

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

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This is the **Exhibit** marked '**CCH-2**' 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-2': a true copy of the Bella
Vista Deed of Compromise**

The Trust Company (Nominees) Limited (ACN 000 154 441)

Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231) in its capacity as the responsible entity of the Timbercorp Orchard Trust

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)

Anthony Cormick (in his capacity as representative of the Participant Growers in the 2004 Timbercorp Table Grape Project (ARSN 108 648 086))

Jeyarasa Rasiah and Anne Rasiah (in their capacity as representatives of the Participant Growers in the 2005 Timbercorp Table Grape Project (ARSN 113 512 236))

Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)

Deed of Compromise for the Bella Vista Rights Proceeding

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This Deed is made on

14 January 2014

~~2013~~**Parties**

- 1 **The Trust Company (Nominees) Limited** (ACN 000 154 441) c/- Allens, 101 Collins Street, Melbourne, Victoria, 3000 (*The Trust Company*)
- 2 **Align Funds Management Limited** (receiver and manager appointed) (ACN 105 684 231) in its capacity as the responsible entity of the Timbercorp Orchard Trust c/- Maddocks Lawyers, 140 William Street, Melbourne, Victoria, 3000 (*Align*)
- 3 **Michael Fung** (in his capacity as receiver and manager of Align) c/- Norton Rose Fulbright Australia, Level 15, RACV Tower, 485 Bourke St, Melbourne, Victoria, 3000 (*Fung*)
- 4 **Anthony Cormick** (in his capacity as representative of the Participant Growers in the 2004 Timbercorp Table Grape Project (ARSN 108 648 086)) c/- M+K Lawyers, Level 22, 114 William Street, Melbourne, Victoria, 3000
- 5 **Jeyarasa Rasiah and Anne Rasiah** (in their capacity as representatives of the Participant Growers in the 2005 Timbercorp Table Grape Project (ARSN 113 512 236)) c/- M+K Lawyers, Level 22, 114 William Street, Melbourne, Victoria, 3000
- 6 **Timbercorp Securities Limited (In Liquidation)** (ACN 092 311 469) c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 (*TSL*)

Recitals

- A Timbercorp Limited (In Liquidation) and its subsidiary entities (together, the *Timbercorp Group*) conducted various agribusiness projects involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives, citrus and table grapes, including the Table Grape Projects.
- B Each entity in the Timbercorp Group is currently in liquidation.
- C Align is currently in receivership.
- D The Trust Company is the trustee for the Debenture Holders pursuant to the Trust Deed.
- E The Participant Growers are investors in the Table Grape Projects which were conducted on the Bella Vista Land.
- F TSL is the responsible entity for the Table Grape Projects.
- G In accordance with the Trust Deed:
 - i) Align issued debentures to the Debenture Holders (and the funds raised by the issue were used to purchase, among other things, the Bella Vista Land and the Bella Vista Water Rights); and
 - ii) The Trust Company obtained the Bella Vista Security over the assets of Align used in the Table Grape Projects, including the Bella Vista Land and the Bella Vista Water Rights.
- H In the course of the receivership of Align, and with Court approval, the Bella Vista Land and the Bella Vista Water Rights were sold separately and the Fund constituted.
- I The amount of The Trust Company's secured debt exceeds the total of the Fund. By executing this Deed, Align acknowledges that there will be no surplus available for payment to

it.

- J A dispute exists between The Trust Company and the Participant Growers regarding the allocation amongst them of the Fund.
- K The Receiver is the stakeholder of the Fund and awaits the orders of the Court regarding disbursement of the Fund.
- L TFL claims that a number of the Participant Growers are TFL Debtors.
- M TSL claims that a number of the Participant Growers are Timbercorp Debtors.
- N On 25 March 2013, The Trust Company commenced Supreme Court of Victoria Proceeding No. S CI 2013 1477, seeking, among other things, declarations as to its, and other relevant parties', rights, if any, to the Fund (***Bella Vista Rights Proceeding***).
- O By orders made on 19 July 2013 in the Bella Vista Rights Proceeding, pursuant to rule 16.01(2) of the Rules:
- i) Anthony Cormick was appointed as representative of the Participant Growers in the 2004 Timbercorp Table Grape Project; and
 - ii) Jeyarasa Rasiah and Anne Rasiah were appointed as representatives of the Participant Growers in the 2005 Timbercorp Table Grape Project,
- (collectively, the ***Representative Growers***).
- P The Parties have agreed to compromise the Bella Vista Rights Proceeding on the terms set out in this Deed.
- Q The Representative Growers consider that it is for the benefit of the class of persons whom they respectively represent that the Bella Vista Rights Proceeding be compromised on the terms set out in this Deed.
- R The Trust Company supports the Bella Vista Rights Proceeding being compromised on the terms set out in this Deed and, together with the Representative Growers, will seek the Court's approval of the Compromise.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) ***Approval Application*** means the application or applications to the Court for the orders referred to in clause 3.2(a);
- (b) ***Bella Vista Accounts*** means the interest bearing accounts styled as:
 - (i) Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (R&M appointed) Bella Vista Land (bsb 083-004; account number 11732-9125); and
 - (ii) Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (R&M appointed) Bella Vista Water (BSB 083-004, Account Number 11733-4178).

- (c) **Bella Vista Extinguishment Date** means 2 March 2011, being the date on which the liquidators of TSL extinguished all of the rights of the Participant Growers in respect of the Table Grape Projects conducted on the Bella Vista Property;
- (d) **Bella Vista Land** means the land the subject of the Bella Vista Rights Proceeding which was owned by Align and being part of the land on which the Table Grape Projects were conducted;
- (e) **Bella Vista Secured Debt** means the total amount owed to The Trust Company under the Trust Deed (held on trust for the benefit of the Debenture Holders) and secured by the Bella Vista Security as at the date the payment referred to in clause 4(d) is made to The Trust Company, including interest accrued to that date.
- (f) **Bella Vista Security** means the security set out in schedule 1 to this Deed;
- (g) **Bella Vista Settlement Amount** means \$385,000;
- (h) **Bella Vista Settlement Entitlement** means, in respect of a Participant Grower, its entitlement, from time to time, to the Bella Vista Settlement Amount (together with any applicable interest on that amount from the date on which the payment provided by clause 4(b) is made by the Receiver to TSL) on the basis of a rateable distribution of that amount between the Participant Growers in the Table Grape Projects in accordance with the number of Lots they held in those projects as at the Bella Vista Extinguishment Date;
- (i) **Bella Vista Water Rights** means the water rights the subject of the Bella Vista Rights Proceeding and owned by Align under:
 - (i) Water Access Licence 21482 granted pursuant to the *Water Management Act 2000* (NSW); and
 - (ii) water share WEE018428 and water share WEE045487 granted pursuant to the *Water Act 1989* (Vic);
- (j) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Victoria;
- (k) **Claim** includes any claim or liability of any kind (including one which is prospective or contingent and the amount of which is not ascertained) and costs (whether or not the subject of a court order);
- (l) **Compromise** means the compromise set out in clause 2;
- (m) **Court** means the Supreme Court of Victoria;
- (n) **Costs** includes legal fees and disbursements;
- (o) **Debenture Holders** means the holders of the debentures issued by Align pursuant to the Trust Deed;
- (p) **Deed** means this document, including any schedule or annexure to it;
- (q) **Draft Orders** means the draft orders set out in schedule 2 to this Deed;
- (r) **First Notice to Participant Growers** has the meaning set out at clause 6.1(b);
- (s) **Fund** means the net sale proceeds of the sale of the Bella Vista Land and the Bella Vista Water Rights (including, for the avoidance of doubt, inclusive of all interest) held on trust by the Receiver, from time to time, in the Bella Vista Accounts pursuant to orders of Justice Davies made on 7 February 2011 and taking into account any other amount which may be deducted pursuant to any subsequent order of the Court or otherwise including, for the avoidance of doubt, the Receiver's Unpaid Costs;
- (t) **Kangara Deed of Compromise** means the deed of compromise dated on or about the

date of this Deed to give effect to the compromise of the Kangara Rights Proceeding;

- (u) **Kangara Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2013 1478;
- (v) **Lot** means a Grapelot as that term is defined in the constituent documents of the Table Grape Projects;
- (w) **Participant Growers** means each "Participant Grower" as that term is defined in the constituent documents of the Table Grape Projects including, for the avoidance of doubt, where applicable, the Participant Grower's legal personal representatives;
- (x) **Party** means a party to this Deed;
- (y) **Receiver** means Fung;
- (z) **Receiver's Account** means the following bank account:
 Account name: PricewaterhouseCoopers
 Bank: National Australia Bank
 BSB: 083-004
 Account number: 19174-6859
- (aa) **Receiver's Unpaid Costs** means, up to and including the date on which the payments provided by clause 4 are made, the amount of unpaid remuneration and expenses incurred by the Receiver in connection with and arising from:
 - (i) his, and his predecessors', appointment as receiver and manager of Align;
 - (ii) his, and his predecessors', management, maintenance and, in accordance with this deed, disbursement of the Fund; and
 - (iii) his costs of and incidental to the Approval Application and the Bella Vista Rights Proceeding,
 excluding any such costs to which paragraph 3 of the order of Justice Davies made on 7 February 2011 applies, as agreed between the Receiver and The Trust Company, failing which, such amount to be approved by the Court;
- (bb) **Rules** means the Supreme Court (General Civil Procedure) Rules 2005 (Vic);
- (cc) **Second Notice to Participant Growers** has the meaning set out at clause 6.3(b);
- (dd) **Table Grape Projects** means the 2004 Timbercorp Table Grape Project (ARSN 108 648 086) and the 2005 Timbercorp Table Grape Project (ARSN 113 512 236);
- (ee) **TFL** means Timbercorp Finance Pty Ltd (in Liquidation) (ACN 054 581 190);
- (ff) **TFL Debtor** means a Participant Grower who entered into a loan agreement with TFL:
 - (i) pursuant to which TFL agreed to lend a specified amount or amounts to that Participant Grower to be used by that Participant Grower to pay liability owed to TSL relating to that Participant Grower's investment in the Table Grape Projects; and
 - (ii) under which TFL claims that indebtedness to TFL remains outstanding;
- (gg) **TFL Indebtedness** means, in respect of a TFL Debtor, its indebtedness to TFL from time to time according to the books and records of TFL;
- (hh) **Timbercorp Debtor** means a Participant Grower who TSL claims is indebted to TSL;
- (ii) **Timbercorp Indebtedness** means, in respect of a Timbercorp Debtor, its indebtedness, from time to time, to TSL according to the books and records of TSL; and

- (jj) **Trust Deed** means the Timbercorp Orchard Trust Debenture Trust Deed dated 17 October 2003.

1.2 Interpretation

- (a) Reference to:
- (i) the singular includes the plural and the plural includes the singular;
 - (ii) a Party includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives); and
 - (iii) a thing includes the whole and each part of it separately.
- (b) 'Including' and similar expressions are not words of limitation.
- (c) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (d) A provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

1.3 Parties

- (a) If a Party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation in favour of more than 1 person is for the benefit of them separately and jointly.
- (c) A Party that is a trustee is bound both personally and in that Party's capacity as a trustee.
- (d) A Party holds the benefit of any release provided for in this Deed for themselves and, where applicable, for that Party's present and former, directors, officers, employees, contractors, agents and partners and, in the case of the Receiver, for any former appointee to that position.

2 Compromise

Subject to the conditions precedent set out in clause 3 being satisfied, the Parties agree to compromise the Bella Vista Rights Proceeding by:

- (a) the making of the payments in accordance with clause 4; and
- (b) the giving of releases in accordance with clause 5.

3 Conditions Precedent

3.1 Debenture Holder approval

It is a condition precedent to the Compromise that, on or before 7 March 2014:

- (a) the Debenture Holders approve the Compromise in accordance with the procedure prescribed in the Trust Deed; and
- (b) the Debenture Holders approve the compromise at clause 2 of the Kangara Deed of Compromise.

3.2 Court Orders

It is a condition precedent to the Compromise that, as soon as practicable after the condition precedent in clause 3.1 is satisfied, and on or before 30 June 2014:

- (a) the Court in the Bella Vista Rights Proceeding:
 - (i) pursuant to rule 16.01(4) of the Rules, approves the Compromise and orders that the Compromise shall be binding on the absent persons who are represented respectively by the Representative Growers, in the form of, or substantially to the effect of, paragraph 1 of the Draft Orders; and
 - (ii) makes orders in the form of, or substantially to the effect of, paragraphs 2 and 3 of the Draft Orders; and
- (b) the Court makes orders in the Kangara Rights Proceeding in accordance with clause 3.2(a) of the Kangara Deed of Compromise.

3.3 Procuring Debenture Holder approval and Court orders

- (a) The Trust Company will:
 - (i) do all things reasonably necessary to procure the approval of the Debenture Holders in accordance with clause 3.1; and
 - (ii) notify the other Parties in writing immediately following the approvals referred to in clause 3.1 being obtained.
- (b) The parties will do all things reasonably necessary to procure the Court to make orders in the terms referred to in clause 3.2.

4 Payments

- (a) As soon as practicable after the conditions precedent set out in clauses 3.1 and 3.2 are satisfied and either agreement reached with The Trust Company or any application to the Court for approval of the quantum of the Receiver's Unpaid Costs has been made and determined, the Receiver will pay from the Bella Vista Accounts the Receiver's Unpaid Costs by direct deposit into the Receiver's Account.
- (b) On the same date as the payment under clause 4(a) is made to the Receiver's Account, the Receiver will pay to TSL from the Bella Vista Accounts the Bella Vista Settlement Amount by direct deposit into the following interest bearing bank account:

Account name: Mark Korda & Leanne Chesser as Liquidators of Timbercorp Securites PL
(In Liq) – Bella Vista

Bank: National Australia Bank

BSB: 083-004

Account number: 39-597-3287
- (c) TSL will hold the Bella Vista Settlement Amount on trust for the Participant Growers in the Table Grape Projects for distribution to, or on behalf of, those Participant Growers in accordance with their respective Bella Vista Settlement Entitlements on the following basis.
 - (i) In respect of each Participant Grower who is not a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause, TSL will pay its Bella Vista Settlement Entitlement as soon as practicable to or at the direction of that Participant Grower (in each case, into a bank account nominated by each such Participant Grower).
 - (ii) In respect of each Participant Grower who:
 - (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and

- (B) directs and authorises TSL by notice in writing to pay its TFL Indebtedness to the extent possible out of its Bella Vista Settlement Entitlement,

TSL will, as soon as practicable, pay to TFL that Participant Grower's TFL Indebtedness (to the extent possible) out of the Participant Grower's Bella Vista Settlement Entitlement and remit the balance of that Participant Grower's Bella Vista Settlement Entitlement (if any) to the Participant Grower.

- (iii) In respect of each Participant Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
- (B) has a Bella Vista Settlement Entitlement for a sum greater than its TFL Indebtedness and directs and authorises TSL by notice in writing to pay only part of its TFL Indebtedness out of its Bella Vista Settlement Entitlement,

TSL will, as soon as practicable, pay to TFL that part of that Participant Grower's TFL Indebtedness out of the Participant Grower's Bella Vista Settlement Entitlement and retain the balance of that Participant Grower's Bella Vista Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.

- (iv) In respect of each Participant Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
- (B) does not give a direction or authorisation to TSL in relation to payment of its TFL Indebtedness,

TSL will continue to hold that Participant Grower's Bella Vista Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.

- (d) On the same date as the payments under clauses 4(a) and 4(b) are made to the Receiver's Account and TSL respectively, the Receiver will pay to The Trust Company any amounts remaining in the Bella Vista Accounts after the payments referred to in clauses 4(a) and 4(b) have been made, into the following bank account:

Account name: The Trust Company (Australia) Limited
Bank: National Australia Bank Limited
BSB: 082057
Account number: 145726240
Reference: TOTDEB

- (e) For the purposes of clause 4(c)(i):

- (i) if a Participant Grower:

- (A) is a Timbercorp Debtor and not a TFL Debtor; and
- (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(c)(i),

TSL will:

- (C) deduct from the payment due to that Participant Grower under clause 4(c)(i) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(c)(i) out of the Participant Grower's Bella Vista Settlement Entitlement to the Participant Grower's nominated bank account; and
 - (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(e), TSL will have discharged its obligations to that Participant Grower under clause 4(c)(i) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.
- (f) For the purposes of clause 4(c)(ii):
- (i) if a Participant Grower:
 - (A) is a Timbercorp Debtor and a TFL Debtor; and
 - (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(c)(ii),

TSL will:

- (C) deduct from the payment due to that Participant Grower under clause 4(c)(ii) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(c)(ii) out of the Participant Grower's Bella Vista Settlement Entitlement to the Participant Grower's nominated bank account; and
 - (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(f), TSL will have discharged its obligations to that Participant Grower under clause 4(c)(ii) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.
- (g) For the purposes of clauses 4(c)(iii) and 4(c)(iv), if a Participant Grower is a Timbercorp Debtor and a TFL Debtor, the Participant Grower will not give any direction or authorisation to TSL to pay any part of that Participant Grower's Timbercorp Indebtedness out of its Bella Vista Settlement Entitlement pending agreement in writing between TFL and the relevant Participant Grower, or relevant court order, as to the manner in which that entitlement is to be disbursed.
- (h) The giving of any authorisation or direction by a Participant Grower to TSL under clause 4(c):
- (i) does not constitute an admission of liability by the Participant Grower to TFL in respect of the Participant Grower's TFL Indebtedness; and
 - (ii) is without prejudice to the Participant Grower's rights (if any) against TFL in relation to the Participant Grower's TFL Indebtedness.

- (i) Nothing in the receipt by TFL of any payment from TSL in accordance with clause 4(c) constitutes a waiver of any rights which TFL may have against a Participant Grower in respect of that Participant Grower's remaining TFL Indebtedness. The benefit of this clause is held by TSL on trust for TFL.

5 Releases

5.1 Representative Growers, The Trust Company, Align and the Receiver

Upon satisfaction of the conditions precedent in clauses 3.1 and 3.2, and the making of the payments in clauses 4(a), 4(b) and 4(d), the Representative Growers on behalf of the Participant Growers, The Trust Company, the Receiver and Align release and discharge each other from all Claims in relation to:

- (a) their respective entitlements to the Fund; and
 - (b) the allocation and disbursement of the Fund under the Compromise,
- and this Deed may be pleaded by any Party as a full and complete defence to any such Claim.

5.2 TSL

Upon:

- (a) the releases in clause 5.1 taking effect; and
- (b) the making of a payment or, as applicable, all payments to, or at the direction of, or on the authorisation of, a Participant Grower under clauses 4(c), 4(e) or 4(f) by which that Participant Grower's Bella Vista Settlement Entitlement is disbursed in full,

the Representative Growers for that Participant Grower release TSL on behalf of that Participant Grower from all Claims in relation to:

- (c) that Participant Grower's entitlement to the Fund;
- (d) the allocation and disbursement of the Fund under the Compromise in respect of that Participant Grower; and
- (e) TSL's obligations to that Participant Grower under clauses 4(c), 4(e) or 4(f) (as the case may be),

and this Deed may be pleaded by TSL as a full and complete defence to any such Claim.

6 Notices to Participant Growers

6.1 First Notice to Participant Growers

- (a) As soon as practicable after this Deed is executed, the Representative Growers will seek the other Parties' comments on the terms of a first notice to Participant Growers, and to this end:
 - (i) the Representative Growers will prepare and circulate among the Parties a draft of the first notice; and
 - (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the first notice.
- (b) The Parties will thereafter confer in good faith in relation to any necessary further comments on the draft first notice and the Representative Growers will finalise the form of the first notice (the finalised form being the **First Notice to Participant Growers**).
- (c) The First Notice to Participant Growers will, among other things:

- (i) provide information about the Bella Vista Rights Proceeding;
- (ii) explain that the interests of the Participant Growers are represented in the Bella Vista Rights Proceeding by the Representative Growers;
- (iii) refer to the Compromise reached between the Parties and explain the key features of this Deed including the various payments contemplated under the Deed;
- (iv) explain that the Compromise is considered by the Representative Growers as being in the best interests of the Participant Growers;
- (v) alert the Participant Growers to consider any potential tax consequences of the Compromise;
- (vi) explain that if the Court approves the Compromise the Participant Growers will be bound by the Compromise in respect of their individual entitlements (if any) out of the Fund;
- (vii) explain the various roles being undertaken by TSL at the request of, and on the instruction of, the Representative Growers in connection with the Approval Application and under this Deed;
- (viii) explain when the Participant Growers may expect to receive a payment under the Compromise from TSL;
- (ix) explain the mechanism by which each Participant Grower is to provide their individual bank account details to TSL for the purposes of receipt of a payment under the Compromise;
- (x) explain that some Participant Growers are TFL Debtors and Timbercorp Debtors and how the Compromise will apply to the individual circumstances of the Participant Growers (having regard, amongst other things, to any offers of settlement made by TFL to TFL Debtors (amongst others));
- (xi) explain how each Participant Grower can access private information in relation to their individual circumstances in respect of the Compromise including the number of Lots they held in the Table Grape Projects as at the Bella Vista Extinguishment Date and, where applicable, their TFL Indebtedness and Timbercorp Indebtedness (as the case may be);
- (xii) explain, in respect of any payment due to the Participant Growers under the Compromise:
 - (A) the right of each Participant Grower to make a direction and authorisation to TSL in accordance with clauses 4(c), 4(e) and 4(f); and
 - (B) the consequences, where applicable, of making or not making such a direction or authorisation;
- (xiii) explain the consequences if the Court does not approve the Compromise;
- (xiv) explain to the Participant Growers what their options are in connection with the Approval Application;
- (xv) inform the Participant Growers that, without prejudice to any other course they may be advised to take, they may:
 - (A) address any comments or questions in relation to the Compromise, the Approval Application, or their individual circumstances;

- (B) raise any objection to the Compromise, to the Representative Growers through TSL using either a specified telephone hotline facility or by a specified email address, and that a reply will be provided to their comments or questions and, as appropriate, their comments and objections will be noted for the purposes of the hearing of the Approval Application;
- (xvi) refer the Participant Growers to a set of 'frequently asked questions' and related answers which they should review before considering whether it is necessary to ask any questions of the Representative Growers through TSL relating to the Compromise or in connection with the Approval Application; and
- (xvii) inform the Participant Growers that a further notice will be provided to them as soon as practicable after it becomes known whether or not the conditions precedent to the Compromise have been satisfied.

6.2 Provision of the First Notice to Participant Growers

As soon as practicable after the condition precedent in clause 3.1 has been satisfied and the First Notice to Participant Growers has been finalised in accordance with clause 6.1(b), the Representative Growers will provide the First Notice to Participant Growers to TSL and, subject to any order of the Court, as soon as practicable thereafter:

- (a) the Representative Growers will cause the First Notice to Participant Growers to be uploaded to the M+K Lawyers website <http://www.mk.com.au>; and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers):
 - (i) cause the First Notice to Participant Growers to be uploaded to:
 - (A) a new section within the Timbercorp section of the KordaMentha website <http://www.kordamentha.com/creditor-information/australia/51/15> which will address the Compromise;
 - (B) the pre-existing "Timbercorp Table Grape Schemes" section of the KordaMentha website <http://www.kordamentha.com/creditor-information/australia/51/07>; and
 - (C) a new section within the Timbercorp section of the Arnold Bloch Leibler website <http://www.abl.com.au/timbercorp/timbercorp.htm> which will address the Compromise;
 - (ii) send to the Participant Growers, by post and by email to their last known postal and email addresses most recently communicated to TSL and recorded in its books and records, a short letter bringing to their attention that the First Notice to Participant Growers has been uploaded to the websites referred to in clauses 6.2(a) and 6.2(b) and specifying the relevant links to those websites; and
 - (iii) cause to be published an advertisement on a business day in 'The Australian' newspaper containing information similar to that to be set out in the letter referred to in clause 6.2(b)(ii).

6.3 Second Notice to Participant Growers

- (a) As soon as practicable after it becomes known whether the conditions precedent in clause 3.2 has been satisfied, the Representative Growers will seek the other Parties' comments on the terms of a second notice, and to this end:
 - (i) the Representative Growers will prepare and circulate among the other Parties a draft of the second notice; and

- (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the second notice.
- (b) The Parties will confer in good faith in relation to any necessary further comments on the draft of the second notice and the Representative Growers will finalise the form of the second notice (the finalised form being the **Second Notice to Participant Growers**).
- (c) The Second Notice to Participant Growers will, among other things:
 - (i) explain whether the condition precedent to the Compromise set out in clause 3.2 has been satisfied; and
 - (ii) if the condition precedent to the Compromise set out in clause 3.2:
 - (A) has been satisfied, confirm when the Participant Growers may expect to receive a payment under the Compromise; and
 - (B) has not been satisfied, confirm the consequences.

6.4 Provision of the Second Notice to Participant Growers

As soon as practicable after it has been finalised in accordance with clause 6.3(b), the Representative Growers will provide to TSL the Second Notice to Participant Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(a); and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers) cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(b).

7 Application for Court approval

- (a) Each of the Parties will use their best endeavours to do all things necessary, including steps contemplated by this Deed, to make the Approval Application and to enable the Court to hear the Approval Application at the earliest opportunity convenient to the Court after distribution of the First Notice to Participant Growers in accordance with clause 6.2, including, for the avoidance of doubt, seeking the orders set out in the Draft Orders (or orders substantially to the same effect).
- (b) On the hearing of the Approval Application, subject to the Court making the orders in paragraph 1 of the Draft Orders (or orders substantially to the same effect), the Parties will consent to the Court making each of the other orders set out in paragraphs 2 and 3 of the Draft Orders (or orders substantially to the same effect).
- (c) Nothing in clause 7(b) will preclude the Representative Growers from informing the Court of any matter which they, or either of them, consider appropriate to disclose to the Court in connection with the Approval Application in their role as representative parties.

8 Failure to satisfy conditions precedent

If the condition precedent in clause 3.1 is not satisfied by 7 March 2014 or the condition precedent in clause 3.2 is not satisfied by 30 June 2014 then this Deed ceases to have any effect. In that event:

- (a) no Party will have any right or entitlement as a result of or by reason of the Parties having entered into this Deed or having conditionally agreed to the Compromise; and

- (b) this Deed, any documents prepared or circulated pursuant to this Deed, and any other documents prepared or circulated in anticipation of, or for the purpose of, the Approval Application may not be referred to or tendered in evidence in the Bella Vista Rights Proceeding, the Kangara Rights Proceeding or any other proceeding relating to the subject matter of this Deed.

9 Role of TSL

At the request of the Representative Growers, TSL will perform the following administrative roles in connection with the Compromise and the Approval Application:

- (a) to distribute the First Notice to Participant Growers in accordance with clause 6;
- (b) to establish and operate effectively an appropriate telephone hotline facility and email facility to:
 - (i) receive and, in accordance with instructions from the Representative Growers, address comments and questions from the Participant Growers in connection with the Compromise and the Approval Application; and
 - (ii) receive any objections to the Compromise made by the Participant Growers;
- (c) in respect of the Participant Growers who have raised comments, questions or made objections, to record with appropriate detail:
 - (i) the identity of those Participant Growers;
 - (ii) the comments and questions raised by those Participant Growers and the responses provided to those Participant Growers; and
 - (iii) any objections made by those Participant Growers and any response provided in relation to those objections;
- (d) to act in accordance with a protocol agreed with the Representative Growers regarding:
 - (i) the comments and questions which:
 - (A) may be answered by TSL without further reference to the Representative Growers;
 - (B) will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (ii) the objections:
 - (A) to which TSL may respond without further reference to the Representative Growers;
 - (B) which will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (iii) the confidentiality of communications between TSL, the Participant Growers and the Representative Growers in relation to comments, questions and any objections raised by any Participant Growers;
- (e) to provide to the Representative Growers, on a timely basis, a record, with appropriate detail, of:
 - (i) all comments, questions and answers given by TSL in accordance with the protocol which do not require preparation of a response by the Representative Growers;
 - (ii) all comments and questions requiring preparation of a response from the

Representative Growers;

- (iii) any objections by the Participant Growers to which TSL has provided a response in accordance with the agreed protocol; and
- (iv) any objections requiring the preparation of a response by the Representative Growers;
- (f) to provide on a timely basis to relevant Participant Growers any responses to comments, questions or objections settled by the Representative Growers;
- (g) to record, with appropriate detail, in an affidavit to be filed on behalf of the Representative Growers in connection with the Approval Application:
 - (i) the tasks which TSL has undertaken at the request and on the instruction of the Representative Growers;
 - (ii) the substance of all comments and questions raised to TSL by the Participant Growers and the responses provided by TSL to those Participant Growers; and
 - (iii) the nature of any objections made to TSL by Participant Growers and the responses provided by TSL to those Participant Growers;
- (h) to provide the Second Notice to Participant Growers in accordance with clause 6;
- (i) to make the payments referred to in clause 4(c);
- (j) to act in accordance with any direction or authorisation given by Participant Growers in accordance with clause 4(c), 4(e) or 4(f);
- (k) to perform such other administrative roles as agreed with the Representative Growers or the other parties in connection with the Compromise and the Approval Application; and
- (l) to provide appropriately qualified personnel to undertake the foregoing.

10 No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the 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.

11 Execution of counterparts

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument.

12 Electronic delivery of document

If a party delivers an executed counterpart of this document or any other document executed in connection with it ("**Relevant Document**") by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

13 Entire Agreement

This Deed contains the entire agreement between the Parties with respect to its subject matter.

14 Further Assurances

At the reasonable request of another Party, each Party will do anything reasonably necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

15 Stamp Duty

All stamp duty (including fines, penalties and interest) payable on or in connection with the declarations of trust provided in clause 4(c) is payable by TSL.

16 Goods and Services Tax

All payments to be made under this Deed are inclusive of GST, if any.

17 Execution by Attorney or Agent

Any Party may execute this Deed by its attorney or agent. Each attorney or agent executing this Deed that, as at the date of executing this Deed, it has no notice of the revocation or suspension of its power of attorney or agency.

18 Governing law and exclusive jurisdiction

This Deed is governed by the law in force in Victoria. The Parties submit to the exclusive jurisdiction of the courts of Victoria or any competent Federal court exercising jurisdiction in Victoria and waive any right to claim that those courts are an inconvenient forum.

Schedule 1 - Bella Vista Security

- i First ranking fixed and floating charge over the assets of the Timbercorp Orchard Trust granted to The Trust Company and registered with the Australian Securities and Investments Commission on 30 April 2004 as charge number 994221.
- ii Two real property mortgages over the Bella Vista Land registered on 4 May 2005 and 16 June 2006 respectively.

Schedule 2 - Draft Orders

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

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 OTHERS ACCORDING TO THE ATTACHED SCHEDULE	Defendants

DRAFT MINUTE OF ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

THE COURT ORDERS THAT:

1. Pursuant to rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005*, the compromise set out in clause 2 of the Deed of Compromise dated 23 December 2013 between the plaintiff and the first to third defendants is approved and shall be binding on the absent persons who are represented by the second and third defendants.

THE COURT ORDERS FURTHER BY CONSENT THAT:

2. The proceeding is dismissed.
3. The plaintiff's and the second and third defendants' costs of this proceeding, including their costs of and incidental to negotiating and giving effect to the Deed of Compromise, be paid in accordance with paragraph 6 of the orders of the Honourable Justice Judd made on 19 July 2013.
4. There be otherwise no order as to costs.

DATE: 2013

SCHEDULE

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

LIST

SCI 2013 01477

B E T W E E N

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**

First Defendant

and

**ANTHONY CORMICK IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN THE 2004
TIMBERCORP TABLE GRAPE PROJECT (ARSN 108 648 086)**

Second Defendant

and

**JEYARASA RASIAH AND ANNE RASIAH IN THEIR CAPACITY AS REPRESENTATIVES OF THE
GROWERS IN THE 2005 TIMBERCORP TABLE GRAPE PROJECT (ARSN 113 512 236)**

Third Defendants

Executed and delivered as a Deed

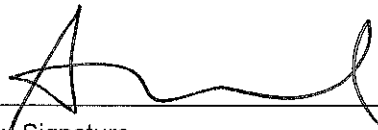
Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed Sealed and Delivered for The Trust Company (Nominees) Limited (ACN 000 154 441), by its attorneys pursuant to a Power of Attorney dated 4 August:



Attorney Signature
RUPERT SMOKER

Print Name



Attorney Signature

ALEXANDER PAMPEL

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231)** in its capacity as the responsible entity of the Timbercorp Orchard Trust:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Executed and delivered as a Deed

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed Sealed and Delivered for The Trust Company (Nominees) Limited (ACN 000 154 441), by its attorneys pursuant to a Power of Attorney dated 4 August:

Attorney Signature

Print Name

Attorney Signature

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231)** in its capacity as the responsible entity of the Timbercorp Orchard Trust:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Signed by 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, in the presence of:

J Stewart

Witness Signature

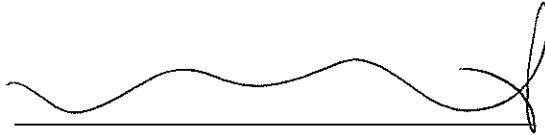
Jane Stewart

Print Name

5/78 Woomack Road

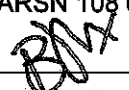
Carnegie VIC 3163

Address of witness



Signature


Signed Sealed and Delivered by
Anthony Cormick in his capacity as
representative of the Participant Growers in
the 2004 Timbercorp Table Grape Project
(ARSN 108 648 086) in the presence of:



Witness Signature

BRENDA COX

Print Name



Signature

Signed Sealed and Delivered by
Jeyarasa Rasiah in his capacity as
representative of the Participant Growers in
the 2005 Timbercorp Table Grape Project
(ARSN 113 512 236) in the presence of:

Witness Signature

Print Name

Signature

Signed Sealed and Delivered by Anne
Rasiah in her capacity as representative of
the Participant Growers in the 2005
Timbercorp Table Grape Project
(ARSN 113 512 236) in the presence of:

Witness Signature

Print Name

Signature

Signed Sealed and Delivered by
Anthony Cormick in his capacity as
representative of the Participant Growers in
the 2004 Timbercorp Table Grape Project
(ARSN 108 648 086) in the presence of:

Witness Signature

Signature

Print Name

Signed Sealed and Delivered by
Jeyarasa Rasiah in his capacity as
representative of the Participant Growers in
the 2005 Timbercorp Table Grape Project
(ARSN 113 512 236) in the presence of:

Witness Signature

Signature

JASON RASIAH

Print Name

Signed Sealed and Delivered by Anne
Rasiah in her capacity as representative of
the Participant Growers in the 2005
Timbercorp Table Grape Project
(ARSN 113 512 236) in the presence of:

Witness Signature

Signature

JASON RASIAH


Print Name


Executed by Timbercorp Securities Limited (in liquidation) (ACN 092 3111 469) by being signed sealed and delivered in its name by **Mark Anthony Korda** in his capacity as liquidator in the presence of:



Witness Signature


Print Name



Signature


Print Name