

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-8**' 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-8': a true copy of the
Mortgage granted over the Bella
Vista Property registered on 4
May 2005**



Form: 05M
 Licence: 04-11-038
 Licensee: Kemp Strang

MORTGAGE

New South Wales
 Real Property Act 1900

AB461741D

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any

STAMP DUTY

Office of State Revenue use only

NEW SOUTH WALES DUTY

04-05-2005

0002634904-001

COLLATERAL

TOTAL SECURED \$ *****37,553,000.00

DUTY \$ *****10.00

(A) TORRENS TITLE

2/1046695 and 1/1067588

(B) LODGED BY

Delivery
Box

48T

Name, Address or DX and Telephone

LLPN : 123819E

CITYLINK

KS/AF/01ML-253958

Reference (optional): 340230 1 DOC act

CODE

M

(C) MORTGAGOR

ORCHARD INVESTMENTS MANAGEMENT LIMITED ACN 105 684 231

(D)

mortgages to the mortgagee all the mortgagor's estate and interest in the land specified above, and covenants with the mortgagee that the provisions set out in annexure A /memorandum No. filed at the Department of Lands, Land and Property Information Division are incorporated in this mortgage.

(E)

Encumbrances (if applicable): 1. 2. 3.

(F) MORTGAGEE

PERMANENT NOMINEES (AUST.) LIMITED ACN 000 154 441

(G)

TENANCY:

DATE

(H)

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: Orchard Investments Management Limited

Authority: Section 127 of the Corporations Act

Signature of authorised person:

Name of authorised person:

Office held:

Michael Emery
 MICHAEL EMERY
 DIRECTOR

Signature of authorised person:

Name of authorised person:

Office held:

Director
 DIRECTOR

I certify that the mortgagee, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this mortgage in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the mortgagee.

Signature of witness:

Name of witness:

Address of witness:

24/10/05
Lucas Papacostas
 37 GOLFWOOD CLOSE
 PINDLEY, VIC, 3172

Signature of mortgagee:

010

PERMANENT NOMINEES (AUST.) LIMITED ACN 000 154 441 by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2nd June 1993, whereby they execute this deed document for instrument. Registered Number: 30049022 Number 346 Group A Attorney Signature: <i>[Signature]</i> Name: <i>John Dignan</i> Group A Attorney Signature: <i>[Signature]</i> Name: <i>SPENCER SILKNEY</i>	
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**Annexure
"A"**

This is the annexure "A" referred to in the mortgage made between **Permanent Nominees (Aust.) Limited** ACN 000 154 441 as mortgagee and **Orchard Investments Management Limited** (ACN 105 684 231) in its capacity as responsible entity of the **Timbercorp Orchard Trust** (ARSN 106 557 297) in respect of the land comprised in Folio Identifiers 2/1046695 (**Costa's Crest**) and 1/1067588 (**Bella Vista**) dated April 2005.

The Mortgagor gives the following mortgage to the Mortgagee as security for the Mortgagor's obligations to the Mortgagee under the Debenture Trust Deed.

1 Understanding this Mortgage

1.1 Special meanings of some words and expressions

In this Mortgage, the following words and expressions have the following special meanings. (The fact that a word or expression in this Mortgage begins with a capital letter usually means that it has a special meaning which is found in this clause):

Building Work means any work to construct, complete or alter an improvement on the Land.

Collateral Security means any loan agreement or mortgage (other than this Mortgage), guarantee or other security held by the Mortgagee as security for the Secured Money.

Corporations Act means the Corporations Act 2001 (Cth).

Debenture Holder means a holder from time to time of a debenture issued pursuant to the Debenture Trust Deed.

Debenture Trust Deed means the Timbercorp Orchard Trust Debenture Trust Deed (including schedules) as originally executed by the Mortgagor and the Mortgagee on 17 October 2003, as it may from time to time be amended in accordance with its terms and conditions.

Disclosure Document means:

- (a) a "disclosure document" as defined in section 9 of the Corporations Act;
- (b) a "product disclosure statement" as defined in section 9 of the Corporations Act;
- (c) any other offer document by which interests in the Projects are offered.

Signature of First Director of the Mortgagor: _____

Signature of Second Director of the Mortgagor: _____

010

PERMANENT NOMINEES (AUST.) LIMITED ACN 000 154 441 by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2nd June 1993, whereby they execute this deed document or instrument. Registered Number: 60422	
Group A Attorney Signature: _____ Name: John Diman	Group B Attorney Signature: _____ Name: STEVE SILKNECKY

Signature of Witness: _____

Name of Witness: **LUCAS PAPACOSTAS**

Address of Witness: **37 GOLFWOOD CLOSE
DINGLEY, VIC, 3172**

Environmental Law means any law which has as one of its purposes or effects protection of the environment.

Event of Default means any one of the events listed in clause 12.1 of the Debenture Trust Deed.

Fixed and Floating Charge means the fixed and floating charge created under the Debenture Trust Deed and granted by the Mortgagor in favour of the Mortgagee over the assets of the Timbercorp Orchard Trust.

GST means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law.

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999.

GST Rate means the rate of GST under the GST Law.

Insolvent means a corporation that is an externally administered corporation within the meaning of the Corporations Act.

Land means the Table Grape Land and Vacant Land described in this Mortgage and includes all capital works, trees, Water Licences and improvements, including irrigation works but does not include the Table Grapes or Other Crops derived from the Projects.

Mortgage means this mortgage, including this annexure.

The Mortgagee means Permanent Nominees (Aust.) Limited (ACN 000 154 441) only in its capacity as trustee of the Debenture Holders under the Debenture Trust Deed and any of its successors or assigns.

The Mortgagor means Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) and any of its successors or assigns.

Occupancy Agreement means any lease, licence or other occupancy agreement entered into by the Mortgagor in respect of the Land.

Officer means any person authorised by the Mortgagee to act as its Officer for the purpose of this Mortgage.

Other Crops means crops, products, rights, benefits or credits derived from horticultural, viticultural, silvicultural or other agricultural activities undertaken on the Land.

Projects means the Timbercorp Table Grape Projects and such other projects undertaken by the Timbercorp Group of a horticultural, viticultural, silvicultural or other agricultural nature on the Land.

Project Agreements has the same meaning given to it by the Disclosure Documents for the Projects.

SA Mortgage means the mortgage, including the annexures, granted by the Mortgagor to the Mortgagee on or about the date of this Mortgage over the citrus land, wine grape land and adjacent vacant land in South Australia of which the Mortgagor is, or will be, the registered proprietor.

Secured Money means all moneys (whether present or future, actual or contingent, ascertained or unascertained, as principal or surety) owing by the Mortgagor to the Mortgagee in all its capacities pursuant to the Transaction Documents.

Specified Office means the registered office of the Mortgagor or such other office advised by the Mortgagor to the Mortgagee from time to time.

Table Grape Land means the land described in this Mortgage which is used for the cultivation of table grape vineyards as at the date of this Mortgage and includes all capital works, vines, Water Licences and improvements, including irrigation works but does not include the Table Grapes or Other Crops derived from the Projects.

Table Grapes means the products, rights, benefits or credits derived from the grapevines on the Table Grape Land.

Timbercorp means Timbercorp Limited (ACN 055 185 067).

Timbercorp Group means Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts".

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

Timbercorp Orchard Trust Constitution means the constitution of the Timbercorp Orchard Trust, as amended from time to time.

Timbercorp Securities means Timbercorp Securities Limited (ACN 092 311 469).

Timbercorp Table Grape Projects means the table grape projects, interests in which have been, or will be, offered by Timbercorp Securities or another Timbercorp Group entity under a Disclosure Document.

Title Documents means all Certificates of Title and other documents regarded as proof of ownership of the Land by the Mortgagor.

Transaction Documents means:

- (a) the Debenture Trust Deed (including the Fixed and Floating Charge);
- (b) the SA Mortgage;
- (c) this Mortgage;
- (d) any document which amends, restates or replaces any of the documents referred to in paragraphs (a), (b) and (c); and
- (e) any other document which the parties so agree in writing.

Vacant Land means the land described in this Mortgage which is vacant land as at the date of this Mortgage and includes all capital works, trees, vines, Water Licences and improvements, including irrigation works attributed to the vacant land but does not include Table Grapes or Other Crops derived from the Projects.

Water Licences means the permanent water licences attributable to all or part of the Land for the purposes of the Projects (whether acquired before or subsequent to the date of this Mortgage).

1.2 Understanding this Mortgage generally

- (a) Words indicating the singular also indicate the plural and vice versa and words indicating any gender also indicate all other genders.
- (b) Headings are for convenience and do not affect the interpretation of this Mortgage.
- (c) A reference in this Mortgage to any thing also means any part of that thing.
- (d) A reference to the Mortgagee includes its successors and assigns and any person to whom the Mortgagee transfers its interest in the Land.
- (e) Where an example is given of something, this does not limit what else might be included.
- (f) Where this Mortgage says that the Mortgagee must not take any action, this means that the Mortgagee must also not enter into any agreement to take that action and it also means that the Mortgagee must not encourage or permit anyone else to take that action.

1.3 Where there is more than one Mortgagor

When there is more than one Mortgagor, each Mortgagor is individually liable for the whole of the Secured Money and for all other obligations under this Mortgage and if any one or more Mortgagor ceases to be liable at any time, the others will continue to be liable.

1.4 What if part of Mortgage invalid

If a part of this Mortgage is or becomes invalid or unenforceable, that part will be read down (interpreted) if possible to make it valid and enforceable, but if this is not possible, the Mortgage will take effect as if it did not include that part.

2 Legislation

2.1 References to legislation

A reference in this Mortgage to any particular legislation is a reference to that legislation and any other regulations or rules made under it and any legislation, regulation or other rule which replaces any of them in force for the time being.

2.2 Effect of legislation

Any part of any legislation having the effect of limiting the Mortgagee's rights or powers, or requiring the Mortgagee to give notices or to take any other action does not apply, unless the Mortgagee is prevented by law from excluding its application. Any part of any legislation that gives rights or protection to the Mortgagee, or imposes obligations on the Mortgagor, will apply except to the extent that it is inconsistent with any part of this Mortgage.

3 Payment and other obligations

3.1 Payment under agreement

The Mortgagor will pay the Secured Money to the Mortgagee in accordance with the Transaction Documents.

3.2 Insurance

The Mortgagor must insure the improvements on the Land, on a replacement and reinstatement basis, but is not required to insure the Table Grapes and Other Crops derived from the Projects. The Mortgagor must also maintain insurance cover for public risk in the sum of ten million dollars. The Mortgagor will be required to produce evidence of the requisite cover to the Mortgagee within 21 days of the end of each financial year of the Mortgagor.

3.3 Leases

The Mortgagor must not, and must not agree or attempt to

- (a) dispose of, assign or transfer, (in whole or in part);
- (b) encumber or grant any interest over; and / or
- (c) amend, terminate, waive or fail to enforce,

any of its material rights and obligations under leases, sub-leases or licences existing over the whole or any part of the Land, without the consent of the Mortgagee which will not unreasonably be withheld, except in accordance with the rights of the Mortgagor under clause 6.8.

3.4 Other obligations

The Mortgagor will perform all of the Mortgagor's obligations under any Collateral Security in force from time to time between the Mortgagor and the Mortgagee.

4 What this mortgage secures

4.1 Secured Money

This Mortgage is granted to, and may be held by, the Mortgagee as security for due and punctual payment to the Mortgagee of the Secured Money and performance by the Mortgagor of all of the Mortgagor's other obligations under this Mortgage.

5 Title to land

5.1 Title

The Mortgagor represents and warrants that to the best of its knowledge:

- (a) except for any separate interests which may be noted on the Certificate of Title for the Land and the Table Grapes or Other Crops derived from the Projects, the Mortgagor is the owner of the interest in the Land as responsible entity of the Timbercorp Orchard Trust which the Mortgagor is mortgaging to the Mortgagee, and nobody else has, or claims, any rights in relation to the Land inconsistent with the rights of the Mortgagor in the Land and the rights of the Mortgagee under this Mortgage, except as disclosed in clause 5.2;
- (b) the Mortgagor has told the Mortgagee about all rights that affect the Land (or are likely to do so) such as rights to compulsorily acquire the Land or any part or parts of it;
- (c) the Mortgagor does not breach any law or any obligation to any other person by signing this Mortgage; and that
- (d) all information the Mortgagor has given to the Mortgagee is correct and is not misleading.

5.2 Agreements, Acknowledgements and Consents

- (a) The Mortgagee acknowledges that the Land does not include the Table Grapes and Other Crops derived from Projects, as they remain the property of:
 - (i) the growers in the Projects;
 - (ii) the responsible entities and managers of the Projects and their nominees;
 - (iii) any lessee or licensee of a person specified in paragraph 5.2(a)(ii); or
 - (iv) any other person who derives title to the Table Grapes or Other Crops derived from the Projects, through any of the persons described in paragraphs 5.2(a)(i) to (iii).
- (b) The Mortgagee acknowledges and agrees that all rights and interests of:
 - (i) the responsible entities and managers of the Projects and their nominees;

- (ii) any lessee or licensee of a person specified in paragraph 5.2(b)(i);
 - (iii) the growers in a Project; and
 - (iv) anyone claiming through the persons specified in paragraphs 5.2(b)(i) to (iv),
to use the Land under the terms of any Occupancy Agreements, lease, sub-lease, licence and other rights of occupancy granted for the purpose of the Projects, whether those rights exist at the date of this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently, have priority over the rights of the Mortgagee and consents to the rights of the persons described in paragraphs 5.2(b)(i) to (iv) having such priority.
- (c) The Mortgagee consents to:
- (i) leases, sub-leases, licences and other rights of occupancy granted for the purpose of the Projects, of any Land and Improvements or part thereof to the persons described in paragraphs 5.2(b)(i) to (iv);
 - (ii) Occupancy Agreements granted for the purpose of the Projects,
whether those Occupancy Agreements, leases, sub-leases, licences and other rights of occupancy exist at the date of this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently.
- (d) The Mortgagee:
- (i) has consented, and consents, to the Mortgagor as responsible entity of the Timbercorp Orchard Trust entering into Occupancy Agreements with Timbercorp in relation to the Land which formed part of the assets of the Timbercorp Orchard Trust on or about 6 October 2004 on terms and conditions consistent with those set out in the Prospectus; and
 - (ii) agrees and acknowledges that this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge are granted subject to the rights and interests described in paragraphs 5.2(d)(i), whether those rights and interests exist at the date of this Mortgage, the Debenture Trust Deed or the Fixed and Floating Charge or arise subsequently.

6 The Mortgagor's obligations in relation to the land

6.1 Maintain the Land

The Mortgagor must keep the Land in good condition and make sure that any Building Work on the Land is completed properly.

6.2 Alterations

The Mortgagor may at any time and from time to time develop and re-develop the Land as it sees fit, and to create rights in other persons similar to those created in growers in Timbercorp Table Grape Projects and other Projects, which will have priority over the rights of the Mortgagee. The Mortgagee acknowledges that the Table Grapes or Other Crops derived from the Projects may be removed by the Timbercorp Group, any grower in the Projects, any lessee of a company in the Timbercorp Group or any other person who derives title to the Table Grapes or crops derived from other Projects through any of them, as the case may be.

6.3 Compliance with laws and government requirements

- (a) The Mortgagor must comply with all laws and the requirements of all councils and other government bodies in relation to the Land and with the requirements of any Title Documents.
- (b) The Mortgagor must give the Mortgagee a copy of any order or notice from any authority concerning the use or condition of the Land as soon as the Mortgagor becomes aware of it.

6.4 Environmental Laws

- (a) The Mortgagor must promptly remedy any breach of Environmental Laws affecting the Land.
- (b) The Mortgagor must tell the Mortgagee if the Land is contaminated, defective or seriously damaged as soon as the Mortgagor becomes aware of it.

6.5 The Mortgagee may inspect the Land

The Mortgagor will allow the Mortgagee and the Mortgagee's officers to enter the Land on reasonable notice for the purpose of inspecting it.

6.6 Compulsory acquisition of the Land

If the Mortgagor becomes aware that the Land is or may be compulsorily acquired or resumed by any competent authority, the Mortgagor must promptly notify the Mortgagee in writing, and keep the Mortgagee fully informed in writing of all steps taken in relation to such resumption or acquisition. The Mortgagor must promptly comply with any directions that the Mortgagee may give in relation to any such resumption or acquisition, and take all steps reasonably required to ensure that appropriate compensation, if applicable, is paid and that any compensation moneys are paid to the Mortgagee to be dealt with in accordance with this Mortgage. The Mortgagee may conduct any negotiations with the government in relation to such resumption or acquisition.

6.7 Rates and taxes

The Mortgagor must pay, by the due dates for payment, any amounts payable in relation to the Land, including all rates and taxes in relation to the Land.

6.8 Dealing with the Land

- (a) The Mortgagor may encumber the Land as security for the payment of any borrowings, or deal with the Land, as described in clause 5.2, and the Mortgagee consents to such encumbrances and dealings.
- (b) The Mortgagor may encumber the Land as security for the payment of any borrowings, and the Mortgagee consents to such encumbrance provided that:
 - (i) such encumbrance ranks in priority below the Mortgage; and
 - (ii) the encumbrance is subject to such terms and conditions that the Mortgagee considers reasonably necessary or desirable to protect the interests of the debenture holders and the Mortgagee under this Mortgage and the Debenture Trust Deed.
- (c) The Mortgagor may subdivide the Land with the Mortgagee's consent, which must not be unreasonably withheld.
- (d) The Mortgagor may, in its absolute discretion, lease, assign or licence the Water Licences to a third party subject to the lease, assignment or licence being for a term of not greater than 12 months and for market value.

6.9 Protection of the Mortgagee's interest in the Land

- (a) If the Mortgagee asks the Mortgagor to, the Mortgagor will promptly sign all such documents and take all such other steps as may be reasonably required on its part to ensure that the Mortgagee has a proper and enforceable mortgage over the Land, to overcome any problems with this Mortgage or to enable the Mortgagee to better exercise the Mortgagee's rights under this Mortgage. The Mortgagor will make sure that anyone else who claims to have an interest in the Land does the same.
- (b) The Mortgagor must do everything necessary to remove any caveat placed on the title to the Land without the Mortgagee's consent except for caveats placed on the title to the Land by the Timbercorp Group and by growers in the Projects which the Mortgagee agrees may be placed on and may remain on the title to the Land.

6.10 Encroachments

If the Mortgagee asks, the Mortgagor must have any encroachment on the Land from adjoining land promptly removed. If any part of a structure on the Land encroaches on adjoining land, the Mortgagor must promptly, if the Mortgagee asks:

- (a) correct the encroachment; or
- (b) obtain an easement or other permission acceptable to the Mortgagee to allow it to continue; or
- (c) become the owner of the encroached land and mortgage it to the Mortgagee on terms no less favourable than this Mortgage.

6.11 Rural land

If any of the Land is used for agricultural or horticulture purposes, the Mortgagor must:

- (a) manage and preserve it properly and efficiently, including by taking reasonable action to keep it free from pests and harmful vegetation; and
- (b) obtain the Mortgagee's consent before doing anything which could cause a licence to be forfeited or cancelled.

7 Building work

7.1 If Building Work is carried out on the Land

- (a) If Building Work is carried out on the Land, the Mortgagor must ensure that it:
 - (i) is done to a reasonable standard;
 - (ii) is completed within a timely manner; and
 - (iii) is done in a good and workmanlike manner and in a way that complies with all appropriate legislation and the requirements of government agencies.
- (b) The Mortgagor must give to the Mortgagee all certificates needed to show that:
 - (i) any Building Work does comply with all these things; and
 - (ii) the Land may lawfully be used for its particular purpose.

8 Default

8.1 What amounts to default?

The Mortgagor will be in default if:

- (a) there is an Event of Default; or
- (b) the Mortgagor does not pay any part of the Secured Money when it is due for payment; or
- (c) the Mortgagor breaches any other provision of this Mortgage; or
- (d) the Mortgagor gives the Mortgagee incorrect or misleading information in connection with this Mortgage; or
- (e) the Mortgagee reasonably believes that the Mortgagor acted fraudulently in connection with this Mortgage; or
- (f) the Mortgagor becomes Insolvent.

8.2 The Mortgagee to give notice

- (a) The Mortgagee must do the following things before the Mortgagee can take any action to enforce this Mortgage:
 - (i) the Mortgagee must give the Mortgagor notice that the Mortgagor is in default, and specify the default;
 - (ii) if the Mortgagee believes on reasonable grounds that the default is not capable of being remedied, the Mortgagee must not begin to enforce this Mortgage until after a period of at least one month from the date of the notice;
 - (iii) if the default is capable of being remedied, the Mortgagee must give a period of one month from the date of the notice to remedy the default and the default must not have been remedied within that period before the Mortgagee can take any action to enforce this Mortgage.
- (b) The Mortgagee may be required by other laws to give notice before exercising some of the Mortgagee's rights under this Mortgage, and may have obligations imposed on the Mortgagee about what the Mortgagee must do when exercising such rights. To the maximum extent allowed by law, those requirements are excluded. However, to the extent that the law does not permit them to be excluded, the Mortgagee must comply with them.

8.3 The Mortgagee's rights on default

Subject to any obligation that the Mortgagee may have to give the Mortgagor prior notice and to any rights of persons described in clause 5.2, including without limitation, Timbercorp, Timbercorp Securities and the growers in the Projects, if the Mortgagor defaults, the Mortgagee may do any of the following things, either in the Mortgagor's name or in the Mortgagee's name:

- (a) exercise any rights set out in this Mortgage;
- (b) exercise any other right that the law gives to a mortgagee in the circumstances;
- (c) take any action in relation to the Land that the Mortgagor could take if the Land were not mortgaged;
- (d) anything that the Mortgagee believes is necessary or desirable for any of these purposes; and

- (e) ask the Mortgagor to pay the Secured Money.

8.4 The Mortgagee's right to enter and take possession

Subject to any obligation that the Mortgagee may have to give the Mortgagor prior notice and to any rights of persons described in clause 5.2, including without limitation, Timbercorp, Timbercorp Securities and the growers in the Projects, if the Mortgagor is in default under this Mortgage, the Mortgagee may take possession of all or any part of the Land by physically taking possession of that part or by doing anything else that the law regards as equivalent to actually entering into possession. If the Mortgagee does enter into possession of the Land or any part, the Mortgagee can withdraw from possession later.

8.5 The Mortgagee's right to sell

- (a) Subject to any obligation that the Mortgagee may have to give the Mortgagor notice, if the Mortgagor is in default the Mortgagee can sell all or part of the Land subject to any rights of persons described in clause 5.2, including without limitation, Timbercorp, Timbercorp Securities and the growers in the Projects.
- (b) The Mortgagee has all of the same powers in relation to a sale of the Land that the Mortgagor would have if the Land was not mortgaged, and such powers extend to all arrangements that the Mortgagee considers to be incidental to any such sale.

8.6 Removal of items from Land

- (a) Subject to any obligation that the Mortgagee may have to give the Mortgagor notice, if the Mortgagor is in default the Mortgagor must remove from the Land anything that is not subject to this Mortgage if the Mortgagee asks the Mortgagor to, except for the Table Grapes or Other Crops derived from the Projects which must remain.
- (b) If the Mortgagor does not remove the things the Mortgagee asked the Mortgagor to remove within 7 days of being asked the Mortgagor will have no further claim to such things, and the Mortgagee may sell them or otherwise dispose of them in any way that the Mortgagee wishes, and retain the proceeds of any sale of such things and apply such proceeds in the same way as any other moneys received under this Mortgage.

8.7 The Mortgagor does not lose rights

The Mortgagee may exercise any of the Mortgagee's rights under this Mortgage even if the Mortgagee has received money from the Mortgagor after the Mortgagor's default (if such money is not sufficient to remedy the default), or the Mortgagee has negotiated with the Mortgagor after the default but has not agreed to postpone the exercise of the Mortgagee's rights, or the Mortgagee holds any other security in relation to the Secured Money, or any other such circumstances may have arisen.

9 Miscellaneous

9.1 Payments to the Mortgagee

- (a) The Mortgagor must make all payments due to the Mortgagee without any deduction or withholding for tax.
- (b) The Mortgagor agrees that the Mortgagee will only be taken to have received any payment when the Mortgagee actually receives the amount of the payment in cash or cleared funds.

- (c) The Mortgagee may apply any money that the Mortgagee receives in relation to this Mortgage first to pay the balance of the Secured Money and secondly to pay any money claimed to be owing to the holder of any later mortgage or charge which is apparently recorded on the title to the Land in the order of priority appearing on the title. The Mortgagee may only then pay any remaining money to the Mortgagor, or into a bank account in the name of the Mortgagor and in either case will have no further liability in relation to the money. In applying any money towards the Secured Money, the Mortgagee can apply the money to any part of the Secured Money that the Mortgagee chooses. However, if money received represents proceeds of an insurance claim, the Mortgagee must deal with the money in accordance with clause 7.4(d) of the Debenture Trust Deed.

9.2 The Mortgagee may carry out the Mortgagor's obligations

If the Mortgagor breaches this Mortgage, the Mortgagee may rectify that breach and the Mortgagor must reimburse the expenses incurred by the Mortgagee in rectifying that breach.

9.3 Government charges

The Mortgagor must pay all government charges including stamp duty, financial institutions duty and debits tax and other taxes and duties on this Mortgage and payments and receipts under it.

9.4 Exercise of the Mortgagee's rights

The Mortgagee can do anything under this Mortgage immediately, or after a time, or on more than one occasion. The fact that the Mortgagee does not do something does not mean that the Mortgagee has given up the right to do that thing later.

9.5 Power of Attorney

- (a) The Mortgagor appoints the Mortgagee and each Officer (on the basis that any one can act without the others) when the Mortgagor has defaulted as the Mortgagor's attorney with power to execute any deed, sign any document and do any other thing that the attorney believes on reasonable grounds is necessary or desirable to make sure that this Mortgage is as effective as possible, to do anything that the Mortgagor can do or ought to have done under this Mortgage and to represent the Mortgagor at any meeting involving the Land.
- (b) If requested to do so the Mortgagor will confirm in writing that anything done by the attorney is binding on the Mortgagor.

9.6 Who can exercise the Mortgagee's rights?

The Mortgagee's rights and powers under this Mortgage may be exercised by any Officer.

9.7 The Mortgagee may certify matters

The Mortgagee may make a written statement about any matter in relation to this Mortgage, for example the amount of the Secured Money at any particular time, debits, credits and balances of any of any accounts at any particular date, relevant rates of interest and whether or not any particular thing has happened. The matters stated in any such certificate will be regarded as correct unless the Mortgagor proves them to be incorrect.

9.8 The Mortgagee to hold Title Documents

- (a) The Mortgagor must cause and permit the Title Documents to be delivered to the Mortgagee.
- (b) The Mortgagee may have possession and control of those Title Documents until the Mortgagee is obliged to discharge this Mortgage.

- (c) The rights of the Mortgagee under this clause 9.8 are subject to any requirement under the Corporations Act or imposed by the Australian Securities and Investments Commission for the responsible entity or custodian of the Projects to have possession or custody of any Title Document because it is "scheme property" as that term is defined in section 9 of the Corporations Act.

9.9 The Mortgagee may transfer this Mortgage

The Mortgagee may only transfer this Mortgage and the obligations of the Mortgagor under it if the Mortgagee is retiring or is being replaced as trustee under the terms of the Debenture Trust Deed.

9.10 Supply of information to the Mortgagee

The Mortgagor must keep the Mortgagee informed of all matters which are likely to significantly affect the Land, or its value, or the Mortgagor's ability to carry out the Mortgagor's obligations under this Mortgage. In addition, the Mortgagor will give to the Mortgagee whatever information the Mortgagee requests from time to time in relation to the Land or the Mortgagor's obligations under this Mortgage.

9.11 Releases do not affect the Mortgagor's liability to the Mortgagee

The fact that the Mortgagee may release any other person who may be liable to the Mortgagee in respect of the Secured Money will not affect the Mortgagor's liability to the Mortgagee, and the Mortgagee does not have to obtain the Mortgagor's consent before releasing any such other person. In this clause, release from liability includes any compromise agreement in relation to that liability.

9.12 Void or unenforceable transactions

If any payment, security or other transaction in favour of the Mortgagee in relation to the Secured Money is subsequently found to be void or unenforceable or is liable to be cancelled then the Mortgagee will have the same rights under this Mortgage as if that transaction had never taken place, and if the Mortgagee has given a discharge of this Mortgage on the basis of that transaction, then that discharge will be treated as having no effect and the Mortgagor will if requested to do so grant a fresh mortgage in favour of the Mortgagee to replace the discharged mortgage.

9.13 Mortgage to remain binding despite changes

This mortgage is to continue until it is finally discharged by the Mortgagee, and will not be regarded as affected or discharged by matters such as any payments or credits towards the Secured Money, or the receivership, administration, or liquidation of the Mortgagor or (if the Mortgagor has entered into this Mortgage as trustee) the replacement of the Mortgagor as trustee.

9.14 Relationship to other documents

Unless the Mortgagee agrees in writing to the contrary, nothing that the Mortgagee does in connection with any Collateral Security will affect the Mortgagee's rights under this Mortgage, and nothing that the Mortgagee does under or in connection with this Mortgage will affect the Mortgagee's rights under any Collateral Security.

9.15 No reliance on the Mortgagee

The Mortgagor agrees that any inspection of the Land carried out by the Mortgagee or on the Mortgagee's behalf and any valuation or other report obtained by the Mortgagee in relation to the Land is made or obtained for the Mortgagee's own purposes and not for the Mortgagor, and that the Mortgagor should therefore not rely on it in any way.

9.16 Set off

- (a) If the Mortgagor has any money in an account with the Mortgagee, the Mortgagee may use that money to make payments due from the Mortgagor under this Mortgage, but is not obliged to do so.
- (b) Except to the extent that the Mortgagor has a right of set off granted by law which cannot be excluded by agreement, the Mortgagor must pay the Secured Money in full without setting off amounts the Mortgagor believes that the Mortgagee owe to the Mortgagor and without counterclaiming amounts from the Mortgagee.

9.17 The Mortgagor is a responsible entity

- (a) The Mortgagor and Mortgagee acknowledge that:
 - (i) the Mortgagor has entered into this Agreement in its capacity as responsible entity under the Timbercorp Orchard Trust Constitution; and
 - (ii) the Mortgagor has full, complete and valid authority and power to enter into this Agreement under the terms of the Timbercorp Orchard Trust Constitution.
- (b) The Mortgagor and Mortgagee acknowledge and agree that every agreement and condition in this Mortgage for the benefit of the Mortgagor, benefits the Mortgagor personally and in its capacity as responsible entity under the Timbercorp Orchard Trust Constitution.
- (c) The Mortgagor and Mortgagee agree that the Mortgagor will in no circumstances be required to satisfy any liability owed to the Mortgagee or to any party claiming through the Mortgagee for breach of any obligation pursuant to, or in respect of, this Mortgage, the Debenture Trust Deed, the SA Mortgage, the Fixed and Floating Charge and any Collateral Security out of any funds, property or assets other than the assets held as the responsible entity under the Timbercorp Orchard Trust Constitution under the Mortgagor's control and in its possession and available to be properly resorted to by the Mortgagor, except that the limitation contained in this clause 9.17(c) does not apply in the case of any fraud or breach of trust on the part of the Mortgagor.

9.18 The Mortgagee's liability

- (a) The Mortgagee enters into this Mortgage only in its capacity as trustee for the Debenture Holders and in no other capacity. A liability arising under or in connection with this Mortgage or a Transaction Document is limited to and can be enforced against the Mortgagee only to the extent to which the Mortgagee is actually indemnified for the liability. This limitation of the Mortgagee's liability applies despite any other provision of this Mortgage or any other Transaction Document and extends to all liabilities and obligations of the Mortgagee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Mortgage or any other Transaction Document.
- (b) The parties other than the Mortgagee may not sue the Mortgagee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Mortgagee or prove in any liquidation, administration or arrangement of or affecting the Mortgagee.
- (c) The provisions of this clause 9.18 do not apply to any obligation or liability of the Mortgagee to the extent that it is not satisfied because under the Debenture Trust Deed or by operation of law there is a reduction in the extent of the Mortgagee's indemnification out of the assets subject to the Debenture Trust Deed, as a result of the Mortgagee's failure to show the degree of care and diligence required of a trustee by the Corporations Act.

- (d) No attorney, agent, receiver or receiver and manager appointed in accordance with this Mortgage or any other Transaction Document or otherwise has authority to act on behalf of the Mortgagee in a way which exposes the Mortgagee to any personal liability and no act or omission of any such person, other than a person appointed by the Mortgagee itself, will be considered failure to show the degree of care and diligence required of a trustee by the Corporations Act for the purpose of clause 19.8(c).
- (e) The Mortgagee is not obliged to do or refrain from doing anything under this Mortgage or any other Transaction Document (including incur any liability) unless the Mortgagee's liability is limited in a manner satisfactory to the Mortgagee in its absolute discretion.
- (f) A failure by the Mortgagee to comply with or a breach by the Mortgagee of any of its obligations under any Transaction Document will not be considered to be a failure to show the degree of care and diligence required of a trustee by the Corporations Act if the relevant failure or breach:
 - (i) arose as a result of a breach by a person other than the Mortgagee of a Transaction Document where the performance of the action (the non performance of which gave rise to such breach) is a precondition to the Mortgagee performing the said obligation;
 - (ii) was in accordance with a lawful court order or direction or otherwise required by law; or
 - (iii) was in accordance with an instruction or direction of the Debenture Holders given at a meeting of Debenture Holders duly convened and held in accordance with the Debenture Trust Deed or the written consent or authority of Debenture Holders given in accordance with the Debenture Trust Deed.
- (g) All of the terms, clauses and conditions of this Mortgage and any other Transaction Document are subject to this clause 19.8.

10 Notices given by the Mortgagee to the Mortgagor

10.1 How to give notices

The Mortgagee may give any notice to the Mortgagor in respect of this Mortgage in writing by:

- (a) leaving it at the Mortgagor's Specified Office with one of the Mortgagor's officers; or by
- (b) sending it by post, facsimile or similar facility to the Mortgagor's Specified Office.

10.2 When are notices given

A notice to the Mortgagor in respect of this Mortgage is taken to be given:

- (a) if given personally, on the date on the notice or the date it is received by the Mortgagor, whichever is the later;
- (b) if sent by post, on the date on the notice or on the date it would have been delivered in the ordinary course of post whichever is the later; or
- (c) if sent by facsimile or other electronic means, on the date on the notice or the date the transmitting machine reports that the notice was sent, whichever is the later.

11 Notices given by the Mortgagor to the Mortgagee

11.1 How to give notices

The Mortgagor must give the Mortgagee any notice in respect of this Mortgage in writing in one of the following ways:

- (a) by leaving it at the Mortgagee's registered office with one of the Mortgagee's officers; or by
- (b) sending it by post, facsimile or similar facility to the Mortgagee's registered office.

11.2 When are notices given

A notice that the Mortgagor gives the Mortgagee in respect of this Mortgage is taken to be given:

- (a) if given personally, on the date on the notice or the date it is received by the Mortgagor, whichever is the later;
- (b) if sent by post, on the date on the notice or on the date it would have been delivered in the ordinary course of post whichever is the later; or
- (c) if sent by facsimile or other electronic means, on the date on the notice or the date the transmitting machine reports that the notice was sent, whichever is the later.

12 Discharge

When the Mortgagee is satisfied that all the Secured Money has been paid in full, and the Mortgagor has fulfilled all of its obligations under this Mortgage, the Debenture Trust Deed, the SA Mortgage, the Fixed and Floating Charge and any Collateral Security, the Mortgagee must if requested to do so by the Mortgagor sign such documents as the Mortgagor may reasonably require to discharge this Mortgage. The Mortgagor must pay the Mortgagee's reasonable expenses in relation to such discharge. The provision of the discharge does not, of itself, constitute a release of the Mortgagor's obligations under this Mortgage, the Debenture Trust Deed, the SA Mortgage, the Fixed and Floating Charge and any Collateral Security.

13 Indemnities

13.1 General

The Mortgagor indemnifies the Mortgagee against any liability, loss, cost or expense:

- (a) caused or contributed to by, or incurred in connection with, any Event of Default; and
- (b) caused or contributed to by, or incurred in connection with, the exercise or attempted exercise of any right by the Mortgagee under this Mortgage;
- (c) incurred in connection with the Land or any Transaction Document.

13.2 Receivers and Purchasers

The Mortgagor must indemnify:

- (a) each receiver and their respective representatives and the representatives of the Mortgagee; and

- (b) any purchaser of the Land,

against any liability, loss, cost and expense caused or contributed to by, or incurred in connection with, anything the Mortgagee is indemnified against under clause 13.1 and the Mortgagee holds the benefit of this clause 13.2 upon trust for those persons.

13.3 Currency conversion

- (a) If a judgment, order or proof of debt for an amount in connection with any Transaction Document is expressed in a currency other than the currency in which the amount is due under any Transaction Document, then the Mortgagor indemnifies the Mortgagee against:
- (i) any difference arising from converting the other currency if the rate of exchange used by the Mortgagee for converting currency when it receives a payment in the other currency is less favourable to the Mortgagee than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
 - (ii) the costs and expense of conversion.

- (b) The Mortgagor agrees to pay amounts under this indemnity on demand from the Mortgagee.

13.4 Independence and Survival

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the Mortgagor and survives the termination of this Mortgage.

14 The Custodian

14.1 Custodian acts as agent of the Mortgagor

- (a) The Mortgagor has appointed Trust Company of Australia Limited (ABN 59 004 027 749) (TCA) as its agent to hold the assets of the Timbercorp Orchard Trust on behalf of the Mortgagor in accordance with a custody agreement dated 15 October 2003 between TCA and the Mortgagor (**the Custody Agreement**).
- (b) The parties agree that:
- (i) any reference to TCA in this Mortgage means TCA in its capacity as custodian of assets of the Timbercorp Orchard Trust and as agent for the Mortgagor; and
 - (ii) any act or omission of TCA in respect of this Mortgage in its capacity as agent for the Mortgagor is taken to have been done (or failed to have been done) by the Mortgagor.
- (c) The Mortgagor agrees that it will properly instruct TCA under the Custody Agreement.

14.2 The Title Documents

- (a) The Mortgagor must cause the Title Documents to be delivered immediately to the Mortgagee upon registration of the Mortgagor as registered proprietor of the Land.
- (b) The Mortgagor irrevocably directs the Mortgagee to:
- (i) deliver to TCA all Title Documents; and
 - (ii) transfer the Land to TCA as agent for the Mortgagor upon request by TCA, upon discharge of this Mortgage.

- (c) The Mortgagee agrees that it will not consent or agree to any dealing in relation to the Land by the Mortgageor, nor make the Title Documents available to the Mortgageor, without first obtaining TCA's written consent.

14.3 The Custodian's liability

- (a) This clause 14 is for the benefit of TCA only in its capacity as custodian of assets of the Timbercorp Orchard Trust and as agent of the Mortgageor, and subject to the terms and conditions of this Mortgage. TCA can only act in accordance with the terms of the Custody Agreement under which it is appointed as the Mortgageor's agent and is not liable under any circumstances to any party under this Mortgage except as expressly provided for under paragraph 14.3(c). This limitation of TCA's liability applies despite any other provision of this Mortgage other than paragraph 14.3(c).
- (b) TCA is not obliged to do or refrain from doing anything under this Mortgage (including, with limitation, incur liability) unless TCA's liability is limited in the same manner as set out in clause 14.3(a).
- (c) Nothing in this clause 14.3 limits the liability of TCA in respect of any loss, cost, damage or expense suffered or incurred by the Mortgagee to the extent that it arises from:
 - (i) any fraud, default or negligence of TCA;
 - (ii) TCA acting or refraining from acting in breach of the Custody Agreement; or
 - (iii) any breach of any warranty or representation contained in the Custody Agreement which is given or deemed to be given by TCA personally in respect of itself.

15 GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Mortgage is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the Value of the taxable supply (the "**GST Exclusive Sum**") and not the Price for that taxable supply.
- (b) In addition to the GST Exclusive Sum for a taxable supply under this Mortgage, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Sum multiplied by the GST Rate.
- (c) Any GST payable under paragraph 15(b) must be payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Sum is payable by the Recipient under this Mortgage.
- (d) The Supplier must, in respect of a taxable supply made by it under this Mortgage, issue to the Recipient a valid tax invoice in the prescribed form, for the amount of GST referable to that taxable supply, so that the Recipient may obtain an input tax credit for the amount of GST payable on the taxable supply.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Mortgage, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Sum and an additional amount must be paid to the Supplier in accordance with paragraph 15(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Mortgage, and such payment will give rise to a liability to pay GST,

the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.

- (g) If a party has a claim for, or the right to recover, under or in connection with this Mortgage, a cost or expense on which that party must pay GST, the claim is for the cost or expense plus all GST, except any GST for which that party is entitled to an input tax credit.
- (h) This clause takes precedence over any other term of this Mortgage to the extent of any inconsistency.

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: ORCHARD INVESTMENTS
MANAGEMENT LIMITED ACN 105 684 231

Authority:

Signature of authorised person:



Name of authorised person: MICHAEL EMERY

Office held: DIRECTOR

Signature of authorised person:



Name of authorised person: THOMAS JOYCE

Office held:

DIRECTOR

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this mortgage in my presence.

Signature of witness



Name of witness: LUCAS PAPADOSTAS

Address of witness: 37 GOLFWOOD CLOSE
DINDLEY, VIC, 3172

Certified correct for the purposes of the Real Property Act 1900 by the person(s) named below who signed this mortgage pursuant to the power of attorney specified.

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PERMANENT NOMINEES (AUST.) LIMITED ACN 000 154 441	
by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2nd June 1993, whereby they execute this deed document or instrument. Registered Number: Book 4022	
Number 346	
Group A Attorney	Group A Attorney
Signature.....	Signature.....
Names: John Dinan	GERICK SILKBECKS

