

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

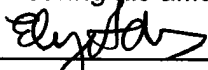
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120339854

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-12**' 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-12': a true copy of the New
South Wales Water Sale
Contract**

Contract for the sale of water access licence - 2005 edition

(a choice printed in BLOCK CAPITALS applies unless a different choice is marked)

TERM

MEANING OF TERM

Vendor's agent (if more than one, the first named)	Name PAUL SMITH WATER SALES Address 73 Perrin Street Robinvale 3549	Phone 03 5026 3393 Fax 03 5026 3640 Ref
Vendor	Name ALIGN FUNDS MANAGEMENT PTY LTD (formerly known as Orchard Investments Management Limited) in its capacity as the responsible entity of the Timbercorp Orchard Trust (Receivers and Managers Appointed) Address c/- PricewaterhouseCoopers, Level 23, 2 Southbank Boulevard, Southbank, 3006	ACN/ARBN 105 684 231 ABN 34 105 684 231
Vendor's Solicitor	Name DAWES & VARY PTY LTD Address 51-55 Heygarth Street, Echuca DX DX 62501 Echuca Email lschuyler@dawes-vary.com.au	Phone 03 5482 2555 Fax 03 5482 5739 Ref LS:MD:20103698
Deposit	Invest deposit <input type="checkbox"/> NO <input checked="" type="checkbox"/> yes	
Completion date	Refer to Special Condition 30	
The Licence	WAL No. 21482	If part only, specify part:
Water Account	Amount at date of contract: Refer to Special Condition 33	
Interdependent Contract	<input type="checkbox"/> NO <input checked="" type="checkbox"/> yes (clause 19) If yes - particulars: Vendor: Refer to Special Condition 31 Purchaser: Land:	
Subdivision	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes	
Change to Licence re Water Supply Work Approval	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes (clause 21) If yes - Approval for water supply work: Reference:	
Subject to Term Transfer	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes	
Purchaser If more than one, as	Name TANDOU LTD Address 31 Alan Mathews Drive, Mildura 3500 <input type="checkbox"/> JOINT TENANTS <input type="checkbox"/> tenants in common (in equal shares unless otherwise stated)	ACN/ARBN 001 014 562 ABN
Purchaser's Solicitor	Name HARDINGS Address First Floor, 1 York Street, Sydney 2000 DX Email mtreaby@hardings.com.au	Phone 02 9247 8541 Fax 02 9251 2451 Ref JPD:DM:100440
Price	\$ 1,387,200.00	Apportioned as in clause 29.
Deposit	\$ 69,360.00	
Balance	\$ 1,317,840.00	
Contract date	22 December 2010 (If not stated, the date this contract was made)	

SIGNATURES:

Vendor

Purchaser

Witness

Witness

Contract for the sale of water access licence - 2005 edition

(a choice printed in BLOCK CAPITALS applies unless a different choice is marked)

TERM	MEANING OF TERM
Vendor's agent (if more than one, the first named)	Name PAUL SMITH WATER SALES Phone 03 5026 3393 Address 73 Perrin Street Fax 03 5026 3640 Robinvale 3549 Ref
Vendor	Name ALIGN FUNDS MANAGEMENT PTY LTD ACN/ARBN 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) Address c/- PricewaterhouseCoopers, Level 23, 2 ABN 34 105 684 231 Southbank Boulevard, Southbank, 3006
Vendor's Solicitor	Name DAWES & VARY PTY LTD Phone 03 5482 2555 Address 51-55 Heygarth Street, Echuca Fax 03 5482 5739 DX DX 62501 Echuca Ref LS:MD:20103698 Email lschuyler@dawes-vary.com.au
Deposit	Invest deposit <input type="checkbox"/> NO <input checked="" type="checkbox"/> yes
Completion date	Refer to Special Condition 30
The Licence	WAL No. 21482 If part only, specify part:
Water Account	Amount at date of contract: Refer to Special Condition 33
Interdependent Contract	<input type="checkbox"/> NO <input checked="" type="checkbox"/> yes (clause 19) If yes – particulars: Vendor: Refer to Special Condition 31 Purchaser: Land:
Subdivision	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes
Change to Licence re Water Supply Work Approval	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes (clause 21) If yes - Approval for water supply work: Reference:
Subject to Term Transfer	<input checked="" type="checkbox"/> NO <input type="checkbox"/> yes
Purchaser if more than one, as	Name TANDOU LTD ACN/ARBN 001 014 562 Address 31 Alan Mathews Drive, Mildura 3500 ABN <input type="checkbox"/> JOINT TENANTS <input type="checkbox"/> tenants in common (in equal shares unless otherwise stated)
Purchaser's Solicitor	Name HARDINGS Phone 02 9247 8541 Address First Floor, 1 York Street, Sydney 2000 Fax 02 9251 2451 DX Ref JPD:DM:100440 Email mtreeby@hardings.com.au
Price	\$ 1,387,200.00 Apportioned as in clause 29.
Deposit	\$ 69,360.00
Balance	\$ 1,317,840.00
Contract date	28 December 2010 (if not stated, the date this contract was made)

SIGNATURES:

Vendor

Witness

Purchaser

Witness



**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

KATHRYN MACAULAY

Name of witness (print)

ALIGN FUNDS

Name of Receiver

SIGNED 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

KATHRYN MACAULAY

Name of Witness (print)



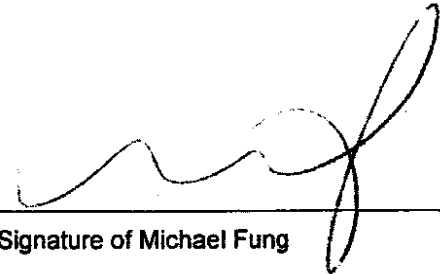
SIGNED by MICHAEL FUNG in his capacity
as Receiver and Manager of Align Funds
Management Limited in its capacity as
responsible entity of the Timbercorp Orchard
Trust (Receivers & Managers Appointed) in
the presence of:



Witness

KATHRYN MACAULAY

Name of Witness (print)



Signature of Michael Fung

Contract for the sale of water access licence – 2005 Edition

(A choice printed in BLOCK CAPITALS applies unless a different choice is marked)

TERM	MEANING OF TERM
Vendor's agent (If more than one, the first named)	Name Address Phone Fax Ref
Vendor	Name Address ACN/ARBN ABN
Vendor's Solicitor	Name Address DX Phone Fax Ref
Deposit	Invest deposit NO <input type="checkbox"/> yes <input type="checkbox"/>
Completion date	The day after the contract date (clauses 22 and 23)
The Licence	WAL No. If part only specify part:
Water Account	Amount at date of contract: megalitres
Interdependent Contract	NO <input type="checkbox"/> yes <input type="checkbox"/> (clause 19) If yes – particulars: Vendor: Purchaser: Land:
Subdivision	NO <input type="checkbox"/> yes <input type="checkbox"/> (clause 20)
Change to Licence re Water Supply Work Approval	NO <input type="checkbox"/> yes <input type="checkbox"/> (clause 21) If yes – Approval for water supply work: Reference:
Subject to Term Transfer	NO <input type="checkbox"/> yes <input type="checkbox"/>
Purchaser	Name Address ACN/ARBN ABN
If more than one, as	<input type="checkbox"/> JOINT TENANTS <input type="checkbox"/> tenants in common (in equal shares unless otherwise stated)
Purchaser's Solicitor	Name Address DX Phone Fax Ref
Price	\$ Apportioned as in clause 29.
Deposit	\$
Balance	\$
Contract date	(if not stated, the date this contract was made)

SIGNATURES

Vendor

Witness

Purchaser

Witness

DOCUMENTS (copy of document attached if marked)

- ☐ Certificate for the WAL
- ☐ Approval
- ☐ Other (specify)

AUCTION - CONDITIONS OF SALE

- (a) The reserve price must be given in writing to the auctioneer by the *vendor* before the auction commences.
- (b) A bid for the *vendor* cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the *vendor*.
- (c) The highest bidder is the *purchaser*, subject to any reserve price.
- (d) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
- (e) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the *vendor*.
- (f) A bidder is taken to be a principal unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person.
- (g) A bid cannot be made or accepted after the fall of the hammer.
- (h) As soon as practicable after the fall of the hammer the *purchaser* is to sign this contract.

Where the auction includes **residential property** or **rural land** (as these terms are used in the *Property Stock and Business Agents Act 2002*) the following additional conditions of sale apply:

- (i) All bidders must be registered in the Bidders Record and must display an identifying number when making a bid;
- (j) One bid only may be made by or on behalf of the *vendor*. This includes a bid made by the auctioneer on behalf of the *vendor*;
- (k) When making a bid on behalf of the *vendor* or accepting a bid made by or on behalf of the *vendor*, the auctioneer must clearly state that the bid was made by or on behalf of the *vendor* or auctioneer.

The Vendor sells and the Purchaser buys the Licence at the price subject to the following terms and conditions:

1 Interpretation

<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 New South Wales 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>DNR</i> -	Department of Natural Resources or any other department or authority replacing that department;
<i>document of title</i> -	document relevant to the title or the passing of title;
<i>interdependent contract</i> -	the contract described in clause 19.1;
<i>licence</i> -	the WAL sold under this Contract (unless the context otherwise requires) and where part only of a WAL is sold, that part which is sold (unless the context otherwise requires);
<i>purchaser</i> -	the person named as such on page 1 of this contract;
<i>register</i> -	the register of WALs administered by Land and Property Information;
<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 - <ul style="list-style-type: none">• 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>terminate</i> -	terminate this contract for breach;
<i>vendor</i> -	the person named as such on page 1 of this contract;
<i>WAL</i> -	Water Access Licence issued pursuant to the WMA;
<i>water account</i> -	the account administered by State Water with respect to the licence which inter alia sets out the current water allocation available to be used by the holder of the licence;
<i>WMA</i> -	the Water Management Act 2000 (as amended) and the regulations made under it;
<i>WSP</i> -	the water sharing plan applicable to the WAL.

2 The deposit

- 2.1 Unless the contract otherwise provides the purchaser must pay the deposit on the making of this contract to the depositholder as stakeholder and in this regard time is essential.
- 2.2 If this contract requires the purchaser to pay the deposit at a later time, that later time is essential.
- 2.3 If the whole of the deposit is not paid on time or if any cheque tendered for 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.

3 Investment of deposit

If the vendor and purchaser agree that the deposit is to be invested the vendor must procure the depositholder to invest the deposit with a bank in an interest bearing account in New South Wales at call or for a term which expires on or before the completion date and to pay the interest to the parties equally after deductions of all proper taxes and financial institution charges. Such deposit is invested at the risk of the party who becomes entitled thereto.

4 Transfer

- 4.1 The purchaser must serve the transfer in the prescribed form at least 14 days before the completion date.
- 4.2 If any information required to complete the transfer is not disclosed in this contract the vendor must provide that information upon request by the purchaser.
- 4.3 If the purchaser serves a transfer in which the transferee is not the purchaser then the purchaser must give to the vendor a direction signed by the purchaser for this form of transfer.

5 Requisitions

If the *purchaser* is or becomes entitled to make a requisition or objection, the *purchaser* can make it only by serving it –

- 5.1 if it arises out of this contract or is a general requisition or objection about the *licence* or its title, within 21 days after the date of this contract;
- 5.2 if it arises out of anything served by the *vendor*, within 21 days after the later of the date of service and the date of this contract;
- 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 *licence*, the title, the *water account* 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 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 3 at call;
 - 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 any 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 is paid to those parties; 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 *licence* 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 any other charges or taxes 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 Adjustments

10.1 Unless otherwise agreed the *vendor* shall be liable up to the *completion date* for all outgoings in relation to the *WAL* and for all charges for water used by the *vendor* under the *WAL* after which date the *purchaser* will be liable and will indemnify the *vendor* against any such liability.

10.2 The parties must make any necessary adjustment on completion.

11 Vendor's water account

11.1 The *vendor* warrants that the amount in the *water account* shall be the same at the *completion date* as stated in this contract unless –

11.1.1 the amount in the *water account* has been varied under the *WMA*; or

11.1.2 either party is entitled to use any of the allocation either pursuant to any conditions of this contract or other agreement between them and uses the allocation in accordance therewith.

11.2 Upon completion if so required by the *purchaser* the *vendor* shall furnish to the *purchaser* a written authority addressed to *DNR* or *State Water* authorising the *purchaser* to take water from the allocation prior to the registration of the transfer of the *licence* on the *register*.

12 Completion

12.1 On completion the *vendor* must give the *purchaser* any document of title that relates to the *licence*.

12.2 If on completion the *vendor* has possession or control of a document of title that relates also to *licence(s)* other than the *licence* the *vendor* must produce it as and when necessary.

12.3 On completion the *vendor* must cause the legal title to the *licence* to pass to the *purchaser* free of any mortgage or other interest subject to any registration.

12.4 The legal title to the *licence* does not pass before completion.

12.5 If the *vendor* gives the *purchaser* a document (other than the transfer) that needs to be lodged for registration the *vendor* must pay the lodgement fee to the *purchaser* plus another 20% of that fee.

13 Purchaser's obligations on completion

13.1 Upon completion the *purchaser* must pay to the *vendor* by *settlement cheque* the purchase price less any deposit paid and subject to any adjustments to be made pursuant to this contract.

13.2 If the *vendor* requires more than 5 *settlement cheques* the *vendor* must pay \$10.00 for each extra *cheque*.

13.3 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.

13.4 On completion the deposit belongs to the *vendor*.

14 Place for completion

Unless otherwise stated in this contract completion must take place –

14.1 If this contract is interdependent with a contract for sale of land, at the place where that contract is to be completed;

14.2 If there is no *interdependent contract* –

14.2.1 at the place stipulated for completion in this contract; or

14.2.2 if none is stated, at the address nominated by the first mortgagee of the *licence*, or

14.2.3 if there is no mortgage of the *licence* at the address of the *vendor's* solicitor stated in this contract.

15 Rescission

15.1 If this contract expressly gives a party a right to *rescind* the party can exercise that right -

15.1.1 only by *serving* a notice before completion; and

15.1.2 in spite of any making of a claim or requisition, any attempt to satisfy a claim or requisition, any arbitration, litigation, mediation or registration.

15.2 Unless otherwise stated in this contract if a party exercises a right to *rescind* expressly given by this contract or any legislation -

15.2.1 the deposit and any other money paid by the *purchaser* under this contract must be refunded;

15.2.2 the *vendor* can claim for a reasonable adjustment if the *purchaser* has used any water allocation standing to the credit of the *water account*;

15.2.3 a party can claim for damages, costs or expenses arising out of a breach of this contract; and

15.2.4 a party will not otherwise be liable to pay the other party any damages, costs or expenses.

16 Miscellaneous

16.1 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.

16.2 Anything attached to this contract is part of this contract.

16.3 If a party consists of 2 or more persons, this contract benefits and binds them separately and together.

16.4 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.

16.5 A document under or relating to this contract is -

16.5.1 signed by a party if it is signed by the party or the party's solicitor (apart from a direction under clause 4.3);

16.5.2 served if it is served by the party or the party's solicitor;

16.5.3 served if it is served on the party's solicitor, even if the party has died or any of them has died;

16.5.4 served if it is served in any manner provided in s170 of the Conveyancing Act 1919;

16.5.5 served if it is sent by fax to the party's solicitor, unless it is not received;

16.5.6 served on a person if it (or a copy of it) comes into the possession of the person; and

16.5.7 served at the earliest time it is served, if it is served more than once.

16.6 An obligation to pay an expense of another party of doing something is an obligation to pay -

16.6.1 if the party does the thing personally - the reasonable cost of getting someone else to do it;

16.6.2 if the party pays someone else to do the thing - the amount paid, to the extent it is reasonable.

16.7 A reference of any legislation includes a reference to any corresponding later legislation.

16.8 Each party must do whatever is necessary after completion to carry out the party's obligations under this contract.

17 Time limits in these provisions

17.1 If the time for something to be done or to happen is not stated in these provisions, it is a reasonable time.

17.2 If there are conflicting times for something to be done or to happen, the latest of those times applies.

17.3 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.

17.4 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.

17.5 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).

17.6 Normally, the time by which something must be done is fixed but not essential.

18 Foreign Acquisitions and Takeovers Act 1975

18.1 The *purchaser* promises that the provisions of the Foreign Acquisitions and Takeovers Act 1975 does not prohibit the *purchaser* from acquiring the *licence*.

18.2 This promise is essential and a breach of it entitles the *vendor* to *terminate*.

19 Interdependent Contract (Delete if not required)

19.1 This contract is interdependent with and shall be completed simultaneously with the contract made between

(as vendor)

and

(as purchaser)

In respect of land being:

(description)

19.2 If the *interdependent contract* is *rescinded* by the *purchaser* or the *vendor*, this contract shall because of that be deemed to have been *rescinded* by the *purchaser* or the *vendor* under this contract and the provisions of clause 15 shall apply.

19.3 If the *interdependent contract* is *terminated* by the *purchaser* or the *vendor*, this contract shall because of that be deemed to have been *terminated* by the *purchaser* or the *vendor* under this contract who as the case may be shall be entitled to claim damages for breach of this contract.

20 Subdivision (Delete if not required)

20.1 This clause only applies if part only of the share component of the *vendor's licence* is being sold.

20.2 The *vendor* must within 7 days after the date hereof lodge with *DNR* an application under Section 71P of the *WMA* and must do or procure the doing of everything reasonable to have the subdivision of the *licence* approved 90 days after the date of this contract.

20.3 The *purchaser* shall if so required by the *vendor* join in the application and furnish all information as may be required for proper consideration of the application by *DNR*.

20.4 If the application is not approved within such period of 90 days or prior to the expiration of that period is rejected then provided the parties have complied with all obligations pursuant to this clause, either party can *rescind* this contract and the provisions of clause 15 shall apply.

21 Nominated works on Licence (Delete if not required)

21.1 This contract is subject to approval being granted by *DNR* to amend the *licence* to vary or remove the water supply work nominated thereon and the *purchaser* must within 7 days after the date of this contract lodge with *DNR* an application under Section 71W of the *WMA* and must do or procure the doing of everything reasonable to have the application approved within 90 days after the date of this contract.

21.2 The *vendor* shall join in the application if the *vendor's* water supply work is to be removed from the *licence*.

21.3 Where the application is to vary the water supply work nominated on the *licence* the approval for such water supply work to be nominated is as disclosed in this contract.

21.4 If the application is not approved within such period of 90 days or prior to the expiration of such period is rejected then the *vendor* and (provided he has complied with all of his obligations pursuant to this clause) the *purchaser* can *rescind* this contract and the provisions of clause 15 shall apply.

22 Completion

22.1 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.

22.2 If an application is made under either or both of clauses 20 and 21 the *completion date* shall be the later of the *completion date* specified on the front page of this contract and 14 days after either the granting of the approval sought under clause 20 or 21 or the granting of the second to be granted of the approvals sought under clauses 20 and 21.

23 Purchaser's Indemnity

Following completion and until the transfer is registered on the *register* the *purchaser* hereby indemnifies the *vendor* against all claims or liability arising out of -

23.1 failure on the part of the *purchaser* or the *purchaser's* mortgagee to register the transfer of the *licence* sold under this contract within any time limit set by the *WMA* or *DNR*;

23.2 any breach of the terms and conditions of the *WMA*, the *licence* or any approval and resulting from any acts, omissions or default on the part of the *purchaser* or any person acting under or with authority or permission of the *purchaser*.

24 The Water Sharing Plan

The WAL is sold subject to all terms and conditions of the WSP and to any amendments to the WSP made prior to completion as to which the purchaser can make no requisition, objection or claim for compensation or terminate or rescind this contract.

25 Amendments to the WAL

The vendor will not make any application to change any particulars shown on the WAL or any of its terms and conditions without the consent of the purchaser.

26 Statement of Title

26.1 The vendor must serve a statement of title to the WAL within 7 days after the contract date.

26.2 The statement may comprise a list of documents, events and facts (apart from a Will or Codicil) in date order if the list in respect of each document -

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

26.2.2 has attached a legible photocopy of it certified by the vendor's solicitor.

26.3 In the case of a replacement licence, the statement must commence with the grant of the former entitlement.

26.4 In the case of a licence granted pursuant to the WMA, the statement must commence with the grant of the WAL.

26.5 The purchaser does not have to serve the form of transfer of the WAL until after the vendor has served a proper statement of the title.

27 Covenants for Title

27.1 The vendor warrants as follows -

27.1.1 that the vendor has a good right to transfer the title;

27.1.2 that subject to the WMA, the licence can be used by the purchaser free of any interference from any third party;

27.1.3 that the title will be transferred free of any encumbrances;

27.1.4 the vendor and any person claiming title through the vendor will execute and effect any further assurances as might reasonably be required for transferring title to the WAL to the purchaser.

27.2 These warranties will not merge on completion.

28 General Warranties

28.1 The vendor warrants that at the date of completion -

28.1.1 the vendor will not be in breach of any conditions in the WAL or of any provisions of the WMA;

28.1.2 there will be no outstanding notices or orders concerning the suspension, cancellation or compulsory acquisition of the WAL; and

28.1.3 there will be no litigation proceedings or claims involving the WAL.

29 Apportionment of Purchase Price

The licence \$

Share Component (if included) \$

Vendor's water account (if included) \$

SPECIAL CONDITIONS

30. **Contract for the Sale of Water Access Licence – 2005 Edition The Law Society of NSW and REINSW Pre-printed Conditions**

30.1. The Vendor warrants that the Particulars, the Schedules and the General Conditions included in this Contract have not been modified, other than by the Special Conditions.

30.2. Clauses 11.1, 19, 20, 21, 25, 26, 27, 28 and 29 of the pre-printed conditions do not apply to this Contract.

30.3. Clause 1 of the of the pre-printed conditions is amended to include the following definitions:
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".

Condition Precedent End Date means one hundred and twenty (120) days after the date of this Contract, or any other later date as the parties may agree in writing.

Completion Date means within seven (7) business days of completion of the Land Contract and fulfilment of the Conditions Precedent specified in Special Condition 31.1.

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

Current Allocation means the remaining allocation standing in the Vendor's Water Account as at the Completion date.

Depositholder means the Vendor's solicitor.

General Conditions means Clauses 1 to 29 of the pre-printed conditions.

Particulars mean the Term and the corresponding Meaning of Term on page 1 of the Contract for the Sale of Water Access Licence – 2005 Edition The Law Society of NSW and REINSW.

Pool Price means the price quoted on the Watermove Exchange for the 1A Greater Goulburn Trading Zone.

Receiver means Michael Fung and Paul Kirk of PricewaterhouseCoopers in their capacity as Receiver and Manager of Align Funds Management Limited (ACN 105 684 231) 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).

Special Conditions mean Clauses 30 to Clause 44.

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).

Water Shares means the 867 units in WAL21482.

31. **Condition precedent**

31.1.. Completion under this Contract will not proceed unless and until the following condition (the **Condition Precedent**) is fulfilled or waived in accordance with this Contract:

- (a) **(Land Contract):** completion taking place under the Land Contract and if completion does not occur under that contract, no completion will take place.

Parties must cooperate

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

Specific obligations of co-operation

31.3. Without limiting the generality of Special Condition 31.2:

- (a) the Vendor must use all reasonable endeavours to procure the satisfaction of the Condition Precedent referred to in Special Condition 31.1 as soon as possible;
- (b) no party may take any action that would or would be likely to prevent or hinder the fulfilment of the Condition 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 Condition Precedent; and
 - (ii) promptly notify the other parties on becoming aware of the fulfilment of any Condition Precedent or any of the Condition Precedent becoming incapable of being fulfilled.

Waiver

31.4. The Condition Precedent may not be waived by any party.

Termination for non-satisfaction of Conditions Precedent

31.5. Subject to paragraph 31.6, the Purchaser or Vendor may terminate this Contract before Settlement if the Condition Precedent is not fulfilled, or they agree that the Condition Precedent is incapable of being fulfilled, on or before the Condition Precedent End Date.

31.6. The Purchaser or Vendor may only terminate under paragraph 31.5 if it has complied with Special Conditions 31.2 and 31.3 and subject to giving 2 Business Days written notice to the other party.

Effect of termination for non-satisfaction of Conditions Precedent

31.7. If this Contract is terminated pursuant to Special Condition 31.5, then:

- (a) each party is released from its continuing obligations under this Contract;
- (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 31.2 and 31.3 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.

32. Investment of Deposit

General Condition 3 is deleted and is substituted as follows:

If the Vendor and Purchaser agree that the deposit is to be invested the Vendor must procure the depositholder to invest the deposit with a bank in an interest bearing account in Victoria at call or for a term which expires on or before the completion date and to pay the interest to the parties equally after deductions of all proper taxes and financial institution charges. Such deposit is invested at the risk of the party who becomes entitled thereto.

33. Assignment of Rights Under Access Licence and Water Account

- 33.1. The Vendor must within seven (7) days after the date hereof execute an Application for Assignment of the Share Component under Section 71Q of the *WMA* ("Application") for the purpose of assigning 867 units from the Vendor's WAL to the Purchaser's WAL 21353, and lodge the Application with the *DNR* within twenty one (21) days of the date hereof.
- 33.2. The Vendor will pay the application fee to *DNR* for the purpose of obtaining approval of the application.
- 33.3. The assignment referred to in clause 33.1 must be approved within one hundred and twenty (120) days after the date of this Contract. The Purchaser may extend this period for a period of up to 30 days by written notice to the Vendor. Such notice must be given by the

Purchaser to the Vendor on or before the expiry of the initial one hundred and twenty (120) days.

- 33.4. If the approval referred to in clause 33.2 is not obtained within one hundred and twenty (120) days after the date of this Contract (or such further extended period in accordance with that clause), then either party may thereafter rescind this Contract by written notice to the other and the provisions of clause 15 will apply.
- 33.5. The Purchaser shall be entitled to the announced water allocation in respect of the Vendor's WAL for the 2010/11 water season ("the announced water allocation").
- 33.6. In the event that the water allocation to be transferred to the Purchaser on completion is below the announced water allocation, the Vendor agrees to a settlement adjustment (not an adjustment to the price) of the variance between the announced water allocation and the water allocation available to the Purchaser on completion, multiplied by the Pool Price as at the completion date or failing any record held for that date the closest day prior to the completion.
- 33.7. In the event that there is a dispute under this clause, the parties agree that Paul Smith of Paul Smith Water Sales of 73 Perrin Street, Robinvale, Victoria will act as an arbitrator as to the value of the Pool Price on the completion date and his determination will be binding on both parties.

34. Vendor's conduct prior to Completion

From the Contract Date until Completion, the Vendor:

- 34.1. must not grant any further interest (including without limitation any mortgage, charge, Term Transfer or other interest) in the WAL;
- 34.2. must not act in relation to the WAL in a manner which would prevent the Vendor complying with its obligations under this contract;
- 34.3. must promptly provide the Purchaser with a copy of any communication received in relation to the WAL from:
 - (a) the Department;
 - (b) any government, governmental, semi-governmental, judicial, municipal, statutory or public entity; or
 - (c) any interest holder;
- 34.4. authorises the Purchaser to inspect the Department's records in relation to the WAL and must provide the Purchaser with such information regarding the WAL as it reasonably requests; and
- 34.5. will promptly execute any document required to evidence the authorisation given in clause 34.4.

35. Warranties by the Parties

This Contract contains the whole agreement of the parties. Neither party is entitled to rely on any warranty or statement in relation to -

- 35.1. the conditions on which this contract has been agreed,
- 35.2. the provisions of this contract, or
- 35.3. the WAL

which is not contained in those documents.

36. Vendor and Receiver Warranties

The Vendor declares and the Purchaser acknowledges:

- 36.1. The Vendor is the sole responsible entity of TOT. 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.

- 36.2. 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.
- 36.3. The Vendor is duly incorporated and validly exists under the law of its place of incorporation.
- 36.4. At Settlement the Purchaser will acquire the full legal and beneficial ownership of the Water Shares free and clear of all encumbrances.
- 36.5. This Contract constitutes a legal and binding obligation of the Vendor enforceable in accordance with its terms by appropriate legal remedy.

The Receiver declares and the Purchaser acknowledges:

- 36.6. 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.
- 36.7. The Receiver has full power and authority to cause the Vendor to enter into this Contract.

37. Liability of Receiver and Manager

- 37.1. The Receiver enters into this agreement solely in its capacity as Receiver and Manager of Align Funds Management Pty Ltd (ACN 105 684 231) (formerly known as Orchard Investments Management Limited) in its capacity as 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.
- 37.2. No debt, duty, liability or obligation arising under this agreement will accrue to, or be enforceable against the Receiver in his personal capacity. The Receiver ceases to have any obligations and liabilities under this agreement if it ceases for any reason to be receiver of the Vendor.
- 37.3. 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.
- 37.4. 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.
- 37.5. 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 37.3.

38. Payment of costs

- 38.1. The Vendor and Purchaser must each pay their own legal costs relating to this contract.
- 38.2. The Purchaser must pay all stamp duty (including any penalties) on or arising out of this contract.

39. Condition of Completion

Where the Transfer Application is not approved by the Department because the transfer is a dealing prohibited by an order gazetted under section 71Z(1) of the Act in which the NSW Minister for Water established access licence dealing principles to regulate or prohibit the kinds of dealings that may be effected under Division 4 of Part 2 of Chapter 3 of the Act, a party is entitled to rescind this contract by notice in writing to the other party.

40. GST

- 40.1. "GST" means GST within the meaning of the GST Act;
- 40.2. "GST Act" means "A New Tax System (Goods & Services Tax) Act 1999";
- 40.3. Expressions used in this Special Condition that are defined in the GST Act have the same meaning as given to them in the GST Act.

- 40.4. The price is a GST exclusive price.
- 40.5. 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).
- 40.6. 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.
- 40.7. 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.
- 40.8. A party's right to payment under this clause 40.7 hereof is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply except in circumstances where the GST Act, the regulations under the GST Act or a determination made by the Commissioner of Taxation dispenses with the requirement of a tax invoice as a condition of the party liable to pay for the taxable supply obtaining an input tax credit.
- 40.9. 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.
- 40.10. 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 5 years from and including day of supply of water to the Purchaser.

41. Counterparts

This contract may be signed in any number of counterparts. All counterparts together will be taken to constitute one agreement.

42. Variations and waivers to be in writing

No variation, modification or waiver of any provision in this contract, nor consent to any departure by a party from any such provision, shall be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent shall be effective only to the extent to or for which it may be made or given.

43. Conflict or Inconsistency

- 43.1. Where the words "not applicable" or "nil" appear opposite any part of any term on page one of this Contract each and every clause in this Contract in which specific reference is made to such part of the relevant item in the Schedule shall so far as the context shall permit be null and void and of no effect.
- 43.2. Where any provision in this Contract in some way conflicts with or is inconsistent with anything in the Water Management Act (NSW) 2000 then that provision is void but only to the extent that it conflicts with or is inconsistent with the Act.

44. Interpretation

This Contract is to be interpreted according to the following:

- 44.1. references to law include all Legislation or Orders made by a Responsible Authority and include any consolidations, amendments, re-enactments or replacements of any of them.
- 44.2. this Contract is to be governed by the laws of the State of New South Wales. Any proceeding under or in connection with it must be taken in the appropriate Court in that State.
- 44.3. the Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales and waive any right to object to proceedings being brought in those Courts.

- 44.4. this Contract must be interpreted so that it complies with all Legislation applicable in New South Wales. If any provision of this Contract does not comply with all relevant Legislation, the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, it must be severed from the rest of the Contract.
- 44.5. another grammatical form of a defined word or expression has a corresponding meaning.
- 44.6. a reference to a document or instrument includes the document or instrument as notated, altered, supplemented or replaced from time to time.
- 44.7. a reference to \$ (Dollars) is to Australian currency unless specified otherwise.
- 44.8. an obligation imposed by this Contract on or in favour of more than one person binds or benefits all of them jointly and each of them individually.
- 44.9. the use of a gender includes other genders and the singular includes the plural and vice versa.
- 44.10. a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of it.
- 44.11. if any of the Parties is an individual, this Contract binds that person's legal personal representative. If any of the Parties is a corporation, this Contract binds its transferees and successor in title.
- 44.12. where this Contract requires a Party to do or refrain from doing something, that Party is required to ensure that its agents do or refrain from doing the thing, as the case may be.
- 44.13. If there is a conflict between the General Conditions, the Special Conditions and/or the Schedules or Annexures, the order of priority is as follows:
- (a) the Special Conditions;
 - (b) the Schedules;
 - (c) the Annexures; and
 - (d) the General Conditions.
- 44.14. A provision of this Contract which can, and is intended to, operate after the Completion Date remains effective after that date.

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: WAL21482

SEARCH DATE	TIME	EDITION NO	DATE
13/12/2010	9:35 AM	1	10/12/2010

WARNING NOTE: INFORMATION ON THIS REGISTER IS NOT GUARANTEED

TENURE TYPE: CONTINUING

HOLDER(S)

ALIGN FUNDS MANAGEMENT LIMITED

ENCUMBRANCES (1 ENCUMBRANCE)

1 TERM TRANSFER: NIL

NOTATIONS

UNREGISTERED DEALINGS: NIL

ACCESS LICENCE DETAILS

CATEGORY: REGULATED RIVER (HIGH SECURITY)

SHARE COMPONENT:

SHARE - 867 UNITS

WATER SOURCE - NEW SOUTH WALES MURRAY REGULATED RIVER WATER

SOURCE

WATER SHARING PLAN - MURRAY AND LOWER DARLING REGULATED RIVERS

WATER SOURCES

EXTRACTION COMPONENT:

TIMES/RATES/CIRCUMSTANCES - ANY TIME OR RATE

EXTRACTION FROM - RIVER, LAKE OR SURFACE WATER RUNOFF

EXTRACTION ZONE - THAT PART OF THE WATER SOURCE DOWNSTREAM OF
THE RIVER MURRAY AT PICNIC POINT

NOMINATED WORKS:

WORK APPROVAL NUMBER(S) - 60CA581917

INTERSTATE TAGGING ZONE - NIL

CONDITIONS

LICENCE CONDITIONS FORM A PART OF THIS LICENCE AND AFFECT THE SHARE AND
EXTRACTION COMPONENTS. CONDITION STATEMENTS ARE AVAILABLE FROM NOW

END OF PAGE 1 - CONTINUED OVER

LUWM/306250099

PRINTED ON 13/12/2010

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*Any entries preceded by an asterisk do not appear on the current edition of the Certificate of Title.

Warning: The information appearing under notations has not been formally recorded in the register.

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: WAL21482

PAGE 2

NOTES

A WATER LICENCE INFORMATION SHEET IS AVAILABLE FROM THE NSW OFFICE OF
WATER (NOW) AND SHOULD BE REFERRED TO IN INTERPRETING THIS LICENCE.
NOW WEBSITE WWW.WATER.NSW.GOV.AU, PHONE 1800 353 104, EMAIL
INFORMATION@WATER.NSW.GOV.AU
NOW REFERENCE NUMBER: 60AL582619

*** END OF SEARCH ***

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