

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

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)

This is the Exhibit marked 'CCH-11' 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-11': a true copy of the
Victorian Water Sale Contract**

CONTRACT OF SALE OF WATER SHARE

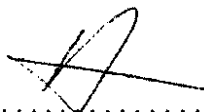
Vendor: **Align Funds Management Limited (ACN 105 684 231)** (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed)

Purchaser: **VicSuper Ecosystem Services Pty Ltd (ABN 42 117 726 164)** as trustee for the VicSuper Future Farming Landscapes Trust

The Vendor sells and the Purchaser buys the Water Shares for the Price and upon the conditions set out in this Contract, including the Particulars of Sale, General Conditions and Special Conditions (if any).

Executed and Delivered as a Deed in Melbourne

Signed for and on behalf of **VICSUPER ECOSYSTEM SERVICES PTY LTD** IN ITS CAPACITY AS TRUSTEE FOR THE **VICSUPER FUTURE FARMING LANDSCAPES TRUST ABN 42 117 726 164** by the following person authorised to sign on behalf of the company:

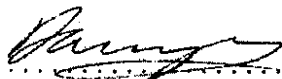


Signature

Henriette Strain

Name (print)

Garry Secord

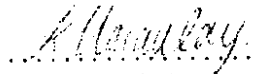


Signature

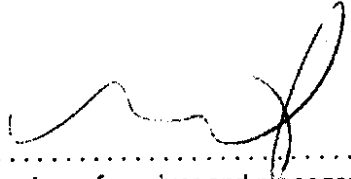
Danny Hsu

Name of witness (print)

Executed by **ALIGN FUNDS MANAGEMENT LIMITED (ACN 105 684 231)** (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receiver and Manager Appointed) in the presence of:

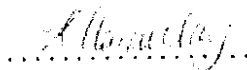

Signature of witness

MARTIN MACHAN
Name of witness (print)

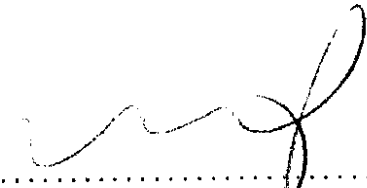

Signature of receiver and manager

MICHAEL FUNG
Name of receiver and manager (print)

Signed sealed and delivered by **MICHAEL FUNG** in his capacity as receiver and manager of Align Funds Management Limited (ACN 105 684 231) (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receiver and Manager Appointed) in the presence of:


Signature of witness

MARTIN MACHAN
Name of witness (print)


Signature of **MICHAEL FUNG**

Signed sealed and delivered by **PAUL WILLIAM KIRK** in his capacity as receiver and manager of Align Funds Management Limited (ACN 105 684 231) (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receiver and Manager Appointed) in the presence of:


.....
Signature of witness


.....
Signature of **PAUL WILLIAM KIRK**

KATHRYN N. MACAULAY
.....
Name of witness (print)

This 22 day of December 2010.

PARTICULARS OF SALE

**VENDOR'S
WATER
BROKER**

Paul Smith Water Sales
73 Perrin Street, Robinvale 3549

Tel: 03 5026 3393
Fax: 03 5026 3640
Ref:

**VENDOR'S
SOLICITOR**

Allens Arthur Robinson
of 530 Collins Street, Melbourne 3000
DX 30999

Tel: 03 9614 1011
Fax: 03 9614 4661
Ref: 306250099

Dawes & Vary Pty Ltd
of 51-55 Heygarth Street, Echuca 3564
DX 62501 ECHUCA

Tel: 03 5482 2555
Fax: 03 5482 5739
Ref: LS:MD:20103698

**PURCHASER'S
SOLICITOR**

DLA Phillips Fox
of 140 William Street, Melbourne VIC 3000
DX 147

Tel: 03 9274 5000
Fax: 03 9274 5111
Ref: MWB:ALM:
0502622

VENDOR

Align Funds Management Limited
(ACN 105 684 231) (formerly known as Orchard
Investments Management Limited) in its capacity
as the responsible entity of the Timbercorp
Orchard Trust (Receivers and Managers
Appointed)
of c/- Pricewaterhouse Coopers, Level 23, 2
Southbank Boulevard, Southbank, 3006

Tel: 03 8603 2136
Fax: 03 8613 2843

Vendor's Water Share Identification No: WEE045487 & WEE018428

Vendor's Water System: Murray

Vendor's Trading Zone: 7 VIC Murray - Barmah to SA

Vendor's Delivery System: Non Water User Limit

Vendor's Water Use Licence No: Not applicable

Vendor's Mortgagee: Nil

Water Authority: Lower Murray Region

PURCHASER

**VicSuper Ecosystem Services Pty Ltd (ABN 42
117 726 164)** as trustee for The VicSuper Future
Farming Landscapes Trust
of Level 6, 90 Collins Street, Melbourne 3000

Tel: c/o Kilter Pty Ltd
(03) 5444 0112
Fax: c/o Kilter Pty
Ltd (03) 5441 8185

☐ (tick box if
appropriate)

If the Water Share is to be associated with land.
Water System

OR

☒ (tick box if
appropriate)

If the Water Share is to be held by a non-user.

WATER SHARE SOLD

2,028.8 MI High reliability @ \$1,520 per MI

214 MI High reliability @ \$1,520 per MI

PRICE	\$	3,409,056.00	High reliability
	\$	0.00	Allocation
	\$	3,409,056.00	Total Purchase Price
DEPOSIT	\$	340,905.60	being 10% on the signing hereof
BALANCE	\$	3,068,150.40	

PAYMENT OF
BALANCE on or before the Settlement Date

SETTLEMENT
DATE 15 business days after the later of (a) the date the Vendor provides the Purchaser with the Transfer of Water Share confirming Ministerial Consent; and (b) the first date on which all of the Conditions Precedent set out in clause 6.1 have been fulfilled or waived in accordance with clause 6.4.

1. INTERPRETATION

1.1. Definitions

The following definitions apply in this Contract.

Act means the *Water Act 1989* (as amended).

Allocation means Water Allocation as defined in Section 3 of the Act.

BB Olives means BB Olives Pty Ltd (in liquidation) (ACN 083 992 367).

Conditions Precedent means the conditions precedent set out in clause 6.1.

Condition Precedent End Date means 30 April 2011, or any other later date as the parties may agree in writing.

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

Costa means Costa Holdings Investments Pty Ltd (ACN 140 921 053) of 234 Deakin Avenue, Mildura VIC 3500.

Crop Sale Agreements means the 2011 Sale of Table Grape Agreement 2004 Timbercorp Table Grape Project and the 2011 Sale of Table Grape Agreement 2005 Timbercorp Table Grape Project dated on or about the date of this Contract between Timbercorp Limited (in liquidation) (ACN 055 185 067), Timbercorp Securities Limited (in liquidation) (ACN 092 311 469) in its capacity as responsible entity for the 2004 Timbercorp Table Grape Project (ARSN 108 648 086) and the 2005 Timbercorp Table Grape Project (ARSN 113 512 226), Timbercorp Securities Limited (in liquidation) (ACN 092 311 469), the Vendor, Mark Anthony Korda and Leanne Kylie Chesser, Michael Fung and Paul William Kirk and Costa Holdings Investments Pty Ltd (ACN 140 921 -53).

Deposit means an amount equal to 10% of the Price, as identified in the Particulars of Sale, being the amount of \$340,905.60.

G-MW means Goulburn-Murray Rural Water Corporation.

Growers means investors in the Table Grape Projects.

Grower's Claim means any claim over all or any part of the 'property' and/or 'water rights' the subject of the Land Contract, including the Water Shares the subject of this Contract, by or in favour of a Grower.

HRWS means High Reliability Water Share of 2,242.8 megalitres (in two parcels, as per the Particulars of Sale).

Interim Management Agreement means the Interim Management Agreement dated 21 December 2009 (as amended) between Timbercorp Limited (in liquidation) (ACN 055 185 067), Timbercorp Securities Limited (in liquidation) (ACN 092 311 469) in its capacity as responsible entity for the 2004 Timbercorp Table Grape Project (ARSN 108 648 086) and the 2005 Timbercorp Table Grape Project (ARSN 113 512 226), the Vendor, Mark Anthony Korda and Leanne Kylie Chesser, Michael Fung and Paul William Kirk and Costa Holdings Investments Pty Ltd (ACN 140 921 053).

Kilter means Kilter Pty Ltd (ACN 111 305 349).

Land Contract means the contract for the sale of land dated 23 July 2010 between the Vendor and Costa Holdings Investments Pty Ltd for the sale of the property known as "Bella Vista".

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

Minister means the Minister administering the Act.

Ministerial Consent means ministerial consent required by Section 33X of the Act to transfer ownership of the Water Shares to the Purchaser ;

Permanent means The Trust Company (Nominees) Limited, formerly known as Permanent Nominees (Aust) Limited (ACN 000 154 441).

Price means the 'Total Purchase Price' identified in the Particulars of Sale, being the amount of \$3,409,056.00.

Public Authority means any government in any jurisdiction whether national, federal, state, regional, territorial or local; any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government or any state owned enterprise; and any regulatory body or trade union.

Receiver means Michael Fung and Paul Kirk of Pricewaterhouse Coopers in their capacities as joint and several Receivers and Managers of Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed).

Registrar means the Registrar of the Victorian Water Register. .

Related Party has the same meaning as it would have in section 228 of the Corporations Act if all references in section 228 to 'public company' were to 'public company or proprietary company.'

Security Interest includes a mortgage, limited term transfer, debenture, charge, encumbrance, lien, pledge, assignment or deposit by way of security, bill of sale, lease, hypothecation, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, caveat, claim, covenant, interest or power in or over an interest in an asset and any agreement or commitment to give or create any such security interest or preferential ranking to a creditor including set off.

Settlement means the settlement of the sale and purchase of the Water Shares in accordance with the terms of this Contract.

Settlement Date means the date on which Settlement occurs, as specified in the Particulars of Sale.

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 irrevocably agrees to surrender the 'grower licences' (as defined in that deed), and extinguish all of the rights of Growers in respect of the 'property' and 'water rights' the subject of the Land Contract (including the Water Shares the subject of this Contract and any Allocation attached to those Water Shares).

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

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

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

TOT Trust Deed means the trust deed governing TOT dated 15 September 2003 (as amended).

TSL means Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469).

Transfer of Water Share means a document of that title issued in accordance with section 84J, Schedule 12A of the Act confirming that the Minister has approved the relevant transfer.

Trigger Date means the first date on which all of the Conditions Precedent set out in clauses 6.1.2, 6.1.3 and 6.1.4 have been fulfilled or waived in accordance with clause 6.4.

Trust means The VicSuper Future Farming Landscapes Trust.

Warranties means each of the following:

- the representations, warranties and undertakings made by the Vendor contained in clause 21; and
- the representations, warranties and undertakings made by the Receiver contained in clause 21.

Water Authority means the Water Authority regulating the Water Shares.

Water Shares means the HRWS identified in the Particulars of Sale.

1.2. Rules for interpreting this document

The following rules also apply in interpreting this Contract, except where the context makes it clear that the rule is not intended to apply.

1.2.1. A reference to:

- 1.2.1.1 legislation (including subordinate legislation) is to that legislation amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- 1.2.1.2 a document or agreement, or provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or notated from time to time;
- 1.2.1.3 a party to this document or any other document or agreement includes a permitted substitute or permitted assign of that party;
- 1.2.1.4 a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Contract;
- 1.2.1.5 a business day means a day other than a Saturday or Sunday on which banks are open for business generally in

Melbourne, Victoria, and if the day on which any act, matter or thing is to be done under this Contract is not a business day, the act, matter or thing must be done on the next business day;

1.2.1.6 'dollars' or '\$' means Australian dollars and all amounts payable under this Contract are payable in Australian dollars;

1.2.1.7 anything (including a right, obligation or concept) includes each part of it.

1.2.2. The 'Particulars of Sale' form part of this Contract.

1.2.3. A singular word includes the plural and vice versa.

1.2.4. If a word is defined, another part of speech has a corresponding meaning.

1.2.5. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

If an example is given of anything (including a right, obligation or concept) such as by saying it includes something else, the example does not limit the scope of that thing.

2. PAYMENT AND COMPLETION

2.1. Ownership of and risk in the Water Shares passes when the whole of the Price is paid.

2.2. The Purchaser must pay:-

2.2.1. The Deposit on the day of sale to Allens Arthur Robinson.

2.2.2. The balance of the Price by bank cheque, cash or cleared funds on the Settlement Date to the Vendor or the Vendor's Solicitor or at the Vendor's written discretion.

3. ASSIGNMENT OF WATER ALLOCATION

- 3.1. By way of disclosure, the Water Shares are the subject of an unregistered terms transfer or lease of entitlement, granted under the Interim Management Agreement and/or the 2011 Sale of Table Grape Agreement, 2004 Timbercorp Table Grape Project and the 2005 Timbercorp Table Grape Project hereafter referred to as the "terms transfer".
- 3.2. Pursuant to the terms transfer, Costa is entitled to use any of the carry-over water and annual Allocation credited to the Water Account associated with the Water Shares ("Account") up until settlement of the Land Contract.
- 3.3. The Vendor undertakes that the terms transfer will extinguish upon settlement of the Land Contract and as at the Settlement Date the Water Shares and the balance of Allocation attached to the Water Shares will not be subject to the terms transfer.
- 3.4. The Vendor undertakes that upon extinguishment of the terms transfer:
 - 3.4.1. The Vendor will use all reasonable endeavours to procure that BB Olives transfer the balance of the Allocation associated with the Water Shares to the Purchaser; and
 - 3.4.2. The Purchaser will be entitled to the balance of Allocation held in the Vendor's Water Account at that time along with all future Allocations allocated to the Water Shares after the Settlement Date.
- 3.5. The Vendor makes no representation as to the volume of the Allocation which will be held in the Account at the Settlement Date.
- 3.6. Unless the parties have agreed otherwise in the Particulars, the Vendor and the Purchaser agree that a value of \$0.00 shall be the monetary consideration entered on the Application to Trade Water Allocation to be lodged with the Water Authority.
- 3.7. The parties hereby agree and acknowledge that:
 - 3.7.1. The Allocation which is attached to the Water Shares being sold may be adversely affected due to the Vendor having carryover water attached to the Water Shares as at 1 July 2010. The Purchaser shall make no claim or requisition or claim any compensation as to any reduced allocation received by it due to any carryover amount attributable to the period up to and including 30 June 2011.
 - 3.7.2. To the extent any water is carried over in respect of the Water Shares on and from 1 July 2011, it shall be the property of the Purchaser and no other person will be entitled to make a claim or requisition or claim any compensation from the Purchaser in respect of the same.
- 3.8. Without limiting clause 6.1.4, the Contract is not subject to nor conditional upon the transfer of the Allocation referred to in this clause 3.

4. WHAT THE PURCHASER MUST DO

The Purchaser must:-

- 4.1. At the time that it executes the Contract, provide to the Vendor's Solicitor the following documents:-

- 4.1.1. Applications for approval to transfer a water share (Form 1) with respect to the Water Shares in a form prepared by Kilter, executed by the Purchaser;
- 4.1.2. Any other documents required by the Water Authority to obtain Ministerial Consent, except for those documents which the Vendor is obliged to provide.

The documents referred to in clause 4.1.1 and 4.1.2 shall, where necessary, be completed with the Purchaser's details and be signed by the Purchaser.

- 4.2. Pay any fee to lodge the Transfer of Water Shares at the Victorian Water Register following Settlement.
- 4.3. Where applicable assist the Water Authority to carry out all inspections and examinations as to the suitability of the transfers to the Purchaser's Water-Use Licence or Water-Use Registration and pay any fees associated with and additional to such investigations not required to be paid by the Vendor.
- 4.4. Make payment and do all other things as required by this Contract.

5. WHAT THE VENDOR MUST DO

The Vendor must:-

- 5.1. When delivering the Contract to the Purchaser, provide the Purchaser with any documents required by the Water Authority to obtain Ministerial Consent, except for those documents which the Purchaser is obliged to provide.
- 5.2. Provide to the Purchaser at Settlement all documents which are sufficient to enable the Purchaser to become the registered owner of the Water Shares and, where applicable receive the Allocations assigned or transferred under this Contract. Without limiting the general intent of this clause the documents shall include where applicable:-
- 5.2.1. The Transfers of Water Shares with respect to the Water Shares.
- 5.2.2. Application to Trade Water Allocation (Form 39) prepared by Kilter and completed by BB Olives, subject to clause 3.4.1.
- 5.2.3. A Discharge of any mortgage or other Security Interest affecting the Water Shares in proper form.
- 5.2.4. Where the Vendor is a company, such debenture release or discharge in proper form as may be required by the Purchaser to provide unencumbered ownership of the Water Shares and applicable Water Allocations to the Purchaser.
- 5.3. Complete and provide to the Water Authority sufficient proof of identification to enable the Water Authority to process Applications to Transfer Water Shares.
- 5.4. Pay or allow to the Purchaser the fees to the Water Authority for the lodging of the Applications to transfer Water Shares.
- 5.5. Pay or allow to the Purchaser the fees for lodging any Discharge of Water

Mortgage.

- 5.6. Pay or allow to the Purchaser the fees for lodging any discharge or release of a Security Interest referred to herein.

6. CONDITIONS PRECEDENT

- 6.1. Settlement is conditional on each of the following Conditions Precedent being fulfilled or waived in accordance with this Contract:

6.1.1. The approval of the Transfer of Water Shares by the Water Authority. For the avoidance of doubt, this clause is intended to apply for approval of the transfer of both HRWS.

6.1.2. Each of the following having occurred in respect of each of the Table Grape Projects:

6.1.2.1 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' described in the Land Contract) in respect of the 'property' and 'water rights' the subject of the Land Contract, and the Water Shares the subject of this Contract, in accordance with the Surrender Deed;

6.1.2.2 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 the Land Contract and 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

6.1.2.3 the Liquidators of TSL executing and delivering to the Vendor the Surrender Deed,

such that the 'property' the subject of the Land Contract may be transferred to the purchaser under the Land Contract at settlement free of any Security Interests relating to the rights of Growers and any Growers' Claims, and such that the full legal and beneficial ownership of the Water Shares the subject of this Contract may be transferred to the Purchaser under this Contract at Settlement free of any Security Interests (whether relating to the rights of Growers and any Growers' Claims or otherwise).

6.1.3. Settlement occurring under the Land Contract in accordance with its terms.

6.1.4. Costa providing the Purchaser with binding written confirmation in the form of a deed poll reasonably acceptable to the Purchaser that neither Costa nor any Related Party of Costa will, on and from Settlement, have any legal or beneficial interest in or to, or any right to possession or use of, any Allocation attached to the Water Shares.

6.1.5. A period of 30 business days commencing on the Trigger Date having passed.

- 6.2. The Vendor must use its best endeavours to ensure that each of Conditions Precedent 6.1.1, 6.1.2, 6.1.3 and 6.1.4 are met as soon as possible and in any event before the Condition Precedent End Date, and must not take any action

that would or would be likely to prevent or hinder the fulfilment of any of those Conditions Precedent. The Vendor must promptly notify the Purchaser in writing if it becomes aware of circumstances that will or may result in any of the Conditions Precedent not being met. The Vendor must also:

- 6.2.1. Keep the Purchaser informed in a timely manner of the status of any discussions or negotiations with relevant third parties regarding the Conditions Precedent, and promptly provide the Purchaser with any additional documents or information the Purchaser reasonably requests regarding such matters; and
 - 6.2.2. Promptly notify the Purchaser on becoming aware of the fulfilment of any Condition Precedent (and provide reasonable evidence of such fulfilment, including a copy of any court order contemplated in clause 6.1.2 and a copy of the executed Surrender Deed), or if any of the Conditions Precedent are or become incapable of being fulfilled.
- 6.3. The Conditions Precedent set out in:
- 6.3.1. Clauses 6.1.2, 6.1.4 and 6.1.5 have been inserted for the benefit of the Purchaser.
 - 6.3.2. Clauses 6.1.1 and 6.1.3 have been inserted for the benefit of both the Vendor and the Purchaser.
- 6.4. If any of the Conditions Precedent are not fulfilled or (to the extent they are capable of waiver) waived in writing by the party or parties for whose benefit they have been included by the Condition Precedent End Date or such later date as the parties may agree in writing, the Purchaser or the Vendor may before fulfilment of all the Conditions Precedent terminate this Contract with immediate effect by giving written notice to the other party. Any waiver pursuant to this clause 6.4 will be irrevocable.
- 6.5. From the date of giving a notice specified in clause 6.4, and subject to clause 6.6, each party is relieved of any further obligation under this Contract, other than under clause 13, clause 14 and clause 23, which will survive termination.
- 6.6. Termination under clause 6.4 does not affect accrued rights arising from any breach of this Contract occurring before the termination.
- 6.7. The Vendor and the Receiver must each ensure that, from the date of this Contract until Settlement, neither of them does or permits to be done any of the following without the prior written consent of the Purchaser:
- 6.7.1. Dispose of, or grant an option or right of pre-emption to purchase, any interest in the Water Shares or the Allocation attached to the Water Shares.
 - 6.7.2. Grant a Security Interest over or in relation to the Water Shares or the Allocation attached to the Water Shares.
 - 6.7.3. Do or omit to do or cause or allow to be done or omitted to be done any act or thing which would result (or be likely to result) in a breach of any of the Warranties.
- 6.8. The Vendor must immediately notify the Purchaser in writing of any matter or thing which arises or becomes known to the Vendor before Settlement which constitutes (or would after the lapse of time constitute) a misrepresentation or

a breach of any of the Warranties given by the Vendor or the undertakings or other provisions of this Contract.

- 6.9. The Receiver must immediately notify the Purchaser in writing of any matter or thing which arises or becomes known to the Receiver before Settlement which constitutes (or would after the lapse of time constitute) a misrepresentation or a breach of any of the Warranties given by the Receiver or the undertakings or other provisions of this Contract.

7. TERMINATION

- 7.1. The Purchaser may immediately terminate this Contract by giving notice in writing to the Vendor if before Settlement any of the following occur:
- 7.1.1. Through no fault of the Purchaser, the Transfer of Water Share document produced by the Vendor at Settlement is due to expire in less than 14 days of the Settlement Date.
 - 7.1.2. Any breach of the Warranties comes to the notice of the Purchaser.
 - 7.1.3. The Vendor is in material breach of any obligation on its part under this Contract and, where that breach is capable of remedy, it is not remedied to the Purchaser's satisfaction within two (2) business days' of written notice by the Purchaser to the Vendor.
 - 7.1.4. With the exception of the court proceeding anticipated in clauses 6.1.2.1 and 6.1.2.2, being an application of the Liquidators, any litigation or arbitration proceedings being instituted or threatened by or against or otherwise involving the Vendor that would or might prevent the Purchaser from acquiring at Settlement the full legal and beneficial ownership of the Water Shares free and clear of all Security Interests in the manner envisaged by this Contract.
 - 7.1.5. With the exception of the court proceeding anticipated in clauses 6.1.2.1 and 6.1.2.2, being an application of the Liquidators, any Public Authority or court or any other person or organisation in any jurisdiction does any of the following:
 - 7.1.5.1 Institutes or threatens any action, suit or investigation to restrain, prohibit or otherwise challenge or interfere with the transactions contemplated under this Contract.
 - 7.1.5.2 Threatens to take any action as a result or in anticipation of the implementation of such transactions.
 - 7.1.5.3 Proposes or enacts any statute or regulation which would prohibit, materially restrict or materially delay implementation of the transactions contemplated by this Contract.
- 7.2. If the Purchaser elects to terminate this Contract in any of the circumstances mentioned in clause 7.1 then:
- 7.2.1. Any such termination by the Purchaser does not affect any other rights of the Purchaser.
 - 7.2.2. From the date of termination by the Purchaser each party is relieved of any further obligation under this Contract, other than under clause 13, clause 14 and clause 23, which will survive termination.

8. SETTLEMENT

- 8.1. If the Vendor fails to deliver any items which are due from it at Settlement on the Settlement Date, the Purchaser is entitled to terminate this Contract on giving ten (10) business days' prior written notice to the Vendor. Termination does not affect any other rights which the Purchaser may have. If the Vendor is able in the notice period to deliver the items in question then Settlement must be reconvened to allow it to do so.
- 8.2. If the Purchaser fails to deliver any items which are due from it at Settlement on the Settlement Date, the Vendor is entitled to terminate this agreement on giving ten (10) business days' prior written notice to the Purchaser. Termination does not affect any other rights which the Vendor may have. If the Purchaser is able in the notice period to deliver the items in question then Settlement must be reconvened to allow it to do so.
- 8.3. From the date of termination by a party in accordance with clause 8.1 or clause 8.2, and subject to clause 8.4, each party is relieved of any further obligation under this Contract, other than under clause 13, clause 14 and clause 23, which will survive termination.
- 8.4. Termination under clause 8.1 or clause 8.2 does not affect accrued rights arising from any breach of this Contract occurring before the termination.

9. ACKNOWLEDGEMENT

- 9.1. The Purchaser acknowledges that the Vendor makes no representation or warranty as to the volume of water allocated to the Water Shares and available to the Purchaser as a result of this Contract. The Purchaser acknowledges that the Price has been determined without reference to any such Allocation and that the Purchaser has made his own judgement as to water availability applicable to the Water Shares proposed to be transferred. The Vendor shall cease using any water allocation after the Settlement Date.
- 9.2. The Purchaser acknowledges that any Allocation which may be assigned pursuant to this Contract may vary from any current Allocation applicable to the Purchaser's water district. The Purchaser receives any Allocation which may be assigned at a level applied to the Vendor's water district.
- 9.3. The Purchaser acknowledges that any Allocation made with respect to the Water Shares shall hold the attributes of the Vendor's water district.
- 9.4. The parties acknowledge and agree that each of the obligations, Warranties and undertakings set out in this Contract which is not fully performed at Settlement will continue in full force and effect after Settlement.

10. GST

- 10.1. The Price is a GST exclusive price.
- 10.2. The Vendor and the Purchaser agree that the sale of water under this Contract is a supply of water that is GST free in accordance with the Australian Taxation Office Ruling GSTR 2000/25 (as amended from time to time).
- 10.3. If the Vendor and the Purchaser are mistaken, and the sale of the water under this Contract is not a supply that satisfies ruling GSTR 2000/25 above then the Vendor may by notice in writing to the Purchaser direct that the Price is to be

increased as provided herein and the amount of that increase in the price will constitute a debt due and payable by the Purchaser to the Vendor on demand.

- 10.4. If any GST (within the meaning of the GST Act), is payable by the Vendor in respect of the supply of the water to the Purchaser, then the Price specified in this Contract ("original price") shall be increased so that after subtracting the GST liability of the Vendor on that increased price, result in the Vendor retaining the original price after payment of the GST liability.
- 10.5. The Vendor will do all things reasonably available to minimise any increase in the Price under this clause, and to assist the Purchaser to claim on a timely basis any input tax credits the Purchaser may be entitled to claim for the acquisition of the water.
- 10.6. This clause is an enduring clause which survives the day of supply of the water to the Purchaser and survives the termination of the Contract. The rights and obligations of the parties under above endure for 10 years from and including day of supply of water to the Purchaser.

11. APPORTIONMENT OF CHARGES LEVIED BY THE WATER AUTHORITY

- 11.1. The Vendor shall be responsible to pay all charges which are or may be levied by the Water Authority for the irrigation season current at the time of Settlement including any entitlement storage fee and no adjustment will be made against the Purchaser, or other amount be payable by the Purchaser, for the Entitlement Storage fee from the Settlement Date to the end of the rating year.
- 11.2. The Vendor shall receive the benefit of any government rebate, refund or assistance in relation to water charges.

12. PAYMENT OF FEES

- 12.1. The Vendor shall pay or allow to the Purchaser at Settlement:
 - 12.1.1. all fees to the Water Authority to complete any division of the water share, or alteration of the status of the water share to obtain the correct volume and status of the Water Shares sold pursuant to this Contract;
 - 12.1.2. all fees to the Water Authority to obtain Ministerial Consent;
 - 12.1.3. all discharge of mortgage fees or any other fees to provide unencumbered title at Settlement.
- 12.2. The Purchaser shall pay:
 - 12.2.1. all fees to register the Transfers of Water Shares at the Water Registry;
 - 12.2.2. all fees required to register Transfer of Water Allocation form (if applicable)

13. CONFIDENTIALITY

Both parties agree to keep confidential all the sale details of this Contract and shall not disclose any information to any other person except:-

- 13.1. The Water Authority.
- 13.2. Any professional adviser, agent, contractor or employee of a party.
- 13.3. Any finance institution who may have or may take an interest in the Water Share.
- 13.4. Any party named in the Particulars of Sale.
- 13.5. To any other party where the information must be disclosed to give effect to this Contract or such disclosure is otherwise required by law.
- 13.6. Where both parties consent in writing to the disclosure.
- 13.7. Any disclosure required by any applicable stock exchange listing rules.
- 13.8. Any disclosure to the Court in connection with any application contemplated by this Contract.
- 13.9. Any disclosure of any information which is a matter of public record.
- 13.10. Any disclosure required by the Receivers to Permanent.

14. DEPOSIT

- 14.1. A Deposit received by any person and any interest earned thereon shall be held as a stakeholder as if Division 3 of Part 1 (excluding Section 27) of the Sale of Land Act 1962 applied and as if a reference in that division to land means a reference to the Water Shares hereby sold, subject always to the other rules set out in this clause 14.
- 14.2. The parties authorise the Vendor's Solicitor to invest the Deposit (less any amount retained on account of commission or other moneys to which the Vendor's Solicitor is or will be entitled, being an amount not exceeding \$500 in aggregate) into the interest-bearing trust account maintained by the Vendors' solicitors with an Australian Bank approved to hold "Controlled Money" under the Legal Practice Act 2004 until such time as the Deposit is to be forfeited to the Vendor or returned to the Purchaser in accordance with this Contract.
- 14.3. For the purposes of this clause 14, 'interest' means the interest actually earned on the Deposit, less all stamp and other duty, taxes and bank charges properly payable for the investment of the Deposit in the trust account referred to in clause 14.2.
- 14.4. Interest earned on the Deposit while held by the Vendor's Solicitor accrues for the benefit of:
 - 14.4.1. the Vendor, where the Deposit is forfeited to the Vendor in accordance with clause 14.5; and
 - 14.4.2. the Purchaser, where the Deposit is returned to the Purchaser in accordance with clause 14.5.
- 14.5. The Deposit must be forfeited to the Vendor or returned to the Purchaser as follows:
 - 14.5.1. If the Purchaser lawfully terminates this Contract, including under clause 6.4, clause 7.1, clause 8.1 or clause 18, or if the sale and purchase of the Water Shares does not proceed to Settlement for any

other reason including termination by the Vendor under clause 6.4 (other than solely as a result of a default by the Purchaser) the Deposit must be returned to the Purchaser.

14.5.2. If Settlement occurs under this Contract, or if the Vendor lawfully terminates this Contract in respect of a default by the Purchaser, the Deposit shall be forfeited to the Vendor.

14.6. The Vendor and the Purchaser must give an irrevocable written direction to the Vendor's Solicitor to return the Deposit to the Purchaser or forfeit the Deposit to the Vendor in accordance with clause 14.5 at Settlement, or within two (2) business days of the termination of this Contract, as the case may be.

14.7. Each party must provide their tax file number to the Vendor's Solicitor within five (5) business days of executing this Contract.

14.8. The parties release the Vendor's Solicitor for any claim resulting from the investment or failure to invest the deposit.

15. COUNTERPART/EXECUTION

15.1. This Contract may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

15.2. This Contract may be executed by one or more of the parties, executing a counterpart, which may be a facsimile copy of this Contract, and transmitting that executed counterpart by facsimile to the party or parties, which upon either the sender's transmission record indicating that the same was duly received without error, or the receipt by the other party or by one of the other parties of the executed Contract by the sender, shall be taken as conclusive evidence of the execution of the Contract by that party.

15.3. The parties covenant to be bound by this Contract being executed in counterparts in accordance with this clause.

16. SERVICE OF NOTICE

16.1. Any notice or communication given to a party under this Contract is only given if it is in writing and sent in one of the following ways:

16.1.1. delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below;

16.1.2. faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

Vendor / Receiver

Address: c/- Pricewaterhouse Coopers, Level 23,
2 Southbank Boulevard, Southbank, 3006

Fax number: (03) 8613 2843

Attention: Michael Fung and Paul Kirk

Purchaser

Address: c/o Kilter Pty Ltd, 36 Wattle St Bendigo VIC
3550

Fax number: (03) 5441 8185

Attention: Euan Friday and Craig Feuerherdt

- 16.2. If a party gives the other party three business days notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 16.3. Any notice or communication is to be treated as given at the following time:
 - 16.3.1. If it is delivered, when it is left at the relevant address.
 - 16.3.2. If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.
 - 16.3.3. If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 16.4. However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

17. SEVERANCE

Each provision of this Contract is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Contract in the relevant jurisdiction, but the rest of this Contract will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

18. DEFAULT

- 18.1. Time is of the essence in relation to the performance by each party of all of its obligations set out in this Contract. If the Purchaser defaults in payment of any money (other than in accordance with its rights under this Contract and at law), the Vendor may sue for the unpaid money immediately without mediating and without giving notice and without affecting any other rights.
- 18.2. If either party defaults, the other party may demand:-
 - 18.2.1. Reasonable expenses incurred properly, directly and necessarily as a result of the default;
 - 18.2.2. Interest on any money overdue during the period of default at a rate of two per centum (2%) higher than the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 as at the date of default and the Price is altered accordingly.
- 18.3. If either party defaults, the other party may serve a notice which:-
 - 18.3.1. Specifies the default, expenses attributable to the default and the rate of any interest; and
 - 18.3.2. States that this Contract will be ended without further notice unless the default is remedied and the expenses and any interest are paid; and
 - 18.3.3. Allows not less than ten (10) business days for the remedy of the default and payment; and

- 18.3.4. If served by the Vendor, states which options the Vendor intends to exercise under this clause.
- 18.4. If the notice is not complied with, the Contract is ended and no further notice is necessary.
- 18.5. Nothing in this clause 18 limits in any way the Purchaser's rights under clause 6.4 or clause 7 or either party's rights under clause 8.
- 18.6. If the Vendor ends the Contract in accordance with clauses 18.3 and 18.4:-
- 18.6.1. All moneys payable become immediately due and payable at the option of the Vendor; and
- 18.6.2. The Vendor may also either:-
- 18.6.2.1 Retain the deposit and resell the Water Shares by private contract with all expenses and any deficiency in price or resale being payable by the Purchaser by way of damages; or
- 18.6.2.2 Retain the deposit and the Water Shares and sue for damages from the Purchaser for breach of this Contract.
- 18.6.3. Each party is relieved of any further obligation under this Contract, other than under clause 13, clause 14 and clause 23, which will survive termination.

19. MEDIATION

- 19.1. Subject always to clause 19.6, the procedures set out below must be followed in relation to the resolution of a dispute concerning this Contract, its subject matter or the rights or liabilities of the parties to this Contract.
- 19.1.1. A party to this Contract claiming that a dispute ("the dispute") has arisen under or in relation to this Contract must give written notice to the other party to this Contract specifying the nature of the dispute.
- 19.1.2. On receipt of that notice by that other party, the parties to this Contract must endeavour in good faith to resolve the dispute expeditiously using mediation.
- 19.1.3. The parties must jointly appoint a Mediator and agree on the Mediator's remuneration. If the parties fail to agree on the appointment and remuneration within five (5) days of service of the notice or any other time that the parties agree to in writing, either party may apply to the President of the Law Institute of Victoria or the President's nominee to appoint a Mediator and determine the Mediator's remuneration.
- 19.1.4. The parties must observe the instructions of the Mediator about the conduct of the mediation.
- 19.1.5. If the dispute is not resolved within:
- 19.1.5.1 five (5) business days after the Mediator is appointed, or any other time that the parties agree to in writing; or

19.1.5.2 ten (10) business days of a notice being given in accordance with clause 19.1.1, or any other time that the parties agree to in writing,

whichever occurs sooner, the mediation ceases and either party is free to pursue its rights at law.

- 19.2. Each party must pay an equal share of the costs of the mediation to the Mediator and each party agrees to indemnify the Mediator against liability in respect of the mediation of the dispute.
- 19.3. If the dispute is resolved, each party must sign the terms of the agreement and the terms are binding on the parties and override the terms of this Contract if there is any conflict. The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement or other resolution of the dispute.
- 19.4. The mediation procedure is confidential.
- 19.5. Any discussions and written statements between the parties and between the parties and the Mediator before or during the mediation procedure, cannot be used in any legal proceedings.
- 19.6. Nothing in this clause 19 restricts or limits the right of either party to obtain interlocutory relief, or to terminate this Contract where this Contract provides such a right.

20. GENERAL

20.1. No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Contract.

20.2. Entire agreement

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

20.3. Amendment

This Contract may be amended or varied in writing executed by both parties.

20.4. No waiver

No failure to exercise or any delay in exercising any right, power or remedy by a party shall 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.

20.5. Governing law

This Contract is governed by the law in force in Victoria. Each party submits to the non-exclusive jurisdictions of the Courts of the State of Victoria in relation to this Contract.

20.6. Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing and stamping this Contract and any document related to this Contract.

20.7. Assignments and transfers

A party must not assign or transfer any of its rights or obligations under this Contract without the prior written consent of each of the other parties.

20.8. Joint and several liability and benefits

Except as otherwise set out in this Contract, any covenant, agreement, representation or warranty under this Contract by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

20.9. Approvals and consents

Unless this Contract expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions. Where this Contract refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

21. VENDOR AND RECEIVER WARRANTIES

The Vendor warrants, represents and undertakes to the Purchaser that as at the date of this Contract and continuously from the date of this Contract to the Settlement Date:

21.1. The Vendor is the sole responsible entity of TOT.

21.2. The Vendor is empowered by the TOT Trust Deed to:

21.2.1. own property and carry out its business; and

21.2.2. enter into and perform its obligations under this Contract,

in its capacity as responsible entity of TOT, and this power is not limited or constrained in any manner including as a result of representations made in any disclosure document issued by the Vendor or TOT or made in any other way by or on behalf of the Vendor or TOT.

21.3. 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, and the execution, delivery and performance of this Contract will not contravene:

21.3.1. any law, regulation, order, judgment or decree of any court or governmental agency which is binding upon it or any of its property;

21.3.2. any provision of its constitution, the TOT Constitution or equivalent documents; or

21.3.3. any agreement, undertaking, instrument or arrangement which is binding on it or any of its property.

- 21.4. The Vendor has taken all corporate or other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Contract.
- 21.5. The Vendor is duly incorporated and validly exists under the law of its place of incorporation.
- 21.6. At Settlement the Purchaser will acquire the full legal and beneficial ownership of the Water Shares free and clear of all Security Interests.
- 21.7. The Surrender Deed will irrevocably extinguish all of the legal and beneficial rights of Growers in respect of the Water Shares the subject of this Contract and any Allocation attached to those Water Shares.
- 21.8. This Contract constitutes a legal and binding obligation of the Vendor enforceable in accordance with its terms by appropriate legal remedy.

The Receiver warrants, represents and undertakes to the Purchaser that as at the date of this Contract and continuously from the date of this Contract to the Settlement Date:

- 21.9. The Receiver is validly and legally appointed as a receiver and manager of the Water Shares in accordance with the requirements of the Corporations Act.
- 21.10. The Receiver has full power and authority to cause the Vendor to enter into this Contract and has taken all necessary action to authorise the execution, delivery and performance of this Contract by the Vendor in accordance with its terms.
- 21.11. To the best of the Receiver's knowledge (after due and proper enquiry), the warranties and representations given by the Vendor under clauses 21.1 to 21.8 are true and accurate.
- 21.12. To the best of the Receiver's knowledge (after due and proper enquiry), the Summary of Bella Vista water rights (as attached at Schedule 1) is a true, complete and accurate statement regarding:
 - 21.12.1. All legal and beneficial interests in the Water Shares at as the date of this Contract.
 - 21.12.2. The proposed method of extinguishing all of those interests.

22. LIABILITY OF RECEIVER AND MANAGER

- 22.1. The Receiver enters into this agreement solely in its capacity as Receiver and Manager of Align Funds Management Pty Ltd (ACN 105 684 231) ('AFM') formerly known as Orchard Investments Management Limited in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed) and will undertake all covenants, terms and conditions on its part to be observed or performed solely in that capacity.
- 22.2. No debt, duty, liability or obligation arising under this agreement will accrue to, or be enforceable against the Receiver in his personal capacity, save for in respect of the Warranties given by the Receiver in clause 21, and except in the event of fraud or dishonesty on the Receiver's part. The Receiver ceases

to have any obligations and liabilities under this agreement for acts or omissions occurring after it ceases for any reason to be receiver of the Vendor.

- 22.3. The Receiver is not required to satisfy any liability arising under or in respect of this Contract out of any funds, property or assets other than to the extent to which it is actually indemnified by the Vendor. However, this does not apply to the extent that the Receiver's right to be indemnified by the Vendor has been reduced by reason of fraud, negligence or breach by the Receiver.
- 22.4. If any party to this Contract other than the Receiver does not recover all money owing to it in under this Contract, it may not seek to recover the shortfall by bringing proceedings against the Receiver in his personal capacity or applying to have the Receiver wound up or proving in the winding up of the Receiver.
- 22.5. The Receiver is not obliged to do or refrain from doing anything under this Contract (including incurring any liability) unless its liability is limited in the same manner as set out in this Special Condition 22.3.

23. LIABILITY OF PURCHASER

- 23.1. The Purchaser enters into this Contract only in its capacity as trustee of the Trust and in no other capacity. A liability arising under or in connection with this Contract is limited to, and can be enforced against the Purchaser only to the extent to which it can be satisfied from the assets of the Trust out of which the Purchaser is actually indemnified for the liability.
- 23.2. Neither the Vendor nor the Receiver may sue the Purchaser in any capacity other than as trustee of the Trust, including to seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Purchaser or to prove in any liquidation, administration or arrangement of or affecting the Purchaser (except in relation to property of the Trust).
- 23.3. The Vendor and the Receiver acknowledge that the Purchaser has no right to an indemnity from the beneficiaries of the Trust for the liabilities or obligations of the Purchaser.
- 23.4. Clauses 23.2 and 23.3 do not apply to any obligation or liability of the Purchaser to the extent that it is not satisfied because, by operation of law, there is a reduction in the extent of the Purchaser's indemnification out of the assets of the Trust as a result of the Purchaser's fraud, negligence or breach of trust.

24. CO-OPERATION

- 24.1. Each party agrees to co-operate and liaise fully with the other party, in order to ensure that this Contract is implemented effectively.
- 24.2. Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Contract and all transactions incidental to it..

25. APPLICATIONS

- 25.1. The parties acknowledge that the Vendor will lodge the Application for Ministerial Consent within five (5) business days of the settlement of the Land

Contract.

Schedule 1: Summary of Bella Vista water rights

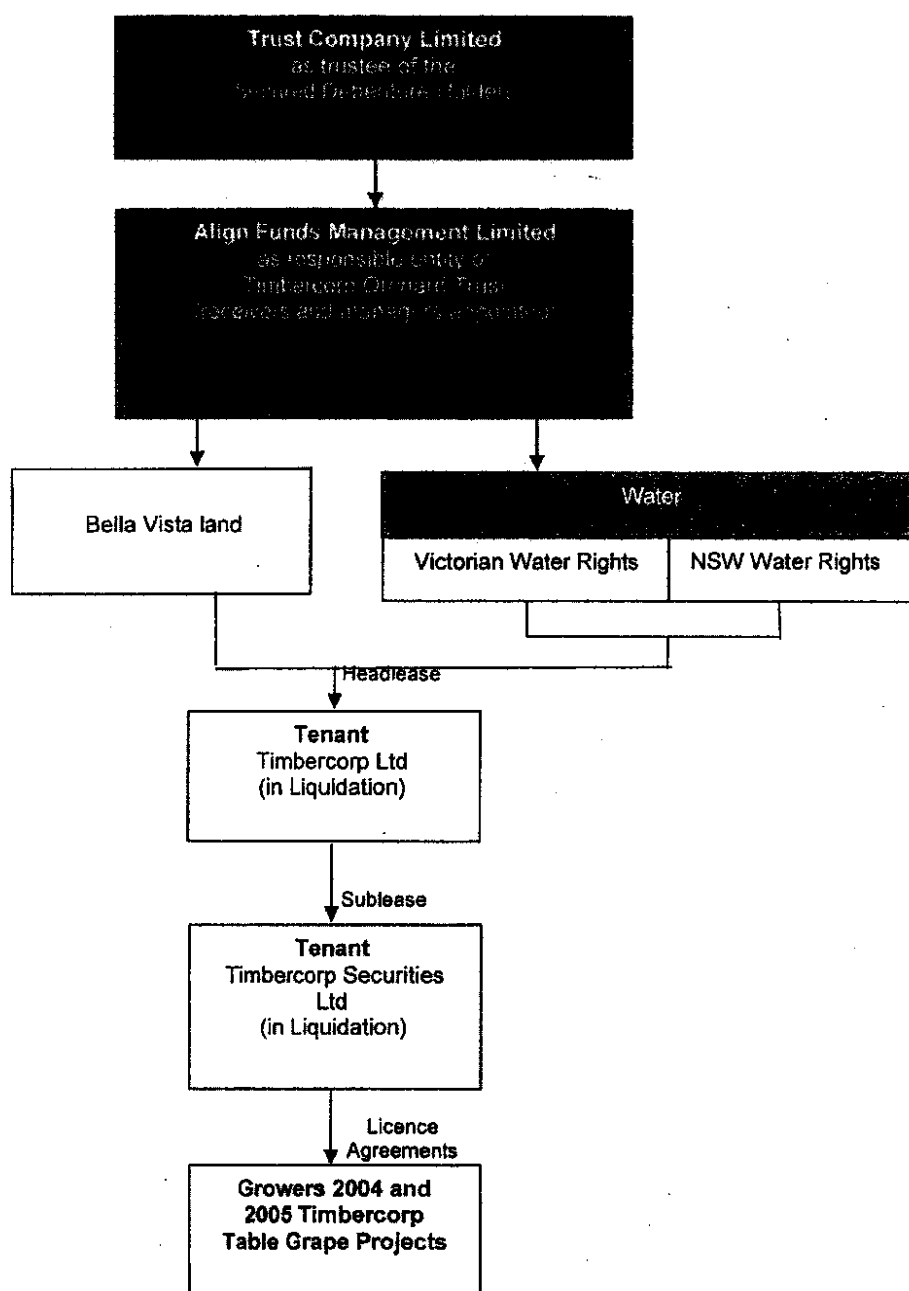
Capitalised terms defined in this Schedule 1 only apply for the purposes of interpreting this Schedule 1 and do not apply for the remainder of this Contract.

Sale of water entitlements associated with the Bella Vista property

This summary is prepared for VicSuper Ecosystem Services Pty Ltd for the purposes of explaining the process of removing encumbrances from the permanent water entitlement attached to Water Share Identification Numbers:

- WEE045487; and
- WEE018428 (together, the **Water**).

1. Relevant Parties and Assets



1.1 Table Grape Projects

- The Bella Vista land and Water are the subject of two registered investments schemes (**Table Grape Projects**).
- The liquidators of Timbercorp Securities Limited intend to terminate, surrender or extinguish all of the Growers' rights in the Table Grape Projects to permit a sale of the assets of the Table Grape Projects on an unencumbered basis.
- There are competing claims to the assets of the Table Grape Projects – claims from the investors in the Table Grape Projects (**Growers**) and Trust Company Limited as trustee of secured Debenture Holders.
- The following precedent was developed in resolving the competing claims when selling the assets of other Timbercorp investment schemes (ie, certain almond and olive properties).

1.2 Removing Growers' rights

- The liquidators are required to apply to the Court seeking:
 - directions from the Court that they are justified in surrendering the Grower Licences which has the effect of extinguishing the Growers' rights in connection with the sale of assets; and
 - orders determining the rights of all and any persons to all or any part of the net proceeds of the sale under the relevant asset contracts.
- The liquidators cannot make an application to the Court without providing the Court with executed sale contracts for the land and the Water.
- Under the terms of the Surrender Deed, the Growers' rights are only extinguished with effect on and from settlement of the land.
 - This is to ensure that the Growers' rights are not removed before receipt of payment for the asset over which they have a right.
- Therefore Align can only sell unencumbered water on and from settlement of the land (expected to be 28 February 2011).