7.2 if the event involves an approval and an application for the approval is refused, a party who has the benefit of the provision can *rescind* *within* 7 days after either party serves notice of the refusal;  
 29.7.3 the completion date becomes the later of the completion date and 21 days after the earliest of -  
     • either party serving notice of the event happening;  
     • every party who has the benefit of the provision serving notice waiving the provision;  
     • the end of the time for the event to happen.
- 29.8 If the parties cannot lawfully complete without the event happening -  
 29.8.1 if the event does not happen *within* the time for it to happen, either party can *rescind*;  
 29.8.2 if the event involves an approval and an application for the approval is refused, either party can *rescind*;  
 29.8.3 the completion date becomes the later of the completion date and 21 days after either party serves notice of the event happening.
- 29.9 A party cannot *rescind* under clauses 29.7 or 29.8 after the event happens.

## WARNING

### SMOKE ALARMS

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the *Environmental Planning and Assessment Act 1979* (NSW). It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.

### SPECIAL CONDITIONS

#### 1. Definitions and Interpretation

##### 1.1 Definitions

In this Contract, the following definitions apply unless the context requires otherwise.

**2011 Table Grape Agreement – 2004 Project** means the 2011 Sale of Table Grape Agreement – 2004 Timbercorp Table Grape Project: Bella Vista dated on or around the date of this Contract.

**2011 Table Grape Agreement – 2005 Project** means the 2011 Sale of Table Grape Agreement – 2005 Timbercorp Table Grape Project: Bella Vista dated on or around the date of this Contract.

**Associate** of a party means any director, partner, officer, employee, agent or representative of that party and each adviser to that party in connection with the transactions contemplated under the Contract.

**Authority** includes:

- (a) any government in any jurisdiction, whether federal, state, territorial or local;
- (b) any provider of public utility services, whether statutory or not; and
- (c) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Property or any part of it.

**Bank Bill Rate** means:

- (a) the average three month bid rate displayed on or about 10.30am Sydney time on the due date for payment on the Reuters screen BBSY page for a period from the due date for payment until the date of payment; or
- (b) if no average bid rate is published for a term equivalent to that period, an alternative rate determined by the Vendor acting reasonably.

**Business Day** means a weekday on which banks are open in Sydney.

**Conditions Precedent** has the meaning given in Special Condition 5.1.

**Conditions Precedent End Date** means 120 days after the date of this Contract, or any other later date as the parties may agree in writing.

**Contamination** means a discharge, emission or deposit of any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind that

- (a) brings about a detrimental change in the condition of the environment;

- (b) makes or may make the environment unsafe, unfit or harmful for habitation, use or occupation by any person or animal; or
- (c) is such that any part of the environment does not satisfy the contamination criteria or standards published or adopted by the NSW Environment Protection Authority from time to time.

**Contract** means this document.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court** means the Supreme Court of Victoria.

**Disclosure Material** means an item of information, communication or disclosure contained in any of the following categories of information:

- (a) all things attached to this Contract;
- (b) all information publicly available (by searches at public registers or otherwise);
- (c) all other information and data provided or communicated to the Purchaser (whether in writing, orally or in any other manner) or its Representatives by the Vendor, the Receivers, their representatives, advisers or employees or any other person; and
- (d) all information which the Purchaser or its Representatives would be aware of by making or undertaking all reasonable enquires, appraisals and investigations based on the information specified in the above paragraphs.

**Easements** means easements on the following plans:

- (a) DP1066010;
- (b) DP1066279;
- (c) DP1066414;
- (d) DP1093662;
- (e) DP1066293;
- (f) DP1066014; and
- (g) DP1070207.

**Excluded Assets** means:

- (a) Water Rights;
- (b) any cash of the Vendor;
- (c) any information which the Vendor or the Receivers are required by Law to retain;
- (d) insurance policies relating to the Vendor or owned by the Vendor or any Related Body Corporate of the Vendor and any rights under those policies;
- (e) any Receivables;
- (f) the benefit of any contract, agreement, commitment or arrangement to which the Vendor is a party;
- (g) any other asset of the Vendor (including tangible and intangible assets and contingent assets) not expressly included in the definition of Property; and
- (h) for the avoidance of doubt, the table grape crop harvested from the Vines prior to Settlement and any proceeds from such crop.

**Expiry Date** has the meaning given to that term in the Interim Management Agreement.

**Financier** means any one or more of National Australia Bank Limited, Westpac Banking Corporation, Commonwealth Bank of Australia, Australia and New Zealand Banking Group Limited, and Bank of Western Australia Ltd.

**Governmental Agency** means any government, whether Federal, State or Territory, municipal or local, and any agency, authority, commission, department, instrumentality, regulator or tribunal thereof, including the Commissioner of Taxation, Australian Securities and Investments Commission, Australian Taxation Office and Australian Competition and Consumer Commission.

**Grower Licences** means, in respect of a Table Grape Project, the licence and joint venture agreements granted to Growers in respect of the Property the object of that Table Grape Project.

**Growers** means investors in the Table Grape Projects.

**Grower's Claim** means any claim over any part of the Property and the Water Rights by or in favour of a Grower.

**Guarantor** means Carmelo Costa.

**Guarantor's Warranties** means the representations and warranties in respect of the Guarantor set out in Schedule 1.

**Information** means all information owned by, or in the control of, the Vendor to the extent it relates to the Property including information contained in:

- (a) books of account, brochures and other promotional material;
- (b) sales and purchasing records;
- (c) trading and financial records;
- (d) lists of customers and suppliers; and
- (e) business plans and sales forecasts,

but excluding:

- (f) statutory company registers;
- (g) records relating to Tax except those records that are required to be delivered to the Purchaser pursuant to Tax Law; and
- (h) information in respect of which the Vendor has legal professional privilege.

**Insolvent** means, in respect of a corporation:

- (a) registered under the Corporations Act:
  - (i) it enters into a scheme;
  - (ii) it makes any arrangement for the benefit of creditors;
  - (iii) an order is made to wind up the party;
  - (iv) a liquidator or administrator is appointed in respect of the party;
  - (v) a mortgagee enters into possession of all or a substantial part of the assets of the party;
  - (vi) it is unable to pay its debts as and when they fall due, or is so deemed by any relevant legislation; or



- (vi) a controller, receiver, receiver and manager or agent of a mortgagee is appointed to all or a substantial part of the assets of the party; or
- (b) incorporated outside Australia, it suffers any event or similar event to those set out in paragraph (a) which would restrict its business operations or cause those operations to be placed under the control of a person other than its directors under the laws of its place of incorporation.

**Interest** means the amount determined by multiplying the amount on which the interest is to be paid by the per annum rate which is the Bank Bill Rate plus 3%.

**Interest Period** means the period commencing on the day following the Settlement Date and ending on the date of Settlement.

**Interim Management Agreement** means the Interim Management Agreement Bella Vista dated 21 December 2009, as amended on 18 March 2010, as further amended on or about the date of this Contract, and as further amended from time to time, between the Vendor, TSL, Timbercorp, Costa Holdings Investments Pty Ltd, the Liquidators and the Receivers.

**Land** has the meaning given in the Particulars of Sale.

**Laws** means the requirements of all statutes, rules, regulations, proclamations, ordinances or by-laws and any orders, directions or notices of any Authority.

**Liability** means any claim, debt, obligation, loss, liability, expense, cost and damage of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Liquidators** means the liquidators appointed to the entities of the Timbercorp group of companies.

**Minister** means the Minister responsible for administration of the Water Management Act.

**New Licence 1** means the Water Access Licence, created by subdividing WAL9415 in accordance with Special Condition 17.1, which holds 867 unit shares.

**New Licence 2** means:

- (a) the Water Access Licence with nominated works approval 60CA581917 created by subdividing WAL9415 in accordance with Special Condition 17.1; or
- (b) the new Water Access Licence issued in favour of the Vendor or the Purchaser in accordance with Special Condition 17.2(b),

and which holds zero unit shares.

**Permanent** means Permanent Nominees (Aust.) Limited (ACN 000 154 441).

**Plant and Equipment** means:

- (a) pipes and conduits on the Land, both above and below the ground;
- (b) trellises and all plant and equipment affixed to the Land;
- (c) all fixtures and fittings, which are located within the Easements that benefit the Land; and
- (d) the other plant and equipment listed in Schedule 4,

to the extent that it is owned by the Vendor as at the date of this Contract and is used in relation to the Property, whether situated on the Land or otherwise.

**Property** means:

- (a) the Land;

- (b) the Vines;
- (c) the Plant and Equipment;
- (d) New Licence 2 (if it has been issued in favour of the Vendor); and
- (e) the Vendor's interest in the information,

but excludes the Excluded Assets.

**Purchaser's Warranties** means the representations and warranties of the Purchaser set out in Schedule 1.

**Receivable** means any amount due to the Vendor as at Settlement or accrued before Settlement and **Receivables** means the aggregate of all such amounts.

**Receivers** means Michael Fung and Paul William Kirk in their capacities as joint and several receivers and managers of the Property, of PricewaterhouseCoopers, Freshwater Place, 2 Southbank Boulevard, Southbank VIC 3006.

**Receivers' Warranties** means the representations and warranties of the Receivers set out in Schedule 3.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Representative** means in relation to a person or entity, its officers, employees, agents, advisers or financiers.

**Settlement** means the completion of the sale and purchase of the Property under this Contract.

**Settlement Date** means the date on which Settlement is due as specified in Special Condition 16.1.

**Stamp Duty** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency, and includes any interest, fine, penalty, charge or other amount in respect of the above.

**Surrender Deed** means, a deed to be executed by TSL in respect of each Table Grape Project (in its capacity as the responsible entity of that Table Grape Project) and as agent and attorney for Growers under the relevant Table Grape Project, under which TSL agrees to surrender the Grower Licences, and extinguish all of the rights of Growers in respect of the Property and the Water Rights.

**Table Grape Projects** means any one or more of the following:

- (a) 2004 Timbercorp Table Grape Project (ARSN 108 638 086);
- (b) 2005 Timbercorp Table Grape Project (ARSN 113 512 226).

**Tax** includes:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called (including profits tax, property tax, interest tax, income tax, capital gains tax, tax relating to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, group tax or PAYG tax, land tax, financial institutions duty, water and municipal rates, customs duties, prescribed payment system tax, reportable payments system tax and transaction duties);
- (b) unless the context otherwise requires, Stamp Duty or GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charge or imposed on or in respect of anything listed in paragraph (a) or (b).

**Tax Law** means any Law regarding a Liability to Tax, Stamp Duty or GST.

**Timbercorp Leases** means leases registered nos. AB528478, AB528479, AB528477, AA779246, AA779247 and AA734548.

**Timbercorp** means Timbercorp Limited (In Liquidation) (ACN 055 185 087).

**TOT** means the Timbercorp Orchard Trust (ARSN 106 557 297).

**TOT Trust Deed** means the constitution governing TOT dated 15 September 2003 (as amended).

**TPIF Charge** means registered charge no 1213445.

**TSL** means Timbercorp Securities Limited (In Liquidation) (ACN 092 311 489).

**Vendor Water Access Licence** means:

- (a) WAL9415; or
- (b) if WAL9415 has been subdivided, New Licence 1.

**Vendor's Solicitor** means Alfens Arthur Robinson of Level 27, 530 Collins Street Melbourne, Victoria 3000.

**Vendor's Warranties** means the representations and warranties of the Vendor set out in Schedule 2.

**Vines** means the table grape vines situated on the Land and includes the future crop from those vines.

**WAL9415** means the water access licence WAL9415 issued under Part 2 of the Water Management Act in favour of the Vendor.

**Water Access Licence** means a water access licence issued under Part 2 of the Water Management Act.

**Water Act** means the *Water Act 1989* (Vic).

**Water Allocation** means any water allocation within the meaning given in the Water Act or within the meaning given in the Water Management Act and includes any carry over water from a previous irrigation season (if any).

**Water Costs** has the meaning given to that term in the Interim Management Agreement, namely, all payments made by the Purchaser in respect of water purchased by the Purchaser in accordance with clause 11.7(a) of the Interim Management Agreement.

**Water End Date** means the earlier of:

- (a) 180 days from the date of this Contract;
- (b) 3 Business Days after the date on which WAL9415 is subdivided in accordance with the application made by the Vendor under Special Condition 17.1; and
- (c) 3 Business Days after the date on which a new Water Access Licence is granted to the Vendor or the Purchaser in accordance with the application made by the Vendor or Purchaser under Special Condition 17.2(b).

**Water Management Act** means the *Water Management Act 2000* (NSW).

**Water Rights** means:

- (a) the Water Shares;
- (b) the Vendor Water Access Licence; and
- (c) any Water Allocation.

to the extent beneficially or legally owned by the Vendor.

**Water Shares** means water shares WEED45487 and WEED18428, or any other water share, issued under Part 3A of the Water Act in favour of the Vendor.

## **1.2 Interpretation**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, paragraph, Special Condition or Schedule is a reference to a clause, paragraph, Special Condition or a Schedule of this Contract.
- (f) A reference to an agreement or document (including a reference to this Contract) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other Contract or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible or tangible form.
- (h) A reference to a party to this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to dollars and \$ is to Australian currency.
- (k) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
- (l) Nothing in this Contract is to be interpreted against a party solely on the ground that the party put forward this Contract or any part of it.

## **1.3 References to disclosure**

In this Contract, a reference to a document, information, matter or thing having been disclosed to the Purchaser includes anything which has been provided to or made available for inspection by the Purchaser, whether or not the Purchaser has actually inspected or examined the relevant document, information, matter or thing.

## **1.4 Service on non-Business Day**

Where a document is served on a day which is not a Business Day, it will be taken to have been served at 9am on the next Business Day.

**1.5 Service by facsimile**

Despite anything in Special Condition 28, a document may be served by facsimile, in which event it is served by or on a party:

- (a) when recorded on the sender's transmission result report unless:
  - (i) within 24 hours of that time the recipient informs the sender that the transmission was received in an incomplete or illegible form; or
  - (ii) the transmission result report indicates a faulty or incomplete transmission;
- (b) where a solicitor for the party is named in this Contract, if it is sent using the solicitor's fax number stated in this Contract or any other fax number which that solicitor may have notified to the sender; and
- (c) where there is no solicitor named in this Contract in respect of a party, if it is sent using the fax number stated in this Contract (if any) or any other fax number which that party may have notified to the sender.

**1.6 Documents attached to Contract**

- (a) For the purposes of clause 10.1.9, the substance of all material contained in any document (or copy of any document) attached to this Contract is disclosed in this Contract whether or not included in the list of documents on page 2 of the standard terms which form part of this Contract.
- (b) If before this Contract is signed by or on behalf of the Purchaser a document or copy of a document, at the request of the Vendor or the Vendor's Solicitor, was attached to this Contract by or on behalf of the Purchaser or the Purchaser's solicitor, the person attaching that document or copy did so as the agent of the Vendor.

**1.7 No Requisitions**

Having acknowledged that it has been given an opportunity to undertake due diligence in respect of the Property, the Purchaser waives all rights to make any requisitions.

**2. Amendments to Printed Conditions**

The printed conditions (clauses 1 to 29 inclusive) of this Contract are amended as follows:

- (a) in clause 2, a new clause 2.10 is added as follows:

*If the vendor accepts a bond or guarantee for the deposit or for part of the deposit and the bond or guarantee is not valid, the vendor can terminate this Contract but only before the deposit is validly paid in full.*
- (b) clause 3 is deleted;
- (c) clause 7.1.1 is deleted;
- (d) in clause 10.1, the word *substance* where appearing in clause 10.1.8 and clause 10.1.9 is deleted and replaced with the word *existence*;
- (e) in clause 10.2, the words *make a claim, requisition* are added after the word *rescind*;
- (f) in clause 12, a new clause 12.4 is added as follows:

*This clause does not apply to a building certificate from the local council.*

- (g) clause 13 is deleted;
- (h) in clause 16.5, the words *plus another 20% of that fee* are deleted;
- (i) clause 16.6 is deleted;
- (j) clause 16.8 is deleted;
- (k) clause 20.1 is deleted;
- (l) clause 20.6.5 is deleted;
- (m) clauses 23, 24, 25 and 26 are deleted;
- (n) in clause 27.3 the words *within 7 days* are deleted and replaced with *as soon as practicable*;
- (o) clause 27.5 is deleted;
- (p) clauses 27.6, 27.7, 27.8 and 27.9 are deleted; and
- (q) clause 28 is deleted.

### 3. Capacity and Liability of Vendor

The parties acknowledge that the Vendor enters into this Contract only in its capacity as responsible entity of TOT. A liability arising under or in connection with this Contract can be enforced against the Vendor only to the extent to which the Vendor is actually indemnified as responsible entity of TOT in respect of that liability out of the assets comprising the Property. No party will be entitled to:

- (a) claim from or commence proceedings against the Vendor in respect of any liability under this Contract in any capacity other than as responsible entity of TOT; or
- (b) enforce or seek to enforce any judgment in respect of a liability under this contract against any property of the Vendor other than the Property held by the Vendor as responsible entity of TOT.

### 4. Receivers

The Purchaser acknowledges that:

- (a) the Receivers were appointed by Permanent on 22 October 2009 pursuant to a first ranking fixed and floating charge dated 17 October 2003 (registered no 994221);
- (b) the Receivers are entering into this Contract as agents of the Vendor and will not be personally liable to any party arising out of the obligations of the Vendor under this Contract, and otherwise have no liability to any party under any provision of this Contract, save for in respect of the Receivers' Warranties and Special Conditions 5.3, 5.4(a)(i) and 5.4(c); and
- (c) by the Receivers' execution of this Contract, the Receivers take the personal benefit of any release, indemnity, acknowledgement or other provision given in favour of them or the Vendor including, without limitation, this Special Condition 4 and Special Conditions 10, 11, 12, 13, 23, 26, 29, 39 and 40 of this Contract.

## 5. Conditions Precedent

### 5.1 Conditions Precedent

Settlement will not proceed unless and until the following conditions (the *Conditions Precedent*) are fulfilled or waived in accordance with this Contract:

- (a) **(Growers Claims):** Each of the following having occurred in respect of each of the Table Grape Projects:
  - (i) the Court directing that the Liquidators of TSL are justified in procuring TSL, in its capacity as the responsible entity of the Table Grape Projects, to extinguish all of the rights of Growers (including under the Grower Licences) in respect of the Property and the Water Rights, in accordance with the Surrender Deed;
  - (ii) the Court making orders determining the rights of all and any persons (including Growers and Permanent) to all or any part of the net proceeds of the sale under this Contract, or ordering that those net proceeds be held on trust until the rights of those persons are determined by a further order of the Court; and
  - (iii) the Liquidators of TSL executing and delivering to the Vendor the Surrender Deed, such that the Property may be transferred to the Purchaser at Settlement free of any encumbrances relating to the rights of Growers and any Growers' Claims.
- (b) **(Western Lands Leases):** The consent to transfer of the Land under section 18G of the Western Lands Act 1901 (NSW) has been obtained as contemplated by clause 27.
- (c) **(Approval):** The Liquidators obtaining Committee of Inspection approval for each of Timbercorp and TSL to enter into each of the 2011 Table Grape Agreement – 2004 Project and the 2011 Table Grape Agreement – 2005 Project pursuant to section 477(2B) of the Corporations Act.

### 5.2 Vendor's obligations prior to Settlement

The Vendor must provide the Purchaser:

- (a) with a notice of satisfaction of each approval referred to in Special Condition 5.1(c) in accordance with the 2011 Table Grape Agreement – 2004 Project and the 2011 Table Grape Agreement – 2005 Project; and
- (b) with copies of the Court order and executed Surrender Deed referred to in Special Condition 5.1(a) at least 3 Business Days prior to Settlement.

### 5.3 Parties must co-operate

Each party must co-operate with the other and do all things reasonably necessary to procure that the Conditions Precedent are fulfilled as soon as reasonably possible, and in any event on or before the Conditions Precedent End Date.

### 5.4 Specific obligations of co-operation

Without limiting the generality of Special Condition 5.3:

- (a) the Vendor must use all reasonable endeavours to procure the satisfaction of the Conditions Precedent referred to in:
  - (i) Special Conditions 5.1(a) and 5.1(b) as soon as possible; and



- (ii) Special Condition 5.1(c) within 45 days of the date of this Agreement.
- (b) no party may take any action that would or would be likely to prevent or hinder the fulfilment of the Conditions Precedent; and
- (c) each party must:
  - (i) keep the other parties informed in a timely manner of the status of any discussions or negotiations with relevant third parties regarding the Conditions Precedent; and
  - (ii) promptly notify the other parties on becoming aware of the fulfilment of any Condition Precedent or of any Condition Precedent becoming incapable of being fulfilled.

#### **5.5 Waiver**

- (a) The Condition Precedent in Special Condition 5.1(b) may not be waived by any party.
- (b) The Conditions Precedent in Special Conditions 5.1(a) and 5.1(c) is for the benefit of the Purchaser and may only be waived by the Purchaser.

#### **5.6 Termination for non-satisfaction of Conditions Precedent**

- (a) Subject to paragraph (b), the Purchaser or Vendor may terminate this Contract before Settlement if the Conditions Precedent are not fulfilled, or they agree that the Conditions Precedent are incapable of being fulfilled, on or before the Conditions Precedent End Date.
- (b) The Purchaser or Vendor may only terminate under paragraph (a) if it has complied with Special Conditions 5.3 and 5.4 and subject to giving 2 Business Days written notice to the other party.

#### **5.7 Effect of termination for non-satisfaction of Conditions Precedent**

If this Contract is terminated pursuant to Special Condition 5.6, then:

- (a) each party is released from its continuing obligations under this Contract, except for this Special Condition 5.7 and Special Conditions 3, 4, 7, 8, 26, 28, 37 and 39;
- (b) each party retains the rights it has against any other party in respect of any prior breach without affecting any rights at law or in equity;
- (c) unless the Purchaser has breached its obligations pursuant to Special Conditions 5.3 and 5.4 and that breach was not remedied within 14 days written notification by the Vendor, the Vendor must return the Deposit (and any interest which has accrued in respect of it) to the Purchaser within 5 Business Days of termination of the Contract.

#### **6. Rescission**

- (a) If for any reason (including the lodging of caveats, writs of execution or injunctive or similar proceedings) other than due to the wilful default of the Vendor, the Vendor is unable to perform any or all of its obligations under this Contract, then the Vendor shall not be liable by way of damages, compensation or otherwise for any loss sustained by the Purchaser by reason of the failure of the Vendor to perform such obligations under this Contract.
- (b) If for any reason (other than due to the wilful default of the Vendor) the Vendor is unable to, or the Vendor is not satisfied that it can, give title (other than those encumbrances referred to in Special Condition 10.5) to and/or possession of all or part of the Property on the



Settlement Date, then the Vendor may either rescind this Contract or (at its option) by notice to the other parties extend the Settlement Date by a period of not more than 3 months. This right may be exercised before the Settlement Date. The Settlement Date may be postponed in this way more than once, as long as it is not postponed beyond three months later than the original Settlement Date.

- (c) If the Vendor is still unable to, or the Vendor is not satisfied that it can, give title (other than those encumbrances referred to in Special Condition 10.5) to and/or possession of all or part of the Property by the date 3 months after the original Settlement Date, then this Contract will automatically be rescinded, unless otherwise agreed by the parties in writing, and the Vendor shall not be liable by way of damages, compensation or otherwise for any loss sustained by the Purchaser by reason of the failure of the Vendor to perform its obligations under this Contract.
- (d) If this Contract is rescinded pursuant to this Special Condition 6, the Vendor must return the Deposit (and any interest which has accrued in respect of it) to the Purchaser within 5 Business Days of termination of the Contract.

## **7. Termination for Insolvency or Breach**

### **7.1 Termination by the Vendor**

If the Purchaser becomes insolvent or fails to comply with any material term of this Contract (and that breach is not remedied within 14 days of notification by the Vendor), then without limiting the remedies available to the Vendor at law or in equity, the Vendor may without further notice to the Purchaser:

- (a) terminate this Contract;
- (b) keep the Deposit; and
- (c) resell the Property by any means the Vendor determines and recover from the Purchaser any amount by which the proceeds of such sale (less all incidental expenses) is less than the Price (including interest on the Price calculated in accordance with Special Condition 22).

### **7.2 Discharge**

On termination of this Contract by the Vendor, the Vendor is discharged from any further obligation or Liability under this Contract.

## **8. Investment of Deposit**

The Purchaser shall pay the Deposit to the depositholder on the execution of this Contract, to be dealt with as follows:

- (a) The depositholder shall deposit the Deposit with an Australia trading bank in an interest bearing account at call in the depositholder's name as stakeholder in trust for the Vendor and the Purchaser.
- (b) The parties must give the depositholder their tax file numbers on or before the date on which the Deposit is invested.
- (c) If Settlement occurs, the Deposit together with any Net Interest shall be paid to the Vendor.

- (d) The Vendor is entitled to any Net interest if the Deposit is released to the Vendor in circumstances where this Contract is not completed.
- (e) The Purchaser is entitled to any Net interest if the Deposit is refunded to the Purchaser where this Contract is not completed.
- (f) The Deposit shall be invested at the sole risk of the party who becomes entitled to it.
- (g) The parties, until the party entitled to the Deposit is determined, at which time that party (solely), shall keep the depositholder indemnified from any tax that may become payable on interest accruing on the Deposit.
- (h) *Net interest* means the interest earned on the invested Deposit less any bank charges, financial institutions duty, bank debit tax and similar taxes and charges in connection with the investment of the Deposit.

## **9. Land Tax**

If, not less than 7 days before the Settlement Date, the Purchaser serves a land tax certificate showing a charge on any of the land, on Settlement the Vendor must give the Purchaser a land tax certificate showing the charge is no longer effective.

## **10. Matters Affecting the Property**

### **10.1 Purchaser's acknowledgments**

The Purchaser acknowledges that prior to entering into this Contract the Purchaser has caused a satisfactory inspection of the Property and matters and documents relating to it, including the Disclosure Material, to be carried out and the Purchaser (subject to the other provisions of this Contract) must make no claim, demand, requisition or objection or seek any compensation, rescind, terminate or delay Settlement in respect of:

- (a) the condition, state of repair, suitability, quality, sufficiency, viability, profitability or potential of the Property;
- (b) any environmental hazard or contamination;
- (c) any latent or patent defect in the Property;
- (d) anything which is disclosed in this Contract; or
- (e) anything which is disclosed in the Disclosure Material.

### **10.2 Purchaser to satisfy itself**

The Purchaser acknowledges that it has satisfied itself (and, subject to the other provisions of this Contract, must make no claim, demand, requisition or objection or seek any compensation, rescind, terminate or delay Settlement) in respect of:

- (a) by physical examination and an inspection, as to the state of repair and condition, quality and quantity of the Property;
- (b) by physical examination, that the property offered for sale and inspected is identical to the Property;
- (c) by physical examination, as to the neighbourhood in which the Property is situated;

- (d) as to the value of the Property from its own independent valuations and reports;
- (e) by enquiry of the appropriate Authorities, as to the zoning and planning restrictions (including all planning approvals, permits and consents) on or in respect of the Property and the use to which the Property may be put and the development potential of the Property;
- (f) as to encumbrances affecting the Property, by perusal of the terms and conditions of any documents relating to the encumbrances;
- (g) whether or not the boundaries, description or area of the Land are correctly described in this Contract;
- (h) whether or not any requisitions, directions or recommendations delivered by any Authority in respect of the Property have been complied with;
- (i) whether or not any notices of resumption or intending resumption affecting the Property have been delivered;
- (j) whether or not any permissions, consents and approvals required from a relevant Authority for the construction of any improvements have been obtained, or having been obtained have been complied with in all respects;
- (k) whether or not any consents, approvals, permits or licences desirable or required to be held for the present use of the Property have been granted by any Authority;
- (l) whether or not any dividing fences forming part of the Property are on the true boundaries of the Land;
- (m) whether or not any improvements purporting to be on the Land are wholly on it;
- (n) as to the rights and privileges pertaining to the Property, by perusal of the terms and conditions of any documents relating to the rights and privileges;
- (o) as to any agreements or arrangements with the owners or occupiers of adjoining or nearby property, including the means of access to and egress from the Property and the terms of all easements and licences benefiting or affecting the Property;
- (p) as to any services connected or provided to the Property;
- (q) as to any building, engineering, architectural or other plans or documents in relation to the Property which the Purchaser or any representative of the Purchaser may have seen or been shown before signing this Contract; and
- (r) by its own examination, of the present and future economic feasibility, viability and economic return of the Property, whether express or implied (other than those specified in this Contract or which are implied by or deemed to have been given by Law and which cannot be excluded by agreement).

### 10.3 No reliance

The Purchaser acknowledges that:

- (a) except as provided in Special Condition 24, at no time:
  - (i) have the Vendor, the Receivers, or their Representatives made or given; or
  - (ii) has the Purchaser relied on,
 any representation, warranty, promise or forecast;
- (b) no other statements or representations made by or on behalf of the Vendor or the Receivers:

- (i) have induced or influenced the Purchaser to enter into this Contract or to agree to any or all of its terms;
- (ii) have been relied on in any way by the Purchaser as being accurate;
- (iii) have been warranted to the Purchaser as being true; or
- (iv) have been taken into account by the Purchaser as being important to the Purchaser's decision to enter into this Contract or agree to any or all of its terms;
- (c) it has relied on its own enquiries in relation to all matters affecting the Property and does not rely on the Vendor's assessment (if any) of the financial consequences and impact on the Purchaser of or arising from any information which may have been made available by the Vendor;
- (d) it is deemed to have examined all information provided to or made available for inspection by the Vendor or otherwise available on reasonable enquiry by the Purchaser, including the Disclosure Material;
- (e) the Receivers, the Vendor or any of its related entities, or their Representatives:
  - (i) have not undertaken any verification of the Disclosure Material; and
  - (ii) give no warranty, representation or undertaking that the Disclosure Material is or will be true, accurate, complete, current or reliable,
 and no obligation to do so arises under this Contract or otherwise;
- (f) except for the Vendor's Warranties and the Receivers' Warranties, all warranties and representations on the part of the Vendor, the Receivers and their respective Associates, whether express or implied, statutory or otherwise, are, to the extent permitted by law, expressly excluded; and
- (g) neither the Vendor nor the Receivers, nor any Associates of any of them, accept any duty of care for the provision of any information to the Purchaser or to any Related Body Corporate of the Purchaser, or to any Associate, equity provider or provider of finance to the Purchaser or to any other person

#### **10.4 Trade Practices Act**

To the extent permitted by law, the Purchaser agrees not to make and waives any right it may have to make any claim against the Vendor, the Receivers or their Representatives under s51A or s52 of the *Trade Practices Act 1974* (Cth), or the corresponding provision of any state or territory enactment for any statement or representation made concerning the Property.

#### **10.5 Easements and other encumbrances**

The Property is sold free from encumbrances, except for:

- (a) the reservations and conditions in the Crown Grant(s);
- (b) all encumbrances (other than the Timbercorp Leases, Grower Licences and any mortgages registered against the title to the Land, which will be discharged prior to Settlement) registered against the title to the Land as at the date of this Contract or otherwise disclosed in the Disclosure Material;
- (c) the caveats referred to in Special Condition 19;

- (d) all statutory rights relating to water supply, sewerage, drainage, electricity, telephone and other services in, passing through or over the Land, whether or not protected by registered easement; and
- (e) any statutory charge over the Property in favour of an Authority which exists at Settlement.

**10.6 Property sold as is, where is**

Having acknowledged that it has been given an opportunity to conduct its own enquiries about the Property, the Purchaser agrees that the Property is sold in an as is condition, subject to all faults and defects whether or not they are apparent.

**10.7 Management of property prior to Settlement**

The Vendor must use reasonable endeavours to procure the parties to the Interim Management Agreement extend the Expiry Date until Settlement.

**11. Plant and Equipment**

No defect in the title or quality of the plant and equipment forming part of the Property will of itself entitle the Purchaser to make a claim, demand, requisition or objection or seek any compensation, rescind, terminate or delay Settlement.

**12. Particulars of Title**

The Purchaser acknowledges that the particulars of title disclosed in this Contract are sufficient to enable the Purchaser to prepare transfers of the Property and the Purchaser cannot request the Vendor to provide particulars of title pursuant to clause 4.

**13. Environmental Matters**

The Purchaser:

- (a) agrees that the Property is sold in an as is condition, subject to all faults and defects whether or not they are apparent;
- (b) will not make any claim, objection, requisition or attempt to rescind or terminate this Contract or seek to delay or defer Settlement or to withhold any part of the Price as a result of or in respect of any Contamination; and
- (c) releases the Vendor against all claims, actions, demands and proceedings that may be made against the Vendor in respect of any alleged Contamination of the Property, including any remediation works which may be required by the NSW Environment Protection Authority and the Purchaser forever indemnifies the Vendor in this regard.

**14. Western Lands Leases**

- (a) The application fees payable on any application for consent to transfer of the Land under section 18G of the *Western Lands Act 1901* (NSW) must be allowed by the Purchaser to the Vendor on Settlement.

- (b) If consent to transfer of the Land is withheld pending certain specified works being undertaken, the Vendor must undertake those works and the cost of those works must be allowed by the Purchaser to the Vendor on settlement.

## **15. Transfer**

### **15.1 Delivery of transfer**

The transfer of land document must be prepared by the Purchaser and delivered to the Vendor's Solicitor at least 10 Business Days prior to the date fixed for payment of the balance of the Price.

### **15.2 Vendor's election**

If Special Condition 15.1 is not complied with, the Vendor at its option may elect to complete this Contract on the expiration of 10 Business Days from the date of delivery, in which event the Purchaser will be taken to have defaulted in payment of the balance of the Price on the due date and must pay interest in accordance with Special Condition 22 from the date fixed for payment of the balance of the Price until the date on which the balance of the Price is paid to the Vendor.

### **15.3 No acceptance of title**

The delivery of the transfer of land document is not acceptance of title.

## **16. Settlement and Possession**

### **16.1 Settlement**

Settlement will occur on the later of:

- (a) 120 days from the date of this Contract;
  - (b) the date that is 3 Business Days after the date on which the Conditions Precedent are satisfied; and
  - (c) such other date as the Vendor and the Purchaser may agree in writing,
- unless extended in accordance with Special Condition 17.3.

### **16.2 Vendor obligations**

At Settlement, the Vendor must provide the following to the Purchaser:

- (a) Certificates of Title Folio Identifiers 22/1093662, 2/1046695, 1/1067588;
- (b) executed discharges of mortgage in respect of the Land;
- (c) an executed request form in registerable form for removal of lease registered no. AB528477 from Certificate of Title Folio Identifier 22/1093662 due to merger of interests;
- (d) an executed request form in registerable form for removal of lease registered no. AA734546 from Certificate of Title Folio Identifier 1/1067588 due to merger of interests;
- (e) executed deed of release and completed ASIC Form 312 in respect of registered charge no 994221 to the extent it relates to the Property;
- (f) the transfer of land document executed by the Vendor which operates to effect the transfer of the Vendor's interest in the Land;

- (g) if New Water Licence 2 has been created and issued in favour of the Vendor:
  - (i) a transfer of water licence document executed by the Vendor which operates to effect the transfer of the Vendor's interest in New Licence 2; and
  - (ii) the Water Access Licence certificate of title for New Water Licence 2;
- (h) the consent to transfer of the Land under section 18G of the *Western Lands Act 1901* (NSW); and
- (i) surrender forms in registerable form in respect of, the registered leases no. AB528478 and AB528479 from Certificates of Title of Folio Identifier 22/1083682, and the registered leases no. AA779248 and AA779247 from Certificates of Title Folio Identifiers 2/1046695 and 1/1067588.

#### 16.3 Purchaser obligations

At Settlement, the Purchaser must provide the balance of the Price to the Vendor.

#### 16.4 TPIF Charge

- (a) If a Financier refuses to advance funds in order for the Vendor to effect Settlement solely because any of the Property is not released from the TPIF Charge, then provided that the Purchaser is otherwise not in default the Purchaser may terminate this Contract without any further liability.
- (b) If this Contract is terminated pursuant to Special Condition 16.4(a), the Vendor must return the Deposit (and any interest which has accrued in respect of it) to the Purchaser within 5 Business Days of termination of this Contract.

### 17. Water Access Licence

#### 17.1 Vendor to apply to subdivide WAL9415

As soon as reasonably practicable after the date of this Contract, the Vendor must lodge with the NSW Office of Water an application for the Minister's consent to subdivide WAL9415 into New Licence 1 and New Licence 2.

#### 17.2 Consultation on failure to obtain approval to subdivide WAL9415

If the application made by the Vendor under Special Condition 17.1 is rejected, the parties must consult in good faith to consider, and if agreed, determine whether:

- (a) the Vendor should make a fresh application for the Minister's consent to subdivide WAL9415 into New Licence 1 and New Licence 2 in accordance with Special Condition 17.1; or
- (b) the Vendor or the Purchaser should make an application for a new Water Access Licence with zero unit shares.

The parties must take the action agreed under this Special Condition.

#### 17.3 Extension of Settlement

The Settlement Date will be extended to the Water End Date, or such other date as the parties may agree in writing, if within 120 days from the date of this Contract:

- (a) WAL9415 has not been subdivided into New Licence 1 and New Licence 2 in accordance with the application made by the Vendor under Special Condition 17.1; or

- (b) a new Water Access Licence is not issued in favour of the Vendor or the Purchaser in accordance with an application made by the Vendor or the Purchaser under Special Condition 17.2(b).

#### 17.4 Termination

Subject to Special Condition 17.5, the Purchaser or the Vendor may terminate this Contract by written notice to the other party, if:

- (a) WAL9415 has not been subdivided into New Licence 1 and New Licence 2;
- (b) the parties fail to agree, in accordance with Special Condition 17.2, that:
  - (i) the Vendor should make a fresh application for the Minister's consent to subdivide WAL9415 into New Licence 1 and New Licence 2 in accordance with Special Condition 17.1; or
  - (ii) the Vendor or the Purchaser should make an application for a new Water Access Licence with zero unit shares; or
- (c) the Vendor or the Purchaser makes an application under Special Condition 17.2(b) and the application is rejected,

on or before the Settlement Date.

#### 17.5 Purchaser may waive right to receive New Licence 2

- (a) If the Vendor intends to exercise its right to terminate this Contract in accordance with Special Condition 17.4, the Vendor must give the Purchaser 5 Business Days prior written notice.
- (b) Upon receiving notice given by the Vendor pursuant to Special Condition 17.5(a), the Purchaser may waive its right to receive New Licence 2 by giving written notice to the Vendor at least 2 Business Day prior to the Settlement Date.
- (c) If the Purchaser elects to waive its right to receive New Licence 2 in accordance with Special Condition 17.5(b), neither the Vendor nor the Purchaser may terminate this contract in accordance with Special Condition 17.4.

#### 17.6 Effect of termination if the Vendor is unable to obtain the New Water Access Licence

If this Contract is terminated pursuant to Special Condition 17.4, then:

- (a) each party is released from its continuing obligations under this Contract, except for this Special Condition 17.6 and Special Conditions 3, 4, 7, 8, 26, 28, 37 and 39;
- (b) each party retains the rights it has against any other party in respect of any prior breach without affecting any rights at law or in equity; and
- (c) the Vendor must return the Deposit (and any interest which has accrued in respect of it) to the Purchaser within 5 Business Days of termination of this Contract.

#### 18. Adjustment to price

On Settlement, an adjustment will be made in favour of the Purchaser for an amount equal to the Water Costs incurred by the Purchaser in accordance with clause 10(a)(ii) of the Interim Management Agreement and clause 7.9(d) of the 2011 Table Grape Agreement – 2004 Project and the 2011 Table Grape Agreement – 2005 Project.



## 19. Caveats

### If at Settlement:

- (a) there is noted on any certificate of title in respect of the Property or any part of it any mortgage or caveat (other than a caveat of the type referred to in paragraph (b)), the Purchaser must accept a discharge or withdrawal so far as the same relates to the Property provided that the discharge of mortgage or withdrawal of caveat is duly executed and in registrable form and the registration fees payable on it are allowed by the Vendor to the Purchaser; or
- (b) there is noted on the certificate of title in respect of the Property a caveat lodged by or on behalf of the Purchaser or any assignee of its interest under this Contract or by any person claiming through or under the Purchaser, the Purchaser must complete this Contract notwithstanding the existence of that caveat and without requiring the Vendor to provide a withdrawal of that caveat.

## 20. Breach of Statutory Warranty by Vendor

- (a) If the Purchaser discovers that the Vendor has breached any warranty implied by the *Conveyancing (Sale of Land) Regulation 2005 (NSW)*, the Purchaser must, within 7 days of discovering that breach, notify the Vendor in writing of that breach.
- (b) If the Vendor breaches any warranty implied by the *Conveyancing (Sale of Land) Regulation 2005 (NSW)*, the Vendor may, before Settlement, serve a notice:
  - (i) specifying the breach;
  - (ii) requesting the Purchaser to serve a notice irrevocably waiving the breach (*Waiver*); and
  - (iii) indicating that the Vendor intends to rescind this Contract if the Waiver is not served within 14 days of service of the notice.
- (c) The Vendor may rescind this Contract if:
  - (i) the Vendor serves a notice under paragraph (b); and
  - (ii) the Purchaser does not serve the Waiver within the time required under the notice.
- (d) If the Purchaser serves a Waiver before the Vendor rescinds this Contract under paragraph (c), the Vendor is no longer entitled to rescind this Contract under paragraph (c).
- (e) The Purchaser has no claim against the Vendor for breach of any warranty implied by the *Conveyancing (Sale of Land) Regulation 2005 (NSW)* other than the right of rescission conferred by that Regulation.

## 21. Notice to Complete

### 21.1 Issue of notice

- (a) If Settlement does not occur on or before 3pm on the Settlement Date, at any time either party (not then being in default under this Contract) may serve on the other a notice (*Notice to Complete*) requiring Settlement of this Contract on a specified date being not less than 14 days (*Notice Period*) after the date of service of the Notice to Complete.

- (b) The parties agree that:
  - (i) the Notice Period is sufficient; and
  - (ii) time will be essential for compliance with the Notice to Complete.

## **21.2 Notice Period**

For the purpose of calculating the Notice Period:

- (a) the Notice Period commences at midnight on the Business Day on which the Notice to Complete is served; and
- (b) a reference to a day means the period of time commencing at midnight and ending 24 hours later.

## **21.3 Time essential**

Any Notice to Complete may specify any time of the day between 11am and 3pm as the time for performance of any obligation under this Contract in which event performance by that specified time is of the essence.

## **22. Interest**

### **22.1 Payment of Interest generally**

If a party (the Payer) does not pay an amount (other than the Price) when due under this Contract (including any GST Amount payable under Special Condition 25) the Payer must pay to the person to whom the amount is due, in cash at the same time as the amount is paid, interest on the amount in respect of the period commencing on the day following the day on which the amount was due and ending on the day on which it is paid in full.

### **22.2 Payment of Interest on Purchase Price**

If Settlement does not occur on or before the Settlement Date, the Purchaser must pay to the Vendor, by bank cheque on Settlement, interest on the balance of the Price in respect of the Interest Period.

### **22.3 Essential term**

It is an essential term of this Contract that the relevant Interest is paid. The Purchaser may not require the Vendor to complete this Contract unless interest payable under this Contract is paid to the Vendor on Settlement.

### **22.4 Delay by Vendor**

Special Condition 22.2 does not apply in respect of any part of the Interest Period during which Completion has been delayed due to the fault of the Vendor.

### **22.5 Completion after 3pm**

If, due to no fault of the Vendor, Settlement takes place after 3pm on the Settlement Date or after 3pm on any day after the Settlement Date, Special Condition 22.2 applies as if Settlement takes place on the Business Day after the day on which Settlement actually takes place.

## **23. Purchaser's Warranties and Guarantor's Warranties**

### **23.1 Purchaser's Warranties**

The Purchaser represents and warrants to the Vendor, the Receivers, TSL, and the Liquidators that, as at the date of this Contract and at Settlement, each of the Purchaser's Warranties is correct.

### **23.2 Guarantor's Warranties**

The Guarantor represents and warrants to the Vendor, the Receivers, TSL and the Liquidators that, as at the date of this Contract and at Settlement, each of the Guarantor's Warranties is correct.

### **23.3 Continued operation**

The Purchaser's Warranties and each of the Guarantor's Warranties will remain in full force and effect after the Settlement Date despite Settlement.

## **24. Vendor's and Receivers' Warranties**

### **24.1 Vendor's Warranties**

The Vendor represents and warrants to the Purchaser that, as at the date of this Contract and at Settlement, each of the Vendor's Warranties is correct.

### **24.2 Receivers' Warranties**

The Receivers represent and warrant to the Purchaser that, as at the date of this Contract and at Settlement, each of the Receivers' Warranties is correct.

### **24.3 Continued operation**

The warranties of the Vendor and the Receivers will remain in full force and effect after the Settlement Date despite Settlement.

## **25. GST**

### **25.1 Recovery of GST**

If GST is payable, or notionally payable, on a supply made under or in connection with this Contract, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the *GST Amount*).

Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This Special Condition does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### **25.2 Liability net of GST**

Where any indemnity, reimbursement or similar payment under this Contract is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

### 25.3 Adjustment events

If an adjustment event occurs in relation to a supply under or in connection with this Contract, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

### 25.4 Farming business

- (a) The parties intend that the Land sold under this Contract comprises farm land supplied for farming under section 38-480 of the GST Law. Notwithstanding that intention, if GST-free treatment is not accepted by the Commissioner of Taxation, the Purchaser must pay the GST Amount in accordance with Special Condition 25.1.
- (b) The Purchaser warrants to the Vendor and the Receivers that it intends that a farming business (as defined in the GST Law) be carried on, on the Land.
- (c) The Purchaser indemnifies each of the Vendor and the Receivers against all loss, liability, cost, penalty, interest or other amount that arises as a result of the Purchaser's breach of the warranty in Special Condition 25.4(b) above.

### 25.5 Survival

This Special Condition will continue to apply after expiration or termination of this Contract.

### 25.6 Definitions

Unless the context requires otherwise, words used in this Special Condition that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this Special Condition.

## 26. Confidentiality

### 26.1 Confidentiality

Subject to Special Condition 26.2, the existence and terms of this Contract (and all Disclosure Material and all books, documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract) must be kept confidential and must not be disclosed to any other person without the written consent of the other parties.

### 26.2 Permitted disclosure

Special Condition 26.1 shall not apply in the following circumstances:

- (a) any disclosure required by Law;
- (b) any disclosure required by any applicable stock exchange listing rules;
- (c) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (d) disclosure to the Court in connection with any application contemplated by this Contract;
- (e) a disclosure to bankers or other financial institutions of the party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if those persons undertake to keep information disclosed confidential;
- (f) a disclosure in connection with the ongoing management and operation of the Property; or

- (g) a disclosure of any information which is a matter of public record.

### 26.3 Public announcements

Except as required by applicable Law or the requirements of an Authority, all press releases and other public announcements relating to the transactions dealt with by this Contract must be in terms agreed in writing by the parties.

### 26.4 Confidentiality deed unaffected

If the Purchaser has entered into any separate deed or agreement to keep confidential the confidential information of the Vendor or in relation to the Property, nothing in this Special Condition 26 limits or otherwise affects the terms of that deed or agreement.

## 27. Purchaser as Trustee

If the Purchaser enters into this Contract as trustee of any trust (the Trust), then the Purchaser:

- (a) discloses that it enters into this Contract as trustee of the Trust;
- (b) warrants to the Vendor that:
  - (i) the Trust is created validly and is in existence;
  - (ii) the Purchaser is the sole trustee of the Trust and has been appointed validly;
  - (iii) the Purchaser has full and free power to enter into this Contract and to perform all the obligations imposed upon it under this Contract; and
  - (iv) this Contract has been duly authorised, executed and delivered by the Purchaser and constitutes and shall constitute a valid legal and binding instrument and that if any consent or approval is required for the Purchaser to enter into this Contract or the performance by the Purchaser of its obligations under this Contract, it has been obtained;
- (c) acknowledges that:
  - (i) the Purchaser accepts and undertakes personal liability under this Contract;
  - (ii) the Purchaser must not before the satisfaction of all liability under this Contract, personally and/or by the Trust exercise in its own favour any right of indemnity, lien or charge to which it may be entitled under or in respect of the assets of the Trust; and
  - (iii) if any of the assets of the Trust are at any time in the hands of the Purchaser free of their Trust character by virtue of the exercise or purported exercise of any such right of indemnity, lien or charge, the Purchaser must hold those assets on behalf of the Vendor to the extent to which any liability under this Contract has not been satisfied; and
- (d) the Purchaser agrees with the Vendor that if at any time before satisfaction of any liability under this Contract:
  - (i) the Purchaser ceases for any reason to be the sole trustee of the Trust, the Purchaser must procure any new or additional trustee of the Trust to execute in favour of the Vendor such covenants relating to this Contract as the Vendor may

- reasonably require, including covenants in the like terms as those contained in this Special Condition; and
- (ii) It will notify the Vendor promptly in writing if the Trust is determined or for any reason ceases to exist.

## 28. Notices

Any notice, demand, consent or other communication (a Notice) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

- (i) To the Vendor and the Receivers: Paul William Kirk  
PricewaterhouseCoopers  
Freshwater Place  
2 Southbank Boulevard  
Southbank, Victoria 3006  
Facsimile: +61 3 8613 4852

Copy to Aliens Arthur Robinson  
Attention: Steve Clifford  
Facsimile: +61 3 9614 4661

- (ii) To the Purchaser: Costa Holdings Investments Pty Ltd  
Attention: Noel Costa  
Facsimile: +61 3 5018 6428

Copy to Goldsmiths Lawyers  
Attention: Darren Goldsmith  
Facsimile: +61 3 9329 1543

- (iii) To the Guarantor: Carmelo Costa  
Facsimile: +61 3 5026 3359

- (c) will be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or at later than 4pm (local time), it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

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**29. Entire agreement**

This Contract contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with its subject matter.

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**30. No waiver**

A failure to exercise or a delay in exercising any right, power or remedy by a party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

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**31. Rights cumulative**

Subject to any express provision in this Contract to the contrary, the rights of a party under this Contract are cumulative and are in addition to any other rights of that party.

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**32. Amendment**

No amendment or variation of this Contract is valid or binding on a party unless made in writing and executed by all parties.

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**33. Further assurances**

Each party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Contract.

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**34. No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Contract. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

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**35. Costs and stamp duty**

Subject to any express provision in this Contract to the contrary, each party must bear its own costs and expenses arising out of the negotiation, preparation and execution of this Contract. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Contract and any instrument executed under this Contract must be borne by the Purchaser.

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**36. Severability of provisions**

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Contract nor affect the validity or enforceability of that provision in any other jurisdiction.

### 37. Governing law and jurisdiction

This Contract is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Contract.

### 38. Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

### 39. Guarantee

#### 39.1 Guarantee

In consideration of the Vendor entering into this Contract at the request of the Guarantor, the Guarantor:

- (a) unconditionally and irrevocably guarantees to the Vendor on demand the due and punctual performance by the Purchaser of all its obligations under this Contract; and
- (b) separately indemnifies the Vendor against any Liabilities which may be incurred or sustained by the Vendor in connection with any default or delay by the Purchaser in the due and punctual performance of any of its obligations under this Contract.

#### 39.2 Liability unaffected by other events

The Liability of the Guarantor under this Special Condition is not affected by any act, omission or thing which, but for this provision, might in any way operate to release or otherwise exonerate or discharge the Guarantor from any of its obligations including (without limitation) the grant to the Purchaser or any other person of any time, waiver or other indulgence, or the discharge or release of the Purchaser or any other person from any obligation.

#### 39.3 Continuing guarantee and indemnity

This Special Condition:

- (a) extends to cover this Contract as amended, varied or replaced, whether with or without the consent of the Guarantor; and
- (b) is a continuing guarantee and indemnity and, despite Settlement, remains in full force and effect for so long as the Purchaser has any liability or obligation to the Vendor under this Contract and until all of those liabilities or obligations have been fully discharged.

### 40. Rural Property

#### 40.1 Claims, objections or requisitions

The Purchaser cannot ask a question or make a claim, objection or requisition or rescind or terminate in respect of:

- (a) any give and take fences on any boundary of the Property, any unfenced boundary or any fence not being on the correct boundary;
- (b) any application to enclose or close a road affecting or adjoining the Property;



- (c) any well, bore or dam constructed or sunk on the Property or any contravention of the *Water Act 1912* (NSW), the *Water Management Act 2000* (NSW) or the regulations under those Acts;
- (d) any application for or grant of licences or titles under any Act relating to mining which affects the Property;
- (e) any contravention of the *Rural Workers' Accommodation Act 1969* (NSW), or any ordinance or regulation under that Act (subject to the Vendor's obligations under clause 11);
- (f) legal access to the Property or lack thereof;
- (g) any alteration to a drain or natural watercourse running through the Property;
- (h) any gate erected across any road;
- (i) any permit or authority to enclose any road or watercourse within the boundaries of the Property; or
- (j) any permit or authority to carry rabbit-proof, dog-proof or marsupial-proof or other fencing across any road dividing or adjoining the Property or any travelling stock reserve or public land adjoining the Property.

#### **40.2 Road permits**

In respect of any road permits held by the Vendor in connection with the Property:

- (a) the Vendor shall give all reasonable assistance to enable the transfer to the Purchaser of them on Settlement;
- (b) any shire rates and rent will be apportioned as outgoings in accordance with clause 14; and
- (c) the Purchaser cannot delay Settlement or refuse to complete if the Purchaser cannot obtain the benefit of any road permit.

#### **40.3 Livestock and agriculture**

The Purchaser acknowledges that:

- (a) it relies on its own knowledge, inspection and enquiries in respect of the livestock carrying and agricultural capacity of the Property and each part of it; and
- (b) any warranties by or on behalf of the Vendor, express or implied, as to the livestock carrying or agricultural capacity of the Property or any part of it are expressly negated.

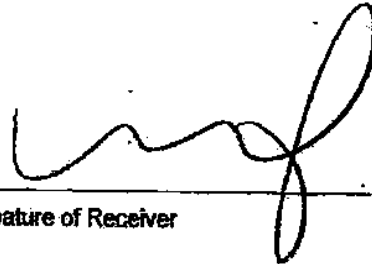
Executed and delivered as a Deed in Melbourne.

**EXECUTED by ALIGN FUNDS**

**MANAGEMENT LIMITED** in its capacity as responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed) in the presence of:



Signature of witness



Signature of Receiver



Name of witness (print)



Name of Receiver

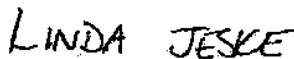
**SIGNED SEALED and DELIVERED** by **PAUL WILLIAM KIRK** in his capacity as Receiver and Manager of Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (Receivers & Managers Appointed) in the presence of:



Witness





Signature of Paul William Kirk

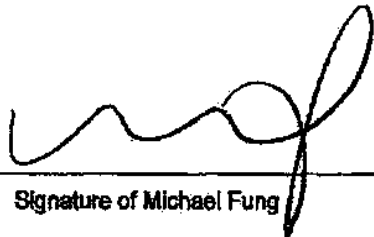


Name of Witness (print)

**SIGNED SEALED and DELIVERED** by  
**MICHAEL FUNG** in his capacity as Receiver  
and Manager of Align Funds Management  
Limited in its capacity as responsible entity of  
the Timbercorp Orchard Trust (Receivers &  
Managers Appointed) in the presence of:

  
\_\_\_\_\_  
Witness

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

  
\_\_\_\_\_  
Signature of Michael Fung

**EXECUTED** as a deed in accordance with  
section 127 of the Corporations Act 2001 by  
**COSTA HOLDINGS INVESTMENTS PTY  
LTD** as trustee for the Charlie Costa  
Investments Trust in the presence of:

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Sole Director and Sole Secretary Signature

\_\_\_\_\_  
Print Name

**EXECUTED** as a deed in accordance with  
section 127 of the Corporations Act 2001 by  
**COSTA HOLDINGS INVESTMENTS PTY  
LTD** as trustee for the Paul Costa  
Investments Trust in the presence of:

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Sole Director and Sole Secretary Signature

\_\_\_\_\_  
Print Name

SIGNED SEALED and DELIVERED by  
MICHAEL FUNG in his capacity as Receiver  
and Manager of Align Funds Management  
Limited in its capacity as responsible entity of  
the Timbercorp Orchard Trust (Receivers &  
Managers Appointed) in the presence of:

Witness

Signature of Michael Fung

Name of Witness (print)

EXECUTED as a deed in accordance with  
section 127 of the Corporations Act 2001 by  
COSTA HOLDINGS INVESTMENTS PTY  
LTD as trustee for the Charlie Costa  
Investments Trust in the presence of:

Witness Signature

Print Name

Bryan Byrnes

Sole Director and Sole Secretary Signature

Print Name

Carmelo Costa

EXECUTED as a deed in accordance with  
section 127 of the Corporations Act 2001 by  
COSTA HOLDINGS INVESTMENTS PTY  
LTD as trustee for the Paul Costa  
Investments Trust in the presence of:

Witness Signature

Print Name

Bryan Byrnes

Sole Director and Sole Secretary Signature

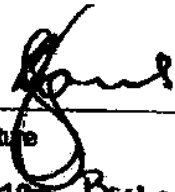
Print Name

Carmelo Costa

SIGNED SEALED AND DELIVERED by  
CARMELO COSTA in the presence of:

Witness Signature

Print Name

  
Bryan Byrnes

Signature



## Schedule 1

### Purchaser's and Guarantor's Warranties

#### The Purchaser

1. The Purchaser is duly incorporated and validly exists under the law of its place of incorporation.
2. The Purchaser is not insolvent and no receiver has been appointed over any part of its assets and no such appointment has been threatened.
3. The Purchaser is not in liquidation or administration and no proceedings have been brought or threatened for the purpose of winding up the Purchaser or placing it into administration.
4. To the best of the knowledge, information and belief of the Purchaser, there are no facts, matters or circumstances which give any person the right to apply to liquidate or wind up the Purchaser or place the Purchaser into administration.

#### The Guarantor

5. The Guarantor is duly incorporated and validly exists under the law of its place of incorporation.
6. The Guarantor is not insolvent and no receiver has been appointed over any part of its assets and no such appointment has been threatened.
7. The Guarantor is not in liquidation or administration and no proceedings have been brought or threatened for the purpose of winding up the Guarantor or placing it into administration.
8. To the best of the knowledge, information and belief of the Guarantor, there are no facts, matters or circumstances which give any person the right to apply to liquidate or wind up the Guarantor or place the Guarantor into administration.

#### Due authorisation

9. The execution and delivery of this Contract has been properly authorised by all necessary corporate action of each of the Purchaser and the Guarantor, respectively.
10. Each of the Purchaser and the Guarantor, respectively, has full corporate power and lawful authority to execute and deliver this Contract and to consummate and perform or cause to be performed its obligations under this Contract and each transaction contemplated by this Contract to be performed by it.
11. This Contract constitutes a legal, valid and binding obligation of each of the Purchaser and the Guarantor, respectively, enforceable in accordance with its terms by appropriate legal remedy.
12. The execution, delivery and performance by each of the Purchaser and the Guarantor, respectively, of this Contract and each transaction contemplated by this Contract does not or will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under:
  - (a) any provision of the constitution of the Purchaser and the Guarantor, respectively;
  - (b) any material term or provision of any security arrangement, undertaking, agreement or deed, or
  - (c) any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound.

## **Schedule 2**

### **Vendor's Warranties**

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1. The Vendor is the sole responsible entity of TOT.
2. The Vendor is empowered by the TOT Trust Deed to:
  - (a) own property and carry out its business; and
  - (b) enter into and perform its obligations under this Contract, in its capacity as responsible entity of TOT.
3. The Vendor has full corporate power and lawful authority to execute and deliver this Contract and to consummate and perform or cause to be performed its obligations under this Contract and each transaction contemplated by this Contract to be performed by it.
4. The Vendor is duly incorporated and validly exists under the law of its place of incorporation.

### **Schedule 3**

#### **Receivers' Warranties**

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1. The Receivers are validly and legally appointed as receivers and managers of the Property in accordance with the requirements of the Corporations Act.
2. The Receivers have full power and authority to cause the Vendor to enter into this Contract and have taken all necessary action to authorise the execution, delivery and performance of this document by the Vendor.



**Schedule 4**

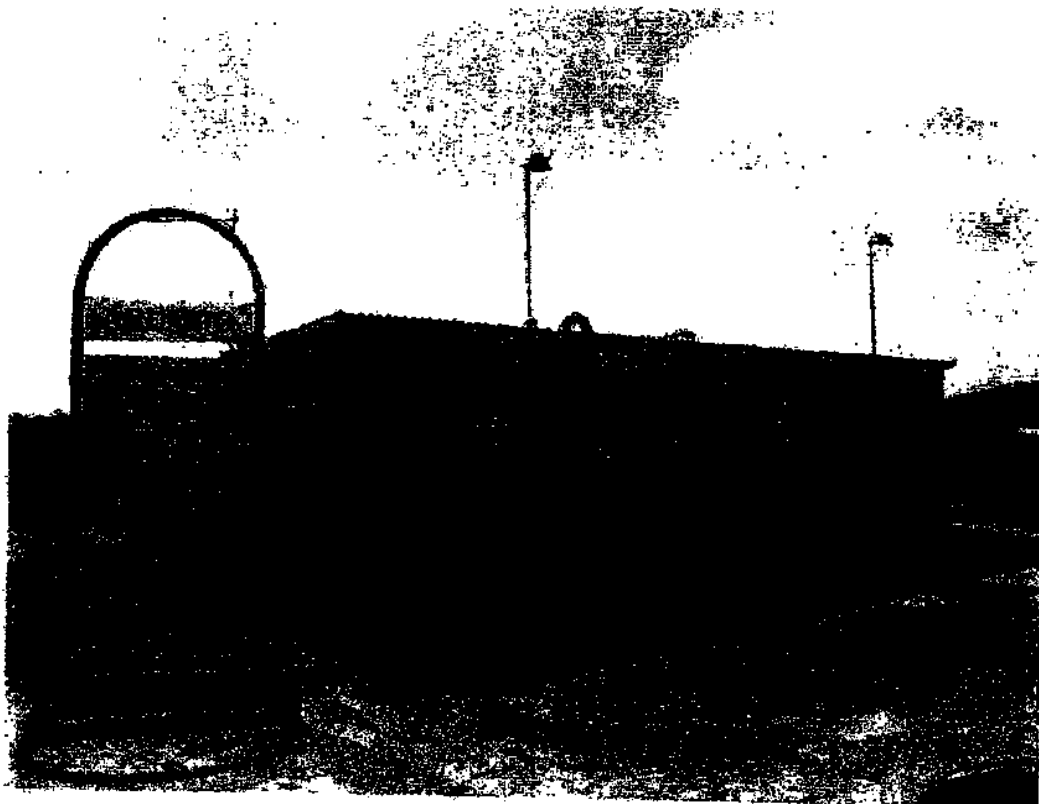
**Plant and Equipment**

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## Fixed Asset Register – Bella Vista

**Farm 6**

**1 x Storage Shed (fertiliser and eyewash)**



**Farm 7**

**1 x hub**

- Lunch room
- Office
- Toilets
- Machinery shed
- Compound (fenced)



**Dam Site**



## **Dam Site**

### **1 x Pump shed**

- 4 Electric dam pumps
- Control room
- 2 Diesel dam pumps

### **1 x Fertigation injection shed**

- 3 electric fert pumps
- Control box
- 5 large tanks

### **1 x Machinery shed**

- Bio tea platform
- Lock up area

### **1 x Office including Meeting Room and toilets**

## **Farm 8**

### **1 x hub**

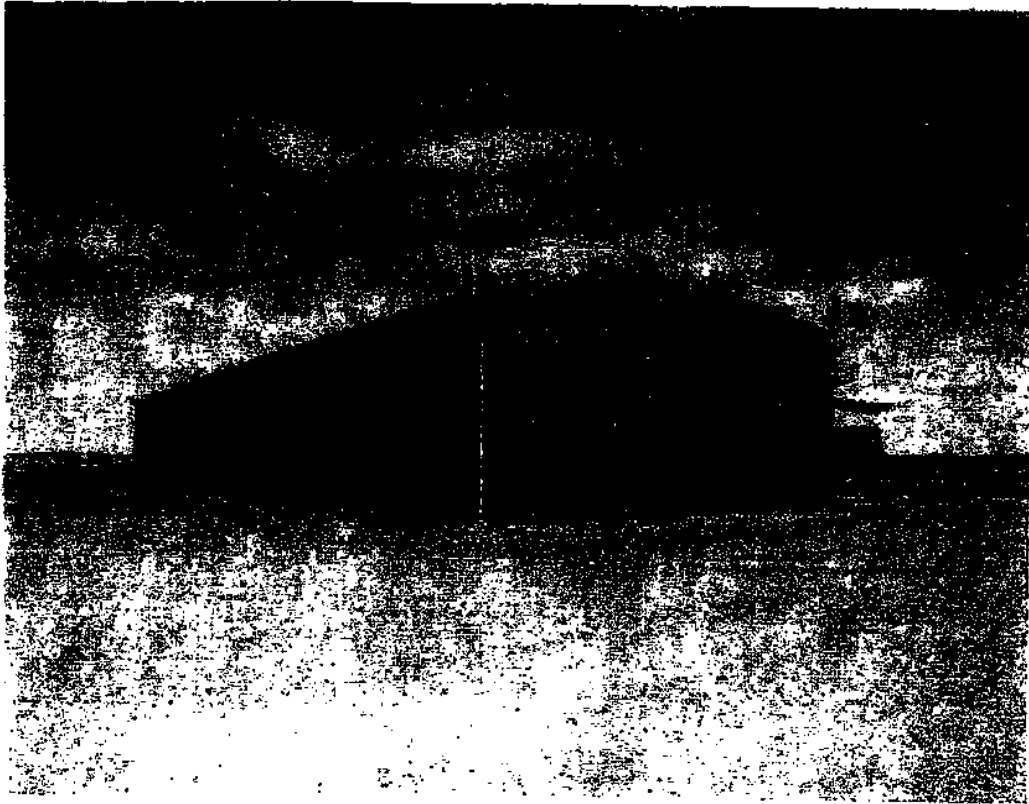
- **Lunch room**
- **Office**
- **Machinery shed**
- **Toilets**
- **Compound (fenced)**



**Farm 9**

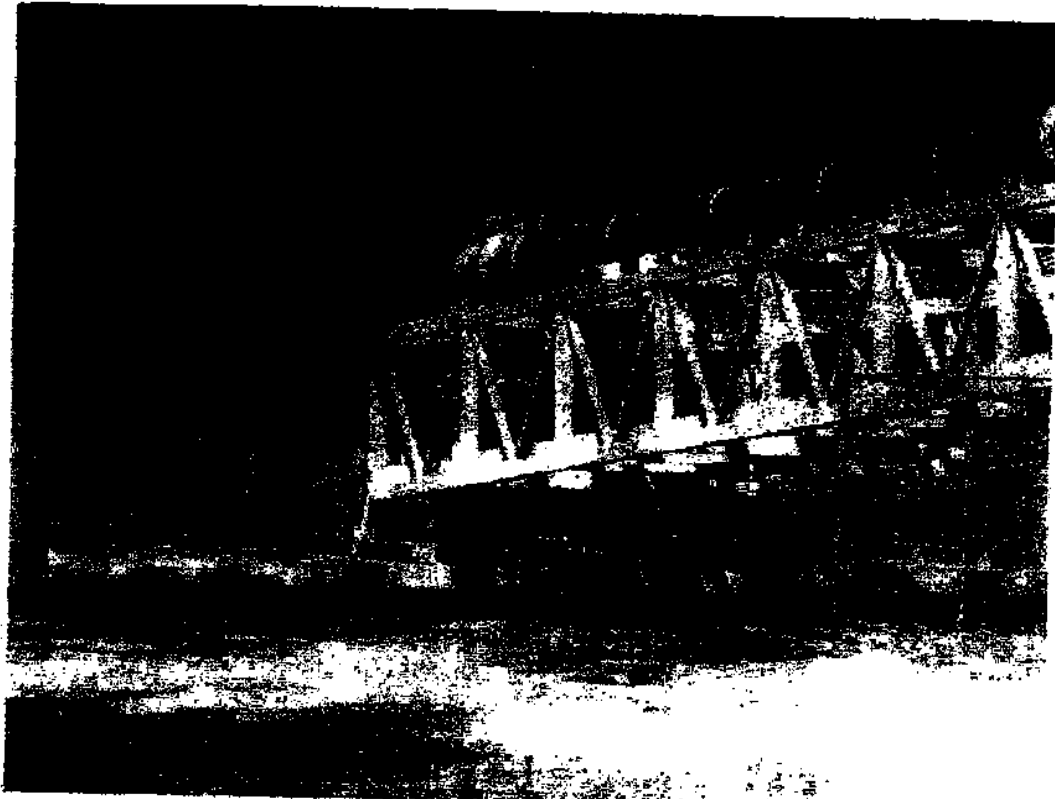
**1 x hub**

- **Lunch room**
- **Office**
- **Toilets**
- **Machinery shed**
- **Compound (fenced)**



## River

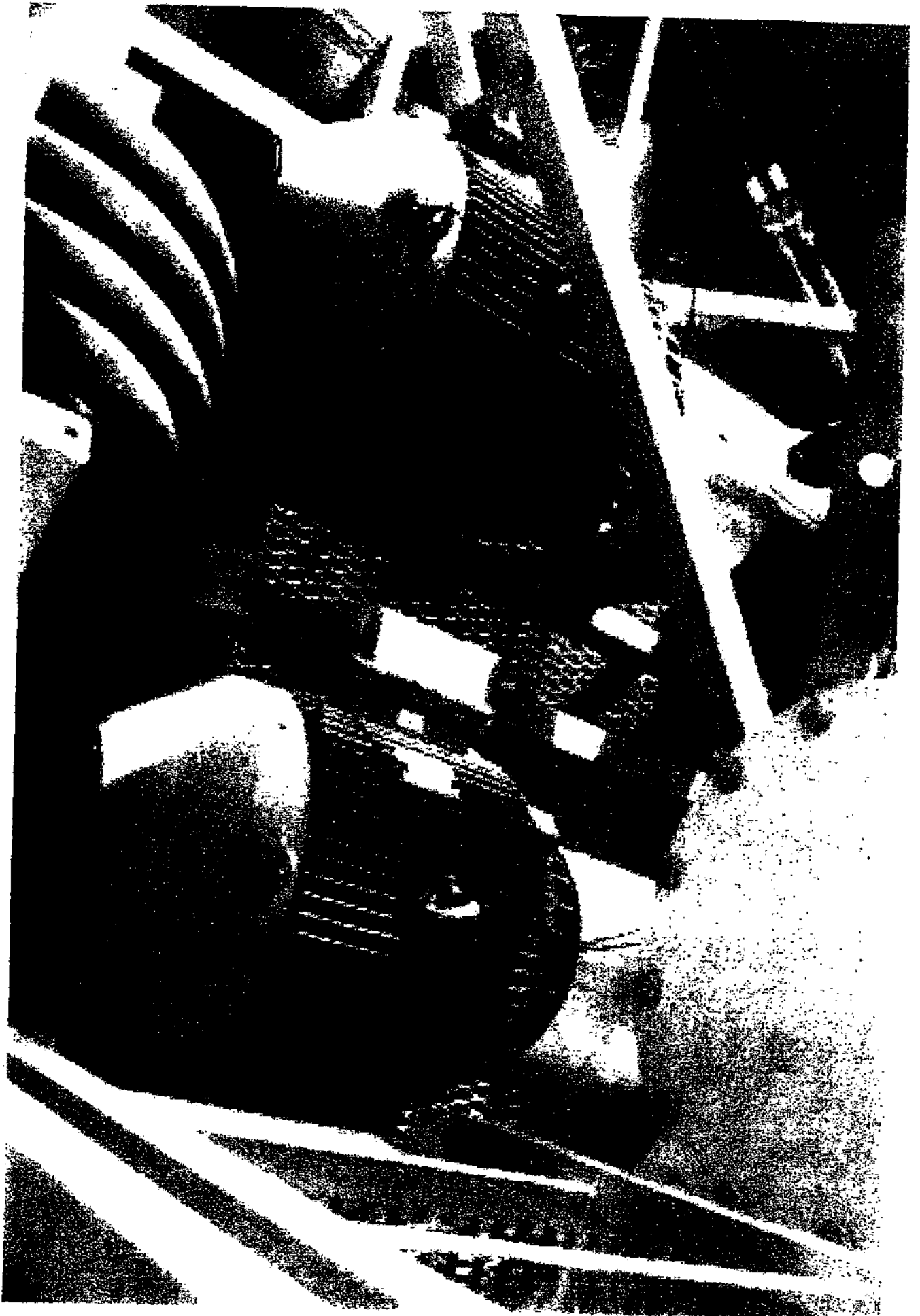
- 2 x Electric River pumps
- Pontoon on river
- Control room













# CMG

## HIGH PERFORMANCE THREE PHASE MOTOR

TYPE	TEACHING-1		SPEC.	TEACHING	
KW	1.5	51	EFFICIENCY	85.5	110
VOLTS	230	4	COS φ	0.85	110

MODEL NO.

TEACHING-1