

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

List B

S CI 2013 01478

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

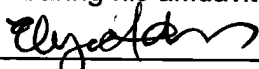
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Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-9**' 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-9': a true copy of the
Kangara Land Sale Contract**



THE LAW SOCIETY
OF SOUTH AUSTRALIA

CONTRACT

FOR THE SALE AND PURCHASE OF LAND

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ISSN 0155-8897

Updated 2008

INTERPRETATION

1. (1) In this Agreement any reference to an item with an accompanying number is a reference to the particulars set opposite the item number referred to in the schedule to this Agreement. If no item with the number referred to is contained in the schedule or no particulars appear in the schedule opposite the item number, this Agreement shall be read and construed as if the word 'nil' or the words 'not applicable', as the context shall admit or require, are contained in the schedule opposite the item number.
- (2) The terms set opposite item numbers in the schedule shall not govern or affect the particulars set opposite those terms in the schedule and, except where otherwise provided in this Agreement, any short description of the subject matter of any item appearing in the schedule shall not affect the construction of this Agreement.
- (3) Headings to clauses are for convenience only and shall not affect the construction of this Agreement.
- (4) In this Agreement, unless the context otherwise requires:-
 - (a) reference to a party includes the party's executors, administrators and assigns and, where the party is a body corporate, its successors and assigns but does not authorise devolution or assignment where the same is subject to the other party's permission or any other condition contained in this Agreement or otherwise;
 - (b) reference to the singular includes the plural and vice-versa;
 - (c) reference to any gender includes the other gender and neuter;
 - (d) where two or more persons are designated as "the Vendor" the agreements on their part in this Agreement bind them and every two or greater number of them jointly and each of them severally;
 - (e) where two or more persons are designated as the "the Purchaser" the agreements on their part in this Agreement bind them and every two or greater number of them jointly and each of them severally;
 - (f) expressions importing persons include bodies corporate;
 - (g) reference to any statute includes all statutes amending, consolidating or replacing the statute referred to;
 - (h) any reference to the schedule to this Agreement includes any schedule of particulars referred to in any special condition annexed to, or forming part of, this Agreement;
 - (i) "Business Day" means a day other than a Saturday, Sunday or Public Holiday in South Australia within the meaning of the *Holidays Act 1910*;
 - (j) "Business Hours" means the hours between 9:00am and 5:00pm (South Australian time) on a Business Day;
 - (k) "Cooling-off Period" means the period from the date of this Agreement to the expiration of "the prescribed time" within the meaning of section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*;

- (l) "Default Rate" means 2% above the published BankSA Variable Business Loan Rate;
- (m) "Goods and Services Tax" and "GST" mean a goods and services tax, a value-added tax or any similar or comparable tax imposed in Australia, and for the present purposes the expressions mean the goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* and any other Act or Regulation pursuant to, associated with, amending or replacing that Act (together the "GST Law");
- (n) "Land" includes the included property referred to in Item 4 and the included chattels referred to in Item 5;
- (o) "Purchase Price" means the Purchase Price in Item 11 including the deposit but not including any GST applicable; and
- (p) "Settlement Day" means the Settlement Day in Item 15.

SALE OF THE LAND

- 2. The Vendor agrees to sell and the Purchaser agrees to purchase from the Vendor the Land described in Item 3 upon and subject to the terms and conditions contained in this Agreement.

RIGHTS AND PROPERTY INCLUDED

- 3. The Land is sold together with:-
 - (a) any easements, rights, privileges and other appurtenances referred to in the certificate or other muniment of title for the Land;
 - (b) all improvements and fixtures on the Land; and
 - (c) the included property referred to in Item 4, if any.

CHATTELS

- 4. (1) The Vendor also agrees to sell and the Purchaser agrees to purchase the included chattels referred to in Item 5, if any, for the amount payable for the included chattels set out in Item 11.
- (2) The Purchaser acknowledges that the excluded property referred to in Item 7, if any, is not included in the sale.

ENCUMBRANCES

- 5. The Land is sold subject to:-
 - (a) any statutory easement pursuant to the *Electricity Trust of South Australia Act 1946*;
 - (b) any easements and rights to which the Land is subject referred to in the certificate or other muniment of title for the Land and any exceptions and reservations referred to therein;
 - (c) the exceptions and reservations referred to in Item 8, if any;
 - (d) the mortgages, encumbrances, liens, charges and interests referred to in item 9, if any; and
 - (e) the tenancies or other interests referred to in Item 10, if any.

PURCHASE PRICE

6. Subject to clause 32, the Purchaser shall pay the Purchase Price to the Vendor for the Land.

PAYMENT OF PURCHASE PRICE

7. (1) The Purchaser shall pay the Purchase Price, together with any GST applicable, in the following manner:-
- (a) the deposit set out in Item 12 in the manner and at the time specified in Item 12 to the Deposit Holder specified in Item 14 or, if no Deposit Holder is specified, to the Vendor; and
 - (b) the balance set out in Item 13 to the Vendor, or as the Vendor may in writing direct, at settlement.
- (2) If it is so specified in Item 14, the Deposit Holder shall hold the deposit as a stakeholder.
- (3) The receipt of any person paid at the direction of the Vendor shall be a sufficient discharge to the Purchaser for the amount paid to that person.

SETTLEMENT

8. (1) Settlement shall take place on the Settlement Day specified in Item 15 at the Lands Titles Registration Office at Adelaide or at any other place agreed between the Vendor and the Purchaser.
- (2) Not less than seven days before the Settlement Day, or within such shorter period as the Vendor may allow, the Purchaser shall deliver to the Vendor or the Vendor's agent, for execution by the Vendor, a memorandum of transfer of the Land duly executed by the Purchaser and any assignment or assignments required by the Purchaser.
- (3) Failing due delivery of a memorandum of transfer or assignment, the Vendor may at any time thereafter prepare a memorandum of transfer at the expense in all things of the Purchaser, based upon the scale of fees provided in the applicable *Supreme Court Rules*.
- (4) Upon payment by the Purchaser of all moneys required to be paid by the Purchaser at or before settlement and upon compliance by the Purchaser in all other respects with the provisions of this Agreement to be complied with by the Purchaser at or before settlement, the Vendor shall execute in favour of the Purchaser, or as the Purchaser shall direct, and deliver to the Purchaser -
- (a) the memorandum of transfer of the Land free of all mortgages, encumbrances, liens, charges, tenancies, licences and other interests except those referred to in clause 5; and
 - (b) such other assignments of the Land as the Purchaser may reasonably require; and
 - (c) any declaration application or certificate which the Vendor may be required to make or give under any Act or Regulation in order to enable the memorandum of transfer to be registered.
- (5) The memorandum of transfer shall be in a form registrable under the provisions of the *Real Property Act 1886*.
- (6) The provisions stated in Item 16, so far as applicable, shall apply to the mortgages, encumbrances, liens and charges referred to in Item 9 and the tenancies and other interests referred to in Item 10.

POSSESSION

9. Vacant possession of the Land and delivery of the included property and the included chattels shall be given and taken on settlement, or at such other time as the Vendor and Purchaser may mutually agree, subject to the tenancies and other interests referred to in Item 10.

ADJUSTMENTS

10. (1) Subject to clauses 21(6) and 21(7) all rates and taxes, including land tax, all other outgoings in respect of the Land and all rents and other income arising from the Land shall be adjusted to midnight on the day preceding settlement. After settlement the Purchaser shall pay all such rates, taxes and other outgoings and shall indemnify the Vendor in respect thereof and the Purchaser shall be entitled to all such rents and other income arising after settlement.
- (2) Land tax shall be adjusted on the amount of tax that would be payable in respect of the Land if the Vendor owned no other land liable to be assessed.
- (3) Before settlement, the Vendor shall pay and discharge all land tax, including any differential land tax, which has or will become payable in respect of the Land in the rating year in which settlement occurs and in all previous rating years. Such land tax shall be paid whether the tax is then due and payable or not.
- (4) The cost or charge for the consumption of water upon the Land shall be adjusted between the Vendor and the Purchaser as follows:
- (a) Where the Land receives an annual water allowance that allowance shall be adjusted on a daily basis to the settlement date whereupon the Vendor shall pay for consumption of water exceeding the allowance so calculated in the proportion of the number of days from the commencement of the consumption year to the settlement date calculated upon the current water rate for water supplied to the Land.
 - (b) Where water is supplied to the Land on the basis of a charge for such consumption (including incremental charges based upon volume consumed) the volume of water supplied, and if applicable, such volume to which an incremental rate is applicable, shall be adjusted on a daily basis calculated from the date of the commencement of the consumption year to the settlement date whereupon the Vendor shall pay for all water supplied to the Land apportioned from the commencement of the consumption year to the settlement date and, if the case so requires, at each incremental rate for the volume of water consumed.
 - (c) Where more than one official meter reading is obtained the meter reading made on the day nearest to the settlement date shall be used in making the adjustment.
 - (d) (i) If an official meter reading is not obtained by either of the parties before settlement, if so required by the Purchaser, the Vendor shall lodge the sum specified in Item 17, or, if no sum is specified in Item 17, the sum of \$300 with the Vendor's solicitor, or if the Vendor is not represented by a solicitor, the Purchaser's solicitor, at or before settlement.
 - (ii) The solicitor shall hold the sum lodged with him or her upon trust until the official meter reading is obtained.
 - (iii) Upon the official meter reading being obtained, the solicitor shall pay to the Purchaser the amount, if any, payable by the Vendor to the Purchaser for water consumed or for water used in excess of the annual water allowance and pay the balance, if any, of the money lodged with him or her to the Vendor and.
 - (iv) If the amount lodged with the solicitor is less than the amount payable by the Vendor to the Purchaser, the Vendor shall pay the deficiency to the Purchaser.
- (5) Where the Vendor has received, or is entitled to receive, a remission in respect of any rate, the amount of the rate for the purposes of this clause shall be deemed to be the amount of the rate which the Vendor would be liable to pay if no remission were applicable.

TITLE

11. The Certificate of the Title under the *Real Property Act 1886* or other muniment of title in the name of the Vendor or the other person named in Item 1 as owner of the Land shall be deemed conclusive evidence of title and the Purchaser shall not be entitled to an abstract of title nor to take any objection thereto nor to make any requisition thereon and no evidence of the identity of the Land shall be required other than that afforded by comparison of the description contained in this Agreement with that contained in the said Certificate of Title.

INCORRECT DESCRIPTION

12. (1) The Land is believed by the Vendor, and shall be taken by the Purchaser, to be correctly described but this sub-clause is without prejudice to the rights of the Purchaser under sub-clause (2).
- (2) (a) No error, omission or improper or imperfect description shall annul the sale or affect the obligation of the parties to settle on the Settlement Day.
- (b) If any error, omission or improper or imperfect description of the Land is notified by one of the parties to the other before settlement, but not afterwards, the same shall be subject to compensation to be received or paid by one party or the other as the case may require.
- (3) The Purchaser acknowledges that the Vendor makes no representation or warranty in respect of the Land or any part of the Land except as set out in this Agreement.

STATUTORY REQUIREMENTS

13. (1) The Vendor warrants that at the date of this Agreement no notices, orders, requirements or demands in relation to the Land have been given or made under the provisions of any Act Regulation or by-law which have not been fully complied with or which adversely affect the Land, except those referred to in Item 18.
- (2) Prior to the Settlement Day the Vendor shall comply with the matters referred to in paragraph (i) of Item 18.
- (3) The Purchaser shall comply with and indemnify the Vendor in respect of the matters referred to in paragraph (ii) of Item 18.
- (4) (a) The Purchaser shall indemnify the Vendor against all liability incurred or obligations created by any notice, order, requirement, declaration or demand relating to the Land made or given after the date of this Agreement.
- (b) If the Vendor complies with any such notice, order, requirement, declaration or demand, the Purchaser shall reimburse to the Vendor upon demand or, if no prior demand is made, on settlement all amounts paid in complying with the notice, order, requirement, declaration or demand.
- (5) (a) The Vendor shall pay all charges against the Land for the forming making and paving of roads, kerbs, footpaths and water tables in respect of work commenced before the date of this Agreement and any interest or fines payable in respect thereof.
- (b) The Purchaser shall pay all such charges, interest and fines in respect of work commenced on or after the date of this Agreement and shall indemnify and keep the Vendor indemnified in respect thereof.

CHATELS ON HIRE

14. (1) The Purchaser acknowledges that the chattels and other property described in Item 6 are on hire or lease to the Vendor or are subject to a consumer mortgage or bill of sale granted by the Vendor.
- (2) The Purchaser shall, as from settlement, take over the obligations of the Vendor under the agreement for the hire or lease of the said chattels or property or the consumer mortgage or bill of sale to which the said chattels or property are subject and shall indemnify the Vendor against all liability in respect thereof arising after settlement.
- (3) At settlement or at any time thereafter, at the request and expense of the Purchaser (but subject to the consent, if required, of the owner of the chattels or property or the mortgagee or grantee under the said consumer mortgage or bill of sale, as the case may be) the Vendor shall execute and deliver to the Purchaser such assignment of the Vendor's interest in the agreement, consumer mortgage or bill of sale and in the chattels or property comprised therein as the Purchaser may reasonably require.

LEASES

15. (1) The Purchaser shall carry out, observe and perform all the covenants terms and conditions contained in the leases and tenancy agreements relating to the tenancies or other interests referred to in Item 10 and on the part of the lessor or the landlord to be carried out, observed or performed (herein called "the Lessor's Covenants") and shall indemnify and keep the Vendor indemnified from and against any and all actions, proceedings, claims and demands which may be made or taken against the Vendor in respect of any breach of any of the Lessor's Covenants occurring after settlement. The Vendor shall carry out, observe and perform all of the Lessor's Covenants to be carried out, observed or performed prior to settlement and shall indemnify and keep the Purchaser indemnified from and against any and all actions, proceedings, claims and demands which may be made or taken against the Purchaser in respect of any breach of any of the Lessor's covenants to be carried out, observed or performed prior to settlement.
- (2) At any time whether before or after settlement the Vendor or the Purchaser may give notice to the other party requiring that the parties enter into a Deed of assignment of the leases or agreements relating to the tenancies or other interests referred to in Item 10, which Deed shall include the indemnities specified in the preceding sub-clause. The Vendor shall use best endeavours to procure the execution of such Deed by the lessee. The said Deed shall be prepared by the party who gives the said notice with the cost of preparation of such Deed to be payable by the party giving the said notice.
- (3) At the same time or following the giving of the notice referred to in the preceding sub-clause, the party giving the notice shall deliver to the other party a Deed executed by the party giving the said notice. The said Deed shall be executed by the other party within 7 days of receipt, and if the Deed is so received by the other party not less than 7 days before settlement it shall be executed by such party prior to settlement.

EXCLUDED PROPERTY

16. Before settlement:
- (a) the Vendor may remove from the Land the excluded property referred to in Item 7; and
- (b) the Vendor shall make good any damage done to the Land by or in consequence of the installation or removal of the excluded property.

RISK

17. From the date of this Agreement the Land shall be at the risk of the Purchaser in all respects but, if and for so long as the Vendor occupies the Land, the Vendor shall use the Land with all reasonable care.

CONSENTS

18. (1) If this Agreement or the performance of this Agreement would otherwise contravene the provisions of the *Real Property Act 1886* or any other Act, this Agreement is subject to the obtaining of all consents and to the deposit of all plans required by law to be obtained or deposited by either party, whether or not such consents are mentioned in Item 19.
- (2) Without limiting the generality of sub-clause (1), this Agreement is subject to -
- (a) the approval in writing of the relevant planning authority pursuant to the *Strata Titles Act 1988*; or
- (b) the Development Assessment Commission issuing a certificate under section 51 of the *Development Act 1993* or any other consent necessary under the provisions of that Act being given; or
- (c) the deposit of a plan of division or a strata plan or a plan of community division pursuant to the *Community Titles Act 1996*;

where it is necessary by virtue of the provisions of any of the Acts referred to in this clause to obtain the approval, certificate or consent or to deposit the plan.

- (3) The grant, transfer, conveyance, mortgage or encumbrance of any estate or interest in the Land pursuant to this Agreement shall not have effect until the plan of division or the strata plan or plan of community division contemplated by the parties has been deposited if the grant, sale, transfer, conveyance, mortgage or encumbrance thereof would otherwise contravene the provisions of the *Real Property Act 1986*.
- (4) The parties shall use their best endeavours to obtain all such consents and to procure the deposit of all such plans as are required by Item 19 to be obtained or procured and all such other consents as they may be required to obtain under this clause and to have any such plan of division or strata plan or plan of community division deposited.
- (5) If default is made by either party in carrying out any of his or her obligations under this clause, the provisions of clause 20 shall apply.
- (6)
 - (a) Subject to sub-clause (8), if all the consents referred to in this clause are not obtained or if any such plan is not deposited within the period or respective periods specified in Item 19 or, if no period is specified in Item 19, within one calendar month from the date of this Agreement, either party, upon giving 14 days' notice in writing to the other, may determine this Agreement.
 - (b) This Agreement shall determine immediately upon the expiration of such notice, unless the consents are obtained or the plan is deposited in the meantime.
- (7)
 - (a) Except where otherwise provided in this Agreement, upon the determination of this Agreement under sub-clause (6), all moneys paid by the Purchaser under this Agreement shall be refunded,
 - (b) the Vendor shall be liable to pay to the Purchaser the amount of any moneys paid by the Purchaser to the Deposit Holder if -
 - (i) the Deposit Holder to whom the moneys were paid is the agent of the Vendor; and
 - (ii) the Deposit Holder does not refund the money within 14 days of the receipt by the Deposit Holder of notice that this Agreement has been determined; and
 - (c) except as provided in paragraph (b), neither party shall have any recourse against the other consequent upon the determination of this Agreement under this clause.
- (8) If any consent mentioned in this clause is not obtained or any plan mentioned in this clause is not deposited due to the failure of the party required by Item 19 to obtain the consent or to procure the deposit of the plan, then the party who is in default shall not be entitled to determine this Agreement under sub-clause (6); any such determination by the party who is not in default shall not prejudice any other rights or remedies which the party may have against the other party.
- (9) In this clause, "consent" includes approval, certificate or other permission or authorisation and "deposited" means deposited in the Lands Titles Registration Office by the Registrar-General.

INTEREST ON DEFAULT

19.
 - (1) If, by reason of the neglect or default of the Purchaser, the purchase is not completed on the Settlement Day the Purchaser shall pay to the Vendor interest on the Purchase Price, or on so much of the Purchase Price as from time to time remains unpaid, at the rate specified in Item 20 or, if no rate is specified in Item 20, at the Default Rate, computed from the Settlement Day until either the date of completion or the date of the determination of this Agreement.
 - (2) If, by reason of the neglect or default of the Vendor, the purchase is not completed on the Settlement Day, the Vendor shall pay the Purchaser interest on the deposit and so much of the Purchase Price as has from time to time been paid, at the rate specified in Item 20 or, if no rate is specified in Item 20, at the Default Rate, computed from the Settlement Day until either the date of completion or the date on which the money paid by the Purchaser is repaid to him or her.
 - (3) The payment of interest under this clause shall be in addition and without prejudice to any other rights or remedies the parties may have by reason of any default.

DEFAULT PRIOR TO SETTLEMENT

20. (1) If either party to this Agreement (herein called "the Defaulting Party") makes default in the due payment of the deposit or any part of the deposit, or in the due observance or performance of any of the terms and conditions contained in this Agreement and on the part of the Defaulting Party to be observed or performed prior to settlement, the other party (herein called "the Complying Party") may give notice of default to the Defaulting Party.
- (2) Notice of default under sub-clause (1)
- (a) may be given at any time after the occurrence of the default;
 - (b) shall be without prejudice to any other rights or remedies the Complying Party may have; and
 - (c) shall
 - (i) require the Defaulting Party to remedy the default within a period of three Business Days from the service of the notice or within such longer period as the Complying Party may specify in the notice; and
 - (ii) state that, unless the default is remedied within the period specified in the notice, this Agreement will automatically determine.
- (3) If the default is not remedied within the period specified in the notice of default, this Agreement shall automatically determine at the expiration of that period unless, in the meantime, the notice is withdrawn by the Complying Party by notice to the Defaulting Party.
- (4) Notice of default under this clause may be given on more than one occasion.

DEFAULT AT SETTLEMENT

21. (1) If
- (a) either party to this Agreement (herein called "the Defaulting Party") makes default in the due observance or performance of any of the terms and conditions contained in this Agreement and on the part of the Defaulting Party to be observed and performed at settlement; and
 - (b) the default continues unremedied for a period of not less than three Business Days;
- the other party (herein called "the Complying Party"), at any time thereafter, may give notice of completion to the Defaulting Party.
- (2) Notice of completion shall appoint a time for settlement, which shall be a time during Business Hours on a Business Day, and shall require the Defaulting Party to settle at the time appointed in the notice.
- (3) If the time for settlement appointed in a notice of completion is not less than fourteen days after the date of service of the notice, the period of notice given shall for all purposes be deemed fair and reasonable and the Defaulting Party shall be precluded from raising any objection to the period of notice given notwithstanding the absence of any unreasonable, unnecessary or improper delay on the part of the Defaulting Party.
- (4) (a) If the Defaulting Party fails to carry out observe and perform the obligations on his or her part to be observed and performed at settlement at the time appointed in a notice of completion, the Complying Party may determine this Agreement by notice to the Defaulting Party.
- (b) Notice under this sub-clause:
- (i) may be given at any time after the time appointed for settlement in the notice of completion; and
 - (ii) shall be without prejudice to any other rights or remedies the Complying Party may have.

- (5) Notice of completion under this clause may be given on more than one occasion.
- (6) Where settlement is postponed as a result of the default of the Vendor, all rents and other income arising from the Land shall be adjusted to midnight on the day preceding the Settlement Day. Rates, taxes and other outgoings shall continue to be adjusted pursuant to clause 10(1).
- (7) Where settlement is postponed as a result of the default of the Purchaser, all rates, taxes and other outgoings in respect of the Land shall be adjusted to midnight on the day preceding the Settlement Day. Rents and other income shall continue to be adjusted pursuant to clause 10(1).
- (8) The reasonable costs of preparation and service of any notice given under this clause (being the amount of \$300 together with any applicable GST) together with any incidental costs reasonably incurred (including the costs of service) shall be paid by the Defaulting Party at settlement or on termination of this Agreement.

TIME

22. Time shall in all respects be of the essence in respect of any time appointed under clauses 20 and 21, any period of notice fixed under those clauses and any notice given pursuant to those clauses.

EFFECT OF DETERMINATION

23. (1) If this Agreement is determined by the Vendor under clause 20 or clause 21:
- (a) all monies paid or payable by the Purchaser under this Agreement by way of deposit shall be forfeited to the Vendor absolutely; and
 - (b) the Vendor, at the Vendor's option, may either:-
 - (i) retain the Land and sue the Purchaser for damages for breach of contract; or
 - (ii) resell the Land, together or in lots, either by public auction or private contract, and the deficiency, if any, in price upon the resale together with all charges and expenses of and incidental to the resale, any attempted resale and the Purchaser's default shall immediately after the resale be made good by the Purchaser under this Agreement; and
 - (c) in the case of non-payment of the deficiency, charges and expenses, the whole thereof shall be recoverable by the Vendor as and by way of liquidated damages with the Purchaser receiving credit for any deposit paid provided that proceedings for the recovery of the deficiency, charges and expenses shall be commenced within 12 calendar months after the determination of this Agreement; and
 - (d) the Vendor shall be entitled to any increase in price on any resale.
- (2) If this Agreement is determined by the Purchaser under clause 20 or clause 21:
- (a) the Vendor shall re-pay to the Purchaser all moneys paid by the Purchaser under this Agreement by way of deposit or otherwise; and
 - (b) the Purchaser may sue the Vendor for damages for breach of contract provided that proceedings for the recovery of the damages shall be commenced within 12 calendar months after the determination of this Agreement.
- (3) It shall not be necessary for the Complying Party to first tender a transfer to the Defaulting Party before determining this Agreement or before exercising any other rights or remedies of the Complying Party.

REMEDIES NOT EXCLUSIVE

24. The remedies provided in this Agreement are in addition to and without prejudice to any other rights or remedies that the parties may have by reason of any default.

FURTHER DOCUMENTS

25. The parties to this Agreement shall promptly do and execute all such further acts, documents and things as may be required to give effect to this Agreement.

NOTICES

26. (1) Any notice or demand to be given to, or made upon, any party to this Agreement shall be in writing and shall be signed by the party giving the notice or making the demand or signed for and on behalf of that party by his or her solicitor or authorised agent.
- (2) Any notice or demand may be served upon the party intended to receive the notice or demand (herein called "the intended recipient"):

- (a) by leaving the notice or demand at the address of the intended recipient stated in Item 1 or Item 2 as the case may be; or
 - (b) by sending the notice or demand by the ordinary course of post in a prepaid envelope addressed to the intended recipient at the address of the intended recipient stated in Item 1 or Item 2 as the case may be and posted in South Australia; or
 - (c) by sending the notice or demand addressed to the intended recipient by facsimile to the facsimile number of the intended recipient stated in Item 1 or Item 2 as the case may be.
- (3) Any notice or demand served by post shall be deemed to have been duly served at noon on the second Business Day after the day on which the envelope containing the notice or demand was posted and in proving service of the notice or demand it shall be sufficient to prove that the envelope containing the notice or demand was properly addressed, stamped and posted.
 - (4) Any notice or demand served by facsimile shall be deemed to have been duly served on the day and time when the sender's facsimile machine reports that the transmission was completed without error.
 - (5) Where there is more than one Purchaser or Vendor, a notice or demand duly served on any one Purchaser or Vendor shall be deemed to have been duly served upon both or all of the Purchasers or Vendors as the case may be.
 - (6) Service effected in accordance with this clause shall be valid and effectual notwithstanding that, at the time of service, the intended recipient was dead, bankrupt or legally incapacitated, or, where the intended recipient is a corporation, notwithstanding that the corporation was in liquidation or wound up or in the process of being wound up, and notwithstanding any other matter or event.
 - (7) Any party may from time to time change his or her address for the service of notices or demands pursuant to this clause by notice in writing to the other party and, in that event, the address so notified shall apply in lieu of the address stated in Item 1 or Item 2 or the address last notified.

COSTS OF AGREEMENT

27. Unless it is otherwise provided in Item 21 or elsewhere in this Agreement:

- (a) the Vendor shall pay the costs of and incidental to the preparation of this Agreement and any costs associated with the discharge, surrender or withdrawal of any mortgage, encumbrance, caveat or lien existing in respect of the Land at settlement and required to be discharged, surrendered or withdrawn to enable the Vendor to give good title to the Purchaser; and
- (b) the Purchaser shall pay the costs of and incidental to the preparation of the memorandum of transfer and any assignment, mortgage or other document to be executed pursuant to this Agreement and all surveyor's fees, stamp duty, registration fees and Government fees.

ANNEXED SPECIAL CONDITIONS

- 28. (1) The special conditions, if any, referred to in Item 22 and annexed to this Agreement shall be incorporated into this Agreement and in the event of any inconsistency between the special conditions and any other provision contained in this Agreement the special conditions shall prevail.
- (2) Any reference to "this Agreement" in any special condition annexed to this Agreement shall be deemed to refer to this Agreement, the special conditions and the schedule to this Agreement.

LEGAL TENDER

- 29. Any payment due under this Agreement may be made or tendered either in cash or by cheque in Australian dollars drawn by a body corporate which is entitled to carry on a "banking business", as defined in the *Banking Act 1959* (Cth).

NON-MERGER

30. The provisions of this Agreement shall continue to have effect notwithstanding settlement.

RESCISSION UNDER THE LAND AND BUSINESS (SALE AND CONVEYANCING) ACT 1994

31. If this Agreement is rescinded by the Purchaser pursuant to section 5 of the *Land and Business (Sale and Conveyancing) Act 1994*, the Vendor may retain any moneys, not exceeding \$50, paid by the Purchaser by way of deposit.

GOODS AND SERVICES TAX

32. (1) The Vendor and the Purchaser acknowledge and agree respectively that, for the purpose of the GST Law, the Land is as described in Item 23.
- (2) If GST has application to a taxable supply made under this Agreement by either the Vendor or the Purchaser then:
- (a) the amount payable under this Agreement in respect of the taxable supply (including the taxable supply of the Land) ("Payment") is exclusive of GST; and
 - (b) the Supplier may in addition to the Payment, recover from the Recipient (and the Recipient shall pay or reimburse the Supplier) an additional amount on account of GST equal to 10% of the Payment (the "GST Amount") which GST Amount must be paid or reimbursed:
 - (i) at settlement; or
 - (ii) in the event that the GST Amount is payable by the Supplier otherwise than in respect of the tax period of the Supplier during which settlement occurs, upon written demand made by the Supplier to the Recipient; and
 - (c) subject to clause 32(4)(c), the Supplier shall, in respect of the taxable supply, provide the Recipient with a tax invoice at settlement or upon written request by the Recipient if settlement does not occur.

Going Concern

- (3) If the sale of the Land is the supply of a going concern or the supply of something which comprises part of the supply of a going concern (the "Arrangement") then:
- (a) the sale of the Land under or pursuant to this Agreement is made under the Arrangement;
 - (b) the Vendor is supplying to the Purchaser all of the things that are necessary for the continued operation of an enterprise;
 - (c) the Vendor carries on, or will carry on, the enterprise until settlement;
 - (d) the Purchaser is registered or required to be registered under the GST Law and provides evidence thereof to the Vendor's satisfaction; and
 - (e) the Payment will not be increased on account of GST.

Margin Scheme

- (4) If the margin scheme applies to the sale of the Land then:
- (a) the Vendor and the Purchaser agree to apply the margin scheme to the sale;
 - (b) the Purchaser's obligation to pay or reimburse the Vendor GST under clause 32(2)(b) shall be 10% of the margin under the margin scheme;

- (c) the Purchaser shall, where a valuation is required under Division 75 of the GST Law:
 - (i) obtain at its expense, in the name of the Vendor, a valuation of the Land which complies with the requirements of Division 75 of the GST Law using the valuation method approved by the Vendor; and
 - (ii) provide the valuation to the Vendor not less than 7 days prior to settlement;
- (d) the Vendor is not required to provide the Purchaser with a tax invoice at settlement; and
- (e) the Purchaser acknowledges that the acquisition of the Land is not a creditable acquisition and it is not entitled to claim an input tax credit.

GST Liability for Vendor

- (5) If this Agreement provides that the sale of the Land:
 - (a) is not a taxable supply and the Purchaser uses the Land in a way that makes the sale a taxable supply; or
 - (b) is the supply of a going concern and the sale is not such a supply (other than by virtue of a breach by the Vendor of clauses 32(3)(b) or (c)),

the Purchaser shall pay to the Vendor on written demand (which the Vendor is entitled to make notwithstanding that settlement of the sale and purchase of the Land pursuant to this Agreement has, or may have occurred) an amount equal to 10% of the Payment, together with any interest or penalties assessed to the Vendor (whether under the GST Law or otherwise) arising from or in respect of the sale.

Adjustment to GST

- (6) (a) The parties acknowledge that the Purchase Price set out in Item 11 has been negotiated on the basis that the sale is wholly a taxable supply under the GST Law and that (subject to box (h) in Item 23 being marked as "yes") in calculating its liability to GST the Vendor and the Purchaser agree not to apply the margin scheme.
- (b) If the supply is negotiated by the parties and represented in this Agreement as either wholly taxable or wholly non-taxable (as evidenced by the omission to complete Item 24), and the supply is found after settlement to be partly taxable and partly non-taxable, then the Purchaser shall either pay to the Vendor or be reimbursed by the Vendor (as is appropriate) the amount of the adjustment in the Vendor's GST liability as determined by the Australian Taxation Office, within one month of such determination. The Purchaser shall pay to the Vendor any interest and/or penalties associated with any such adjustment provided an adjustment note is provided.

Interpretation

- (7) In this clause 32:
 - (a) any expression used that is also used in the GST Law shall have, for the purposes of this Agreement, the meaning used in or attributed to that expression by the GST Law from time to time;
 - (b) "Recipient" means a person who acquires or receives or is entitled to acquire or receive a taxable supply under this Agreement and includes the Purchaser; and
 - (c) "Supplier" means a person who supplies or is required to supply a taxable supply under this Agreement and includes the Vendor.

SEVERABILITY OF CLAUSES

- 33. Each clause and sub-clause of this Agreement is severable from each other clause and sub-clause, and the invalidity or unenforceability of any clause or sub-clause shall not prejudice or affect the validity or enforceability of any other clause or sub-clause.

FOREIGN INTERESTS

34. Unless otherwise provided, the Purchaser warrants that:

- (a) the Purchaser is not a "foreign person" within the meaning of section 21A of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) as the meaning of that expression is extended by the operation of section 4(6) of that Act; and
- (b) the Purchaser is not a "person to whom this section applies" within the meaning of that expression in section 26A of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) as that section is affected by section 5A of that Act.

DATED the day of
Executed and Delivered as a Deed in Melbourne

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

Signature of witness

Name of witness (print)

Signature of Receiver

Name of Receiver

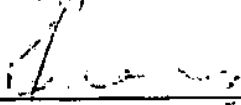
SIGNED SEALED and DELIVERED
by **MICHAEL FUNG** in his capacity as
a Receiver and Manager of Align
Funds Management Limited in its
capacity as responsible entity of the
Timbercorp Orchard Trust (Receivers
& Managers Appointed) in the
presence of:

Witness

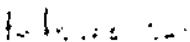
Name of Witness (print)

Signature of Michael Fung

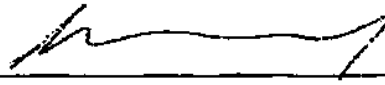
SIGNED SEALED and DELIVERED
by **PAUL WILLIAM KIRK** in his
capacity as a Receiver and Manager of
Align Funds Management Limited in
its capacity as responsible entity of
the Timbercorp Orchard Trust
(Receivers & Managers Appointed) in
the presence of



Witness



Name of Witness (print)



Signature of Paul William Kirk

EXECUTED by Agriproperty Pty Ltd
in accordance with section 127 of the
Corporations Act

Signature of director

Signature of director / company
secretary

Name of director (print)

Name of director / company secretary
(print)


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

Witness

Signature of Paul William Kirk

Name of Witness (print)

EXECUTED by Agriproperty Pty Ltd
in accordance with section 127 of the
Corporations Act



Signature of director

Signature of director / company
secretary

ANTHONY COSTA

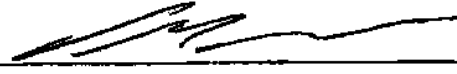
Name of director (print)

Name of director / company secretary
(print)

EXECUTED by Kingston Vineyards
Pty Ltd in accordance with section
127 of the Corporations Act



Signature of witness



Signature of director / company
secretary

IAN STEWART MACRAE

Print name

BILL Moularadellis

Name of director / company secretary
(print)



THE LAW SOCIETY OF SOUTH AUSTRALIA

CONTRACT

FOR THE SALE AND PURCHASE OF LAND

For the use of Law Society of South Australia members only

Reprinted 2006

SCHEDULE

This Schedule is to be read in conjunction with the Contract Terms and Conditions.

The terms opposite the item numbers 1 to 22 have the respective meanings as detailed in the particulars in the Schedule.

THIS AGREEMENT IS MADE BETWEEN THE VENDOR AND THE PURCHASER NAMED AND DESCRIBED IN THE SCHEDULE.

THE VENDOR AND THE PURCHASER AGREE as follows:

Item	Term	Particulars
1.	Vendor (Name, address and description)	ALIGN FUNDS MANAGEMENT LIMITED (ABN 34 105 684 231) (formerly known as Orchard Investments Management Limited) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) c/- PricewaterhouseCoopers Australia, Freshwater Place, 2 Southbank Boulevard, Southbank, Victoria 3006
	Facsimile:	Attention: Paul William Kirk +61 3 8613 4852
1A	Receivers	Michael Fung and Paul William Kirk of PricewaterhouseCoopers Australia, Freshwater Place, 2 Southbank Boulevard, Southbank, Victoria 3006 in their capacities as joint and several receivers and managers of the Property
	Facsimile:	Attention: Paul William Kirk +61 3 8613 4852
2.	Purchaser (Name, address and description)	Agriproperty Pty Ltd (ACN 140 954 874) of Level 1, 170 Little Malop Street, Geelong, Victoria 3220 Kingston Vineyards Pty Ltd (ACN 080 860 555) of 1 Sun Highway, Kingston-on-Murray, SA 5331
	Facsimile:	Agriproperty Pty Ltd Attention: Robert Costa / John Harris +61 3 8645 1672 Kingston Vineyards Pty Ltd Attention: Bill Moularadellis +61 8 8583 0304

2A	Guarantor (Name, address and description) Facsimile:	Not applicable Not applicable
3.	The Land (Description of the Land) (Clause 2)	An estate in fee simple in the whole of the land comprised in Certificates of Title Volume 5509 Folio 66, Volume 5509 Folio 65, Volume 5097 Folio 564, Volume 5097 Folio 565, Volume 5097 Folio 566, Volume 5131 Folio 62, Volume 6018 Folio 804, Volume 6018 Folio 805 and Volume 6018 Folio 807 which will be purchased by Agriproperty Pty Ltd and Kingston Vineyards Pty Ltd in accordance with Schedule 4.
Property address: Behrendt Road, Murtho, South Australia		
4.	Included Property (Improvements fixtures fittings and other property included in the sale) (Clause 3)	The Property (other than the Land) as defined in the Special Conditions.
5.	Included Chattels (Chattels sold and included in the sale) (Clause 4)	<p>All chattels located on the Land or relating to the operation of the farming business on the Land, which chattels;</p> <p>(a) located on the Land acquired by Agriproperty Pty Ltd or relating to the operation of the citrus orchards on the Land will be acquired by Agriproperty Pty Ltd; and</p> <p>(b) located on the Land acquired by Kingston Vineyards Pty Ltd or relating to the operation of the vineyard on the Land will be acquired by Kingston Vineyards Pty Ltd.</p>
6.	Chattels on hire etc. (Hatch on hire, lease, mortgage or bill of sale to be taken over by Purchaser) (Clause 14)	Not applicable.

7.	Excluded Property (Property excluded from the sale including chattels on hire, lease, mortgage or bill of sale) (Clause 4)	The Excluded Assets as defined in the Special Conditions.
8.	Exceptions and reservations (Clause 5)	Nil.
9.	Mortgages, encumbrances etc. (Mortgages, encumbrances, liens and interests) (Clause 5)	Refer to Special Condition 9.5.
10.	Tenancies and other interests (Clauses 5, 15)	Registered Lease L 9759033.
11.	Purchase Price (Clauses 4, 6)	<p>Amount payable for the Land: (in words)</p> <p>Agriproperty Pty Ltd</p> <ul style="list-style-type: none"> for its portion of the Land acquired and chattels, which amount will be apportioned between Land and chattels once the value of the relevant chattels is agreed between the Vendor and Agriproperty Pty Ltd for the Water Entitlements
		<p>Four million thirty thousand dollars</p> <p>\$4,030,000</p> <p>One hundred and seventy five thousand dollars</p> <p>\$175,000</p>

	- Amount payable for the included chattels (in words)	Subject to the apportionment of the purchase price above
	Kingston Vineyards Pty Ltd	
	- for its portion of the Land acquired (excluding the land on which the packing shed is located) and chattels which amount will be apportioned between Land and chattels once the value of the relevant chattels is agreed between the Vendor and Kingston Vineyards Pty Ltd	One million six hundred thousand dollars \$1,600,000
	- Land on which the packing shed is located	One hundred dollars \$100
	- Amount payable for the included chattels: (in words)	Subject to the apportionment of the purchase price above
	Purchase Price: (in words)	
	Agriproperty Pty Ltd	Four million two hundred and five thousand dollars \$4,205,000
	Kingston Vineyards Pty Ltd	One million six hundred thousand and one hundred dollars \$1,600,100
GST (Clause 32)	GST (if applicable): (in words)	Nil
	Total	Five million eight hundred and five thousand and one hundred dollars \$5,805,100
12.	Deposit (Clause 3)	Payable on the execution of this Agreement, being 10% of the Purchase Price
	Agriproperty Pty Ltd	Four hundred and twenty thousand and five hundred dollars \$420,500
	Kingston Vineyards Pty Ltd	One hundred and sixty thousand and ten dollars \$160,010

13.	Balance (including GST, if applicable) (Clause 7)	Being 90% of the Purchase Price.	
		Agriproperty Pty Ltd	
		- to be paid to the Vendor	Three million six hundred and nine thousand five hundred dollars \$3,609,500
		- to be paid to the Vendor's Legal Practitioner subject to Special Condition 8 and 16.6	One hundred and seventy five thousand dollars \$175,000
		Kingston Vineyards Pty Ltd	One million four hundred and forty thousand and ninety dollars \$1,440,090
14.	Deposit Holder (Clause 7)	Allens Arthur Robinson who shall hold as stakeholder pursuant to Special Condition 8.	
15.	Settlement Day (Clause 11)	Refer to Special Condition 16.1.	
16.	Provisions applying to mortgages, tenancies etc. (Provisions which apply to the mortgages, encumbrances, liens, charges, tenancies, licences and other interests referred to in Items 9 and 10) (Clause 8(b))	Not Applicable.	
17.	Water Allowance (Clause 10(4)(d))	\$300.00	
		(Caution should be exercised to ensure that the sum in this item relates to sewerage, otherwise the sum in clause 10(4)(d) provides for \$300 to be retained)	
18.	Notices and orders (Clause 13)	(i) Matters to be discharged by the Vendor: Nil	
		(ii) Matters to be discharged by the Purchaser: Nil	

-
19. **Consents**
(Consents to which this Agreement is subject)
(Clause 15)
- (i) To be obtained by the Vendor:
Nil
- Period within which to be obtained:
- (ii) To be obtained by the Purchaser:
Nil
- Period within which to be obtained:
-
20. **Interest Rate** 12 per cent per annum.
(Interest rate on unpaid money if not in accordance with Clause 19)
-
21. **Costs** The Vendor and the Purchaser shall each bear their own costs and expenses (including legal costs and expenses) of and incidental to the negotiation and preparation of this Agreement.
(Liability for costs if not in accordance with Clause 27)
-
22. **Annexures**
(Annexures forming part of this contract)
(Clause 28)
- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Special Conditions (Sale of Purchaser's Property) |
| <input type="checkbox"/> | Special Conditions (Finance) |
| <input type="checkbox"/> | Special Conditions (Mortgage back to Vendor) |
| <input type="checkbox"/> | Special Conditions (Strata Title) |
| <input type="checkbox"/> | Special Conditions (Community Title) |
| <input checked="" type="checkbox"/> | Special Conditions (Other) |
-

SPECIAL CONDITIONS

1. Definitions and Interpretation

1.1 Definitions

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

2004 Citrus Project means the 2004 Timbercorp Citrus Project (ARSN 108 887 538) to the extent it is conducted on the Land.

2004 Project Citrus Sale Agreement (FY 2010) means the Sale of Citrus Agreement (1 December 2009 to 30 June 2010) in respect of the 2004 Citrus Project dated 16 July 2010 between, among others, the Vendor, CostaExchange, AgriExchange, the Liquidators and a number of Timbercorp Entities (all in liquidation).

2004 Project Citrus Sale Agreement (FY 2011) means the Sale of Citrus Agreement (2011 Financial Year) in respect of the 2004 Citrus Project dated 16 July 2010 between, among others, the Vendor, CostaExchange, AgriExchange, the Liquidators and a number of Timbercorp Entities (all in liquidation).

2005 Citrus Project means the 2005 Timbercorp Citrus Project (ARSN 114 091 299) to the extent it is conducted on the Land.

2005 Project Citrus Sale Agreement (FY 2010) means the Sale of Citrus Agreement (1 December 2009 to 30 June 2010) in respect of the 2005 Citrus Project dated 16 July 2010 between, among others, the Vendor, CostaExchange, AgriExchange, the Liquidators and a number of Timbercorp Entities (all in liquidation).

2005 Project Citrus Sale Agreement (FY 2011) means the Sale of Citrus Agreement (2011 Financial Year) in respect of the 2005 Citrus Project dated 16 July 2010 between, among others, the Vendor, CostaExchange, AgriExchange, the Liquidators and a number of Timbercorp Entities (all in liquidation).

2010 Citrus means the citrus harvested from the Citrus Orchards for the period commencing 1 December 2009 until 30 June 2010

2011 Citrus means the citrus harvested from the Citrus Orchards for the period commencing 1 July 2010 until 30 June 2011.

2010 Citrus Sale Agreements means the 2004 Project Citrus Sale Agreement (FY 2010) and the 2005 Project Citrus Sale Agreement (FY 2010).

2011 Citrus Sale Agreements means the 2004 Project Citrus Sale Agreement (FY 2011) and the 2005 Project Citrus Sale Agreement (FY 2011).

2010 Citrus Start Date means 1 December 2009.

2011 Citrus Start Date means 1 July 2010.

2011 Sale of Wine Grape Agreement means the 2011 Sale of Wine Grape Agreement – Kangara in respect of wine grapes located on the Wine Grape Vineyards dated on or about the date of this Contract between, among others, the Vendor, Kingston, the Liquidators and a number of Timbercorp Entities (all in liquidation).

2011 Wine Grape Start Date means the date of the 2011 Sale of Wine Grape Agreement.

Agriproperty means Agriproperty Pty Ltd (ACN 140 954 874).

AgriExchange means AgriExchange Murtho Pty Ltd (ACN 093 583 049).

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

Authority includes:

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

Citrus Orchards means the citrus trees situated on the Land.

Citrus Projects means the 2004 Citrus Project and the 2005 Citrus Project.

Conditions Precedent has the meaning given in Special Condition 5.1.

Conditions Precedent End Date means 75 days after the Day of Sale, or any other later date as the parties may agree in writing.

Contaminant means any:

- (a) air pollution;
- (b) water pollution;
- (c) waste;
- (d) substance which harms or is likely to harm (whether directly or indirectly) the Environment or the health or safety of any person, taking into account any current or proposed land uses;
- (e) thing which causes or gives rise to an Environmental Hazard; or
- (f) petrol contamination and the presence of residual hydrocarbons in or under any soil or in any groundwater,

whether a solid, liquid or gas.

Contamination means the existence in, on or under any land, building, structure, groundwater or waters of any Contaminant.

Contract means this document.

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

Costa means CostaExchange and AgriExchange.

CostaExchange means CostaExchange Limited (ACN 002 687 961).

Costa Services means the services performed by Costa, on behalf of the Vendor, of cultivating, maintaining and managing the Citrus Orchards in order to maintain the Citrus Orchards and harvest the citrus from those trees (where relevant).

Court means the Supreme Court of Victoria.

Day of Sale means the date of this Contract.

Department means the Department of Water of South Australia.

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

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

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surrounds such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

Environmental Hazard means a state of danger or harm to human beings or the Environment, whether imminent or otherwise, resulting from the storage or handling or exposure of any substance (whether a solid, liquid or gas) having a toxic, corrosive, flammable, explosive, infectious or other dangerous or harmful characteristics.

Environmental Laws means a law relating to the Environment (whether a statute law or common law or otherwise) including but not limited to a law relating to land use, planning, environmental assessment, the environmental heritage, coastal protection, water catchments, pollution of air or water, noise, soil or groundwater contamination, chemicals, pesticides, hazardous substances, the ozone layer, water, dangerous goods, building regulation, occupation of buildings, fire safety, public health, occupational health and safety, noxious trades, any Environmental Hazard, any aspect of the protection of the Environment or the protection or administration of any of those laws.

Environmental Liability or Environmental Liabilities means any of the following liabilities which arise from the ownership or use of the Land:

- (a) all costs and expenses associated with undertaking any clean-up or other remediation work whether or not ordered or required by any government agency of any land, buildings or waters;
- (b) any compensation or other moneys that a government agency requires to be paid to any person under any Environmental Laws for any reason;
- (c) any fines or penalties incurred under Environmental Laws;
- (d) all costs and expenses incurred in complying with any Environmental Laws; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses), damages, costs and expenses, legal or consulting fees and interest payable under Environmental Laws.

Excluded Assets means:

- (a) any cash of the Vendor;
- (b) any information which the Vendor or the Receivers are required by Law to retain;
- (c) insurance policies relating to the Vendor or owned by the Vendor or any Related Body Corporate of the Vendor and any rights under those policies;
- (d) any Receivables;
- (e) the benefit of any contract, agreement, commitment or arrangement to which the Vendor is a party;
- (f) any other asset of the Vendor (including tangible and intangible assets and contingent assets) not expressly included in the definition of Property;
- (g) for the avoidance of doubt, the citrus harvested from the Citrus Orchards prior to the 2010 Citrus Start Date and any proceeds from such citrus;
- (h) for the avoidance of doubt, the portions of the 2010 Citrus and the 2011 Citrus sold to Costa and Align under the 2010 Citrus Sale Agreements and the 2011 Citrus Sale Agreements respectively; and
- (i) for the avoidance of doubt, the wine grapes harvested from the Wine Grape Vineyard prior to Settlement and any proceeds from such wine grapes.

First Right of Refusal means a first right of refusal granted in favour of AgriExchange pursuant to the Contract for the Sale and Purchase of Land between the Vendor (as purchaser) and AgriExchange (as vendor) dated 31 December 2003 under which:

- (a) the Vendor must, by notice in writing (*Offer Notice*), offer to sell the Property to AgriExchange at the same price and on the same terms and conditions contained in this Contract; and
- (b) AgriExchange has 30 days upon receipt of the Offer Notice to elect to enter into a contract for the purchase of the Property at the same price and on the same terms and conditions contained in this Contract.

General Conditions means the general conditions forming part of this Contract.

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

Grower Licences means, in respect of the Citrus Projects, the licence agreements granted to Growers in respect of the Property on which the Citrus Projects are conducted.

Growers means investors in the Citrus Projects.

Growers' Claims means any claim over any part of the Property by or in favour of a Grower including any claim by a Grower for a right to occupy or to access the Land or any claim or entitlement to harvest any crop from the Citrus Orchards.

Head Lease means the registered lease No 9852713 between Timbercorp Limited and the Vendor in respect of the Land.

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

-
- (a) books of account, brochures and other promotional material;
 - (b) sales and purchasing records;
 - (c) trading and financial records;
 - (d) lists of customers and suppliers; and
 - (e) business plans and sales forecasts,
- but excluding:
- (f) statutory company registers;
 - (g) records relating to Tax except those records that are required to be delivered to the Purchaser pursuant to Tax Law; and
 - (h) information in respect of which the Vendor has legal professional privilege.

Information Memorandum means the Kangara Information Memorandum dated 30 November 2009 (including any supplement to it or replacement of it).

Insolvent means, in respect of a corporation:

- (a) registered under the Corporations Act:
 - (i) it enters into a scheme;
 - (ii) it makes any arrangement for the benefit of creditors;
 - (iii) an order is made to wind up the party;
 - (iv) a liquidator or administrator is appointed in respect of the party;
 - (v) a mortgagee enters into possession of all or a substantial part of the assets of the party;
 - (vi) it is unable to pay its debts as and when they fall due, or is so deemed by any relevant legislation; or
 - (vii) a receiver, receiver and manager or agent of a mortgagee is appointed to all or a substantial part of the assets of the party; or
- (b) incorporated outside Australia, it suffers any event or similar event to those set out in paragraph (a) which would restrict its business operations or cause those operations to be placed under the control of a person other than its directors under the laws of its place of incorporation.

Kingston means Kingston Vineyards Pty Ltd (ACN 080 860 555).

Land has the meaning given in the Particulars of Sale.

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

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

Liquidators means the liquidators appointed to the Timbercorp Entities.

Offer Notice means a notice in writing sent by the Vendor to AgriExchange in accordance with the First Right of Refusal.

Outstanding Management Costs means the aggregate of:

-
- (a) in relation to the 2010 Citrus Sale Agreements, the Outstanding Costa Actual Costs (as defined in the 2010 Citrus Sale Agreements) amount to be paid directly to CostaExchange or AgriExchange (as the case may be) by the Purchaser at Settlement, in accordance with the 2010 Citrus Sale Agreements; and
- (b) in relation to the 2011 Citrus Sale Agreements, the Outstanding Costa Actual Costs (as defined in the 2011 Citrus Sale Agreements) and any Unpaid Costa Shortfall Amount (as defined at clause 8.6(e) of the 2011 Citrus Sale Agreements) to be paid directly to CostaExchange or AgriExchange (as the case may be) by the Purchaser at Settlement, in accordance with the 2011 Citrus Sale Agreements.

Outstanding Use and Occupancy Fees means the amount to be paid to the Vendor by the Purchaser at Settlement, in accordance with the 2010 Citrus Sale Agreements and the 2011 Citrus Sale Agreements.

Outstanding Water Amount means the total amount outstanding to the Department relating to the Water Entitlements as at the Settlement Date including all outstanding fees charged in previous licence years and the current licence year.

Particulars of Sale means the means the Schedule annexed to the General Conditions.

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

Plant and Equipment means the plant and equipment to the extent that it is owned by the Vendor as at the Day of Sale which is used in relation to the Property, whether situated on the Land or otherwise.

Price means the purchase price payable for the Property specified in the Particulars of Sale.

Property means

- (a) the Land;
- (b) the Citrus Orchards;
- (c) the Wine Grape Vineyard;
- (d) the portion of the 2011 Citrus not sold to Costa under the 2011 Citrus Sale Agreements and any future citrus from the Citrus Orchards;
- (e) any future (as at the Settlement Date) wine grapes from the Wine Grape Vineyard;
- (e) the Plant and Equipment;
- (f) the Water Entitlements; and
- (g) the Information,

but excludes the Excluded Assets.

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

Receivable means any amount due to the Vendor as at Settlement or accrued before Settlement and

Receivables means the aggregate of all such amounts.

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

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

Relevant Period means:

- (a) in respect of the 2010 Citrus Agreements, the period commencing from the 2010 Citrus Start Date and ending on 30 June 2010;
- (b) in respect of the 2011 Citrus Agreements, the period commencing from the 2011 Citrus Start Date and ending on the Settlement Date; and
- (c) in respect of the 2011 Sale of Wine Grape Agreement, the period commencing on the 2011 Wine Grape Start Date and ending on the date specified in the 2011 Wine Grape Sale Agreement.

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

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

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

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

Surrender Deed means, a deed to be executed by TSL in respect of the Citrus Projects (in its capacity as the responsible entity of the Citrus Projects) as agent and attorney for Growers under the Citrus Projects under which TSL agrees to surrender the Grower Licences, and extinguishes all of the rights of Growers, in respect of the Property with effect on and from Settlement in form and substance acceptable to Agriproperty (acting reasonably).

Tax includes:

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

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

Timbercorp Entities means Timbercorp Limited and Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) in its own capacity and in its capacity as responsible entity for the 2004 Timbercorp Citrus Project (ARSN 108 887 538) or the 2005 Timbercorp Citrus Project (ARSN 114 091 299), as the case may be.

Timbercorp Leases means leases registered nos. 9852713, 9857592, 9857592A and 10240850.

Timbercorp Limited means Timbercorp Limited (In Liquidation) (ACN 055 185 067).

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

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

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

Vendor's Legal Practitioner means Allens Arthur Robinson.

Vendor's Statement means the statement given to the Purchaser by the Vendor pursuant to section 7 of the *Land and Business (Sale and Conveyancing) Act 1994* (SA).

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

Water End Date means the date that is 60 days after the date of lodgement of the Water Entitlement Transfer with the Department for approval and transfer or any other later date as the parties may agree in writing..

Water Entitlements means:

- (a) part of the water access entitlement attached to Water Licence No. 827, being
 - (i) 500 class 1 shares; and
 - (ii) 100,000 class 3a shares;
- (b) Water Allocation No. SA827-1-10009;
- (c) Water Resource Works Approval No. 172707; and
- (d) Site Use Approval No. 172708,

each granted pursuant to the *Natural Resources Management Act 2004* (SA).

Water Entitlement Price means the purchase price for the Water Entitlements set out in item 11 of the Schedule being \$175,000.

Water Entitlement Transfer means the application (in the prescribed statutory form) required for the transfer and/or variation (as the case may be) of Water Entitlements to Agriproperty pursuant to the *Natural Resources Management Act 2004* (SA).

Wine Grape Vineyard means the vines situated on the Land.

1.2 Interpretation

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

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, paragraph, Special Condition or schedule is a reference to a clause, paragraph, Special Condition of or a schedule of this Contract.
- (f) A reference to an agreement or document (including a reference to this Contract) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Contract or that other Contract or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings, or symbols in a visible or tangible form.
- (h) A reference to a party to this Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

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- (j) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (j) A reference to *dollars* and \$ is to Australian currency.
 - (k) Mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included.
 - (l) Nothing in this Contract is to be interpreted against a party solely on the ground that the party put forward this Contract or any part of it.

1.3 References to disclosure

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

1.4 Vendor's Statement

The Purchaser acknowledges receiving:

- (a) a copy of this Contract; and
- (b) a copy of the Vendor's Statement signed by the Vendor,

before paying any money or signing any document relating to the sale of the Property.

1.5 Joint and several liability

- (a) If there is more than one Vendor, the liability of the Vendors is joint and several.
- (b) The liability of each of the Purchasers:
 - (i) is several (and neither joint nor joint and several); and
 - (ii) is limited to the Land which each Purchaser will acquire under this Contract.

1.6 Time

If any date is fixed by this Contract for the payment of moneys or for the performance of any obligation, all moneys must be paid or the obligation performed by 3pm on the date fixed otherwise the payment or performance will be taken to have occurred on the next Business Day after the date when the payment or the performance takes place and the Purchaser will be taken to have made default in the payment or performance of its obligations under this Contract on the due date.

1.7 No requisitions

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

2. Amendments to General Conditions

The General Conditions are amended as follows:

- (a) In General Condition 1(4)(i), add the following after the word '1910':
 , or Victoria within the meaning of the *Public Holidays Act 1998*.
- (b) Delete General Condition 32 (GST).

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- (c) Amend General Condition 17 to read as follows:

The Land shall remain at the risk of the Vendor until the Settlement Date and, between the Day of Sale and the Settlement Date:

- (a) the Vendor shall use the Land with reasonable care; and
 - (b) to the extent the Purchaser, or a related body corporate of the Purchaser, undertakes any activity on the Land or controls any activity taking place on the Land, the Purchaser shall, and shall procure that its related body corporate (as the case may be), do so with reasonable care.
- (d) In General Condition 21(1), delete the words 'at any time thereafter' in the second last line and replace them with 'within five Business Days'.
- (e) Replace General Condition 21(4)(a) and (b) to read as follows:
- (a) If the Defaulting Party is:
 - (i) the Vendor and fails to carry out observe and perform the obligations on its part to be observed and performed at settlement at the time appointed in a notice of completion, the Complying Party may determine this Agreement by notice to the Defaulting Party.
 - (ii) one of the Purchasers (*Defaulting Purchaser*) and fails to carry out observe and perform the obligations on its part to be observed and performed at settlement at the time appointed in a notice of completion, the other Purchaser (*Non-defaulting Purchaser*) that has tendered its part of the Price may assume the rights and liabilities of the Defaulting Purchaser and will become the substituting purchaser of the Defaulting Purchaser under this Contract by notice to the Defaulting Purchaser and the Vendor.
 - (b) Notice under this sub-clause:
 - (i) must be given to both the Vendor and the Defaulting Purchaser within five Business Days after the time appointed for settlement in the notice of completion;
 - (ii) shall be without prejudice to any other rights or remedies the Complying Party may have;
 - (iii) must state that the Non-defaulting Purchaser will effect settlement on all of the Land and the Water Entitlements on payment at settlement of:
 - (A) the Defaulting Purchaser's deposit to the Defaulting Purchaser; and
 - (B) the balance of the Price to the Vendor,which settlement must take place within ten Business Days after the time appointed for settlement in the notice of completion.

3. Capacity and Liability of Vendor

The parties acknowledge that the Vendor enters into this Contract only in its capacity as responsible entity of TOT. A liability arising under or in connection with this Contract can be enforced against the Vendor only to the extent to which the Vendor is actually indemnified as responsible entity of

TOT in respect of that liability out of the assets comprising the Property and the assets of the Citrus Projects. No party will be entitled to:

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

4. Receivers

The Purchaser acknowledges that:

- (a) the Receivers were appointed by Permanent on 22 October 2009 pursuant to a first ranking fixed and floating charge dated 17 October 2003 (registered no 994221);
- (b) the Receivers are entering into this Contract as agents of the Vendor and will not be personally liable to any party arising out of the obligations of the Vendor under this Contract, and otherwise have no liability to any party under any provision of this Contract, save for in respect of the Receivers' Warranties and Special Conditions 5.2, 5.3(c), and 5.3(d); and
- (c) by the Receivers' execution of this Contract, the Receivers take the personal benefit of any release, indemnity, acknowledgement or other provision given in favour of them or the Vendor including, without limitation, this Special Condition 4 and Special Conditions 9, 10, 11, 12, 14.1, 18 and 21 of this Contract.

5. Conditions Precedent

5.1 Conditions Precedent

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

- (a) (Growers' Claims): Each of the following having occurred in respect of the Citrus Projects:
 - (A) the Court directing that the Liquidators of TSL are justified in procuring TSL, in its capacity as responsible entity of the Citrus Projects, to extinguish all of the rights of Growers (including under the Grower Licences) in respect of the Property, in accordance with the Surrender Deed;
 - (B) the Court making orders determining the rights of all and any persons (including Growers and Permanent) to all or any part of the net proceeds of the sale under this Contract, or ordering that those net proceeds be held on trust until the rights of those persons are determined by a further order of the Court; and
 - (C) the Liquidators of TSL executing and delivering to the Vendor the Surrender Deed,such that the Property may be transferred to the Purchaser at Settlement free of any encumbrances relating to the rights of Growers and Permanent and any Growers' Claims.

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- (b) **(Non-exercise of First Right of Refusal):** The non-exercise or waiver of the First Right of Refusal by AgriExchange.
 - (c) **(Timbercorp Leases):** Each of the parties to the deeds of surrender in respect of the Timbercorp Leases agree in writing to the execution of the deeds of surrender that are to be delivered by the Vendor at Settlement in accordance with Special Condition 16.3(a)(vi).

5.2 Parties must co-operate

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

5.3 Specific obligations of co-operation

Without limiting the generality of Special Condition 5.2:

- (a) the Vendor must use all reasonable endeavours to procure the satisfaction of the Conditions Precedent referred to in Special Conditions 5.1(a) and 5.1(c) as soon as possible;
- (b) the Purchaser must use all reasonable endeavours to procure the satisfaction of the Condition Precedent referred to in Special Condition 5.1(b) as soon as possible;
- (c) no party may take any action that would or would be likely to prevent or hinder the fulfilment of the Conditions Precedent; and
- (d) each party must:
 - (i) keep the other parties informed in a timely manner of the status of any discussions or negotiations with relevant third parties regarding the Conditions Precedent; and
 - (ii) promptly notify the other parties on becoming aware of the fulfilment of any Condition Precedent or of any Condition Precedent becoming incapable of being fulfilled.

5.4 Waiver

- (a) The Conditions Precedent in Special Condition 5.1(a) and 5.1(c) are for the benefit of all parties and may only be waived by all parties in writing.
- (b) The Condition Precedent in Special Conditions 5.1(b) is for the benefit of the Vendor and may only be waived by the Vendor in writing.

5.5 Consultation on failure of Conditions Precedent

If any event occurs which would prevent the Conditions Precedent in Special Condition 5.1 being satisfied, or it is apparent that the Conditions Precedent in Special Condition 5.1 will not be satisfied by the Conditions Precedent End Date, the parties must consult in good faith to:

- (a) consider and, if agreed, determine whether the transaction contemplated by this Contract may occur by any other means or methods; and
- (b) consider and, if agreed, extend the Conditions Precedent End Date.

5.6 Termination for non-satisfaction of Conditions Precedent

- (a) Subject to paragraph (b):

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- (i) the Purchaser or Vendor may terminate this Contract before Settlement if the Conditions Precedent are not fulfilled or waived on or before the Conditions Precedent End Date; or
 - (ii) the Purchaser or Vendor may terminate this Contract before Settlement if they agree that the Conditions Precedent are incapable of being fulfilled and will not be waived, on or before the Conditions Precedent End Date.
- (b) The Purchaser or Vendor may only terminate under paragraph (a) if it has complied with Special Conditions 5.2 and 5.3 and subject to giving 2 Business Days written notice to the other party.

5.7 Effect of termination for non-satisfaction of Conditions Precedent

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

- (a) each party is released from its continuing obligations under this Contract, except for this Special Condition 5.7 and Special Conditions 3, 4 and 21;
- (b) each party retains the rights it has against any other party in respect of any prior breach without affecting any rights at law or in equity; and
- (c) the Vendor must return the Deposit (and any interest which has accrued in respect of it) to the Purchaser within 5 Business Days of termination of the Contract, except where the Purchaser has breached its obligations pursuant to Special Conditions 5.2 and 5.3.

6. Rescission

- (a) If for any reason (including the lodging of caveats, writs of execution or injunctive or similar proceedings) other than due to the wilful default of the Vendor, the Vendor is unable to perform any or all of its obligations under this Contract, then the Vendor shall not be liable by way of damages, compensation or otherwise for any loss sustained by the Purchaser by reason of the failure of the Vendor to perform such obligations under this Contract.
- (b) If for any reason (other than due to the wilful default of the Vendor) the Vendor is unable to, or the Vendor is not satisfied that it can, give title to and/or possession of all or part of the Property on the Settlement Date, then the Vendor may either rescind this Contract or (at its option) by notice to the other parties extend the Settlement Date by a period of not more than 3 months. This right may be exercised before the Settlement Date. The Settlement Date may be postponed in this way more than once, as long as it is not postponed beyond three months later than the original Settlement Date.
- (c) If the Vendor is still unable to, or the Vendor is not satisfied that it can, give title to and/or possession of all or part of the Property by the date 3 months after the original Settlement Date, then this Contract will automatically be rescinded, unless otherwise agreed by the parties in writing, and the Vendor shall not be liable by way of damages, compensation or otherwise for any loss sustained by the Purchaser by reason of the failure of the Vendor to perform its obligations under this Contract.
- (d) If this Contract is rescinded pursuant to this Special Condition 6, the Vendor must return the Deposit (and any interest which has accrued in respect of it) to the Purchaser within 5 Business Days of termination of the Contract.

7. Termination for Insolvency

- (a) If the Purchaser becomes Insolvent, without limiting the remedies available to the Vendor at law or in equity, the Vendor may do any or all of the following:
 - (i) terminate this Contract;
 - (ii) keep the Deposit; and
 - (iii) sue the Purchaser for breach.
- (b) On termination of this Contract by the Vendor, the Vendor is discharged from any further obligation or Liability under this Contract.

8. Investment of Deposit and Water Entitlement Price

Where the Vendor's Legal Practitioner is the stakeholder:

- (a) the parties authorise the Vendor's Legal Practitioner to invest the Deposit and the Water Entitlement Price with an authorised deposit-taking institution on fixed deposit;
- (b) the parties must provide their ABN or tax file number to the Vendor's Legal Practitioner and will make no claim against the Vendor's Legal Practitioner for taxes deducted from any interest to which a party is entitled as a result of that party failing to provide its ABN or tax file number;
- (c) the Vendor's Legal Practitioner will not be responsible for any loss occasioned by its investment of the Deposit and the Water Entitlement Price on the terms of this Special Condition; and
- (d) the parties, until the party entitled to the Deposit or the Water Entitlement Price, as the case may be, is determined, at which time that party solely, shall indemnify the Vendor's Legal Practitioner from any tax that may become payable on interest accruing on the Deposit or the Water Entitlement Price.

9. Matters Affecting the Property

9.1 Purchaser's acknowledgments

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

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

9.2 Purchaser to satisfy itself

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

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

this Contract or which are implied by or deemed to have been given by law and which cannot be excluded by agreement).

9.3 No reliance

The Purchaser acknowledges that:

- (a) except as provided in Special Condition 19, at no time:
 - (i) have the Vendor, the Receivers, or their Representatives made or given; or
 - (ii) has the Purchaser relied on.any representation, warranty, promise or forecast;
- (b) no other statements or representations made by or on behalf of the Vendor or the Receivers:
 - (i) have induced or influenced the Purchaser to enter into this Contract or to agree to any or all of its terms;
 - (ii) have been relied on in any way by the Purchaser as being accurate;
 - (iii) have been warranted to the Purchaser as being true; or
 - (iv) have been taken into account by the Purchaser as being important to the Purchaser's decision to enter into this Contract or agree to any or all of its terms;
- (c) it has relied on its own enquiries in relation to all matters affecting the Property and does not rely on the Vendor's assessment (if any) of the financial consequences and impact on the Purchaser of or arising from any information which may have been made available by the Vendor;
- (d) it is deemed to have examined all information provided to or made available for inspection by the Vendor or otherwise available on reasonable enquiry by the Purchaser, including the Disclosure Material;
- (e) the Receivers, the Vendor or any of its related entities, or their Representatives:
 - (i) have not undertaken any verification of the Disclosure Material; and
 - (ii) give no warranty, representation or undertaking that the Disclosure Material is or will be true, accurate, complete, current or reliable,and no obligation to do so arises under this Contract or otherwise;
- (f) except for the Vendor's Warranties and the Receivers' Warranties, all warranties and representations on the part of the Vendor, the Receivers and their respective Associates, whether express or implied, statutory or otherwise, are, to the extent permitted by law, expressly excluded; and
- (g) neither the Vendor nor the Receivers, nor any Associates of any of them, accept any duty of care for the provision of any information to the Purchaser or to any Related Body Corporate of the Purchaser, or to any Associate, equity provider or provider of finance to the Purchaser or to any other person.

9.4 Trade Practices Act

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

9.5 Easements and other encumbrances

The Property is sold free from encumbrances, except for:

- (a) the rights and interest reserved to the Crown in the deed of grant;
- (b) all encumbrances (other than the Timbercorp Leases and any mortgages registered against the title to the Land, which will be discharged at Settlement) registered against the title to the Land as at the Day of Sale;
- (c) the caveats referred to in Special Condition 17;
- (d) all statutory rights relating to water supply, sewerage, drainage, electricity, telephone and other services in, passing through or over the Land, whether or not protected by registered easement; and
- (e) any statutory charge over the Property in favour of an Authority which exists at Settlement.

9.6 Property sold as is, where is

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

10. Plant and Equipment

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

11. Planning

The Purchaser buys the Land subject to any restrictions imposed by and to the provisions of any planning scheme.

12. Environmental Matters

- (a) The Purchaser accepts the condition of the Land as at the Settlement Date and as from the Settlement Date, the Purchaser must, at its own cost and expense, assume all responsibility for the presence of any Contamination or Environmental Liability arising from Contamination found over, on or in the Land or having migrated from the Land, including the presence of any Environmental Hazard emanating from the Land or from any adjoining land and without limitation must to the fullest extent permissible by law assume all responsibility for:
 - (i) compliance with all Environmental Laws;
 - (ii) the performance of any work required by any competent authority in respect of Contamination or Environmental Hazard or under any Environmental Laws; and
 - (iii) any legal, statutory or other Environmental Liability under or in connection with or resulting from the presence of any Contaminant or Environmental Hazard over, in or migrating from the Land.

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- (b) The Purchaser releases and indemnifies the Vendor from and against all claims, demands, suits, proceedings, losses, expenses, penalties or damages which are brought, claimed, issued or assessed against the Vendor as a result of any Contamination found over, on or in the Land or having migrated from the Land or any Environmental Hazard or any notice served under Environmental Laws in relation to the Land after the Settlement Date. Nothing in this Special Condition operates to make the Purchaser liable for any legal, statutory or other liability arising from the presence of Contamination or Environmental Liability where that legal, statutory or other liability arose prior to the Settlement Date.
 - (c) The Purchaser must not:
 - (i) require the Vendor to obtain or contribute to the cost of:
 - (A) any environmental assessment or audit report for the Land or any part of the Land; or
 - (B) any statement or certificate of environmental audit for the Land or any part thereof under the EPA Act; or
 - (ii) make any claim, objection or requisition or attempt to rescind or terminate this Agreement or seek to delay or defer settlement or to withhold any part of the Price as a result of any Contamination relating to the Land.

13. Water Entitlements

13.1 Water Entitlement Transfer

- (a) On or at any time before the Settlement Date, Agriproperty must provide to the Vendor:
 - (i) the Water Entitlement Transfer executed by Agriproperty; and
 - (ii) the applicable statutory fee payable in respect of the Water Entitlement Transfer.
- (b) At or before Settlement, the Vendor must:
 - (i) execute the Water Entitlement Transfer provided by Agriproperty under Special Condition 13.1(a); and
 - (ii) provide to Agriproperty a copy of a release of any charge or other interest noted against the Water Licence and anything else required to obtain approval for and to register the Water Entitlement Transfer.
- (c) As soon as reasonably practicable after Settlement, the Vendor must take all reasonable steps to obtain approval for and to register the Water Entitlement Transfer.

13.2 Parties must co-operate

- (a) Agriproperty must provide the Vendor with all reasonable assistance and information requested by the Vendor (and will prepare and execute any documents reasonably required by the Vendor) in order to assist the Vendor to procure the approval of the Water Entitlement Transfer.
- (b) The Vendor and Agriproperty must:
 - (i) keep each other informed in a timely manner of the status of any discussions with the relevant third parties regarding approval of the Water Entitlement Transfer; and

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- (ii) as soon as reasonably practicable, notify the other on receiving notification, or otherwise becoming aware, that:
 - (A) approval of the Water Entitlement Transfer has been granted; or
 - (B) the Water Entitlement Transfer has been refused, or will not or will likely not be approved.
 - (c) No party may take any action that would or would be likely to prevent or hinder obtaining the approval of the Water Entitlement Transfer.

13.3 Access to water

- (a) The Vendor agrees that from the period between the Settlement Date and the date on which the approval of the Water Entitlement Transfer becomes effective, the Vendor will licence to Agriproperty the right to use the Water Entitlements free of charge, which licence to Agriproperty is non transferable to a third party and is subject to Agriproperty complying with all conditions attached to the licence which grants the Water Entitlements to the Vendor.
- (b) Agriproperty may sub-licence the right to use all or any part of the Water Entitlements to Kingston or Costa or both.
- (c) To the extent that the Vendor licences to Agriproperty the right to use the Water Entitlements in accordance with paragraph (a), Agriproperty must indemnify the Vendor and keep the Vendor indemnified against all claims or liability arising out of any breach of the terms and conditions of the *Natural Resources Management Act 2004* (SA), the Water Entitlements or any approval and resulting from any act, omission or default on the part of Agriproperty or any person acting under or with authority or permission of Agriproperty.
- (d) In the event that Agriproperty sub-licences the right to use all or any part of the Water Entitlements to Kingston or Costa or both in accordance with clause 13.3(c), Kingston and Costa (as the case may be) must indemnify the Vendor in accordance with clause 13.3(c).

13.4 Consultation on failure to obtain approval of Water Entitlement Transfer

If the Vendor is unable to obtain approval of the Water Entitlement Transfer by the Water End Date, the parties must consult in good faith to consider and, if agreed:

- (a) determine whether a fresh Water Entitlement Transfer be made; and
- (b) extend the Water End Date.

14. Special Funding Arrangements

14.1 Purchaser acknowledgements

The Purchaser acknowledges that:

- (a) the Timbercorp Entities are not able to pay Costa for the Costa Services in accordance with the arrangements in place prior to 23 April 2009;
- (b) Timbercorp Limited has not been able to pay the Vendor the rental under the Head Lease since 23 April 2009;
- (c) TSL and the Vendor have entered into:

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- (i) the 2010 Citrus Sale Agreements in relation to the Citrus Orchards for the purpose of funding the Costa Services in respect of the 2010 Citrus for the Relevant Period; and
 - (ii) the 2011 Citrus Sale Agreements in relation to the Citrus Orchards for the purpose of funding the Costa Services in respect of the 2011 Citrus for the period commencing on the 2011 Citrus Start Date and ending on 30 June 2011;
 - (d) TSL and the Vendor have entered or will enter into the 2011 Sale of Wine Grape Agreement for the purpose of funding the management arrangements in relation to the Wine Grape Vineyard for the Relevant Period;
 - (e) the 2010 Citrus Sale Agreements and the 2011 Citrus Sale Agreements require that, in the event of a sale of the Property, the purchaser of the Citrus Orchards is to pay:
 - (i) directly to Costa Exchange or AgriExchange (as the case may be) the Outstanding Management Costs in accordance with Special Condition 16.5 as consideration for the provision of the Costa Services; and
 - (ii) directly to the Vendor the Outstanding Use and Occupancy Fees as consideration for the use of the Land comprising the Citrus Orchards during the Relevant Period.

14.2 Purchaser to pay the Outstanding Management Costs

Upon Settlement, Agriproperty must pay directly to CostaExchange or AgriExchange (as the case may be) out of Agriproperty's portion of the Price the Outstanding Management Costs (if any) for the Relevant Period.

14.3 Outstanding Use and Occupancy Fees

As the Outstanding Use and Occupancy Fees are payable to the Vendor by Agriproperty out of Agriproperty's portion of the Price, the Vendor does not require Agriproperty to pay to the Vendor separately the Outstanding Use and Occupancy Fee. Instead, Agriproperty will only be required to pay the balance of its portion of the Price (after deducting the payment under Special Condition 14.2) and the Vendor will allocate, out of Agriproperty's portion of the Price that the Vendor receives:

- (a) the amount payable to it as Outstanding Use and Occupancy Fee; and
- (b) the amount it receives from the sale of the relevant Property to Agriproperty.

15. Transfer

15.1 Delivery of transfers

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

15.2 Vendor's election

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

must pay interest in accordance with General Condition 19 from the date fixed for payment of the balance of the Price until the date on which the balance of the Price is paid to the Vendor.

15.3 No acceptance of title

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

16. Settlement and Possession

16.1 Settlement

Settlement will occur on the later of:

- (a) the date that is 14 Business Days after the date on which the Conditions Precedent are satisfied; and
- (b) 31 March 2011, or such other date as the Vendor and the Purchaser may agree in writing.

16.2 Vendor obligations prior to Settlement

As soon as practicable following execution of this Contract, the Vendor must send the Offer Notice to AgriExchange.

16.3 Vendor obligations at Settlement

At Settlement, the Vendor must provide the following:

- (a) to the Purchaser:
 - (i) the duplicate certificates of title volume 5509 folio 66, volume 5509 folio 65, volume 5097 folio 564, volume 5097 folio 565, volume 5097 folio 566, volume 5131 folio 62, volume 6018 folio 804, volume 6018 folio 805 and volume 6018 folio 807;
 - (ii) executed discharge of mortgage No 9759035 in respect of the Land;
 - (iii) executed deed of release and completed ASIC Form 312 in respect of registered charge No 994221 to the extent it relates to the Property;
 - (iv) the transfer of land document executed by the Vendor;
 - (v) the executed Surrender Deed in respect of the Citrus Projects;
 - (vi) deeds of surrender executed by the relevant parties in respect of the Timbercorp Leases in form and substance acceptable to the Purchaser (acting reasonably) together with the relevant Land Title Office Forms S1;
 - (vii) the Water Entitlement Transfer Form, if it has not already been lodged with the Department under Special Condition 13.1(a);
 - (viii) duly executed and registerable withdrawal of the caveat Nos. 11411688 and 11411688A in respect of the relevant Land;
 - (ix) vacant possession of the Property;
 - (x) application forms for the transfer of Licence to Occupy No. OL18343 and Licence to Occupy No. OL18981 under the *Crown Management Land Act 2009* (SA), executed by the Vendor; and

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- (b) to Agriproperty, a release of any charge or other interest noted against the Water Licence and anything else required to obtain approval for and to register the Water Entitlement Transfer.

16.4 Special adjustment provisions for Outstanding Water Amount

- (a) The parties agree that this Special Condition 16.4 applies in respect of any adjustment of the Outstanding Water Amount at Settlement and that other than as provided for in this Special Condition 16.4, General Condition 10 does not apply to the Outstanding Water Amount.
- (b) Agriproperty:
 - (i) may, prior to the Vendor lodging the Water Entitlement Transfer with the Department, pay an amount directly to the Department in full and final settlement of the Outstanding Water Amount or part of the Outstanding Water Amount; and
 - (ii) must, on the Settlement Date, pay an amount directly to the Department in full and final settlement of the Outstanding Water Amount (to the extent it has not already been paid by Agriproperty).
- (c) If Agriproperty pays any Outstanding Water Amount pursuant to Special Condition 16.4:
 - (i) any amounts paid by Agriproperty under this Special Condition 16.4 must be adjusted against Agriproperty's portion of the Price in favour of Agriproperty;
 - (ii) Agriproperty must notify the Vendor of the amount paid and provide the Vendor evidence of such payment as soon as reasonably practicable after making such payment.

16.5 Purchaser obligations

At Settlement, the Purchaser must provide the following:

- (a) to the Vendor, the balance of Price (excluding the Water Entitlements Price), as adjusted pursuant to General Condition 10 and, in the case of Agriproperty,:
 - (i) as adjusted pursuant to Special Condition 16.4; and
 - (ii) after deducting the amount payable to CostaExchange or AgriExchange (as the case may be) under Special Condition 14.2; and
- (b) in the case of Agriproperty:
 - (i) to CostaExchange or AgriExchange (as the case may be), the Outstanding Management Costs; and
 - (ii) to the Vendor's Legal Practitioner, the Water Entitlement Price.

16.6 Release of Water Entitlement Price

- (a) The Vendor's Legal Practitioner is authorised to release the Water Entitlement Price (and any interest which has accrued in respect of it) as follows:
 - (i) to the Vendor, if the Water Entitlement Transfer is approved in its entirety and the relevant Water Entitlements are transferred to Agriproperty; or
 - (ii) to Agriproperty, if the Water Entitlement Transfer is not approved in its entirety by the Water End Date or the relevant Water Entitlements are not transferred to Agriproperty.

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- (b) In the event the Vendor's Legal Practitioner has released the Water Entitlement Price (and any interest which has accrued in respect of it) to Agriproperty in accordance with Special Condition 16.6(a)(ii) and the Water Entitlement Transfer is approved after the Water End Date and the relevant Water Entitlements are transferred to Agriproperty, Agriproperty must pay the Water Entitlement Price to the Vendor.

16.7 Interdependence of obligations

- (a) The obligations of the parties in respect of Settlement are interdependent and unless all such obligations have been performed, then no Settlement may take place.
- (b) Performance of the obligations of each party in respect of Settlement is treated as taking place simultaneously.

16.8 Period before Settlement

From the date of this Contract up to and including Settlement, the Receivers and the Vendor must not dispose of any interest in any of the Property.

17. Caveats

If at Settlement there is noted on a certificate of title in respect of the Property a caveat lodged by or on behalf of the Purchaser or any assignee of its interest under this Contract or by any person claiming through or under the Purchaser, the Purchaser must complete this Contract notwithstanding the existence of that caveat and without requiring the Vendor to provide a withdrawal of that caveat.

18. Purchaser's Warranties

18.1 Purchaser's Warranties

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

18.2 Continued operation

Each Purchaser's Warranties will remain in full force and effect after the Settlement Date despite Settlement.

19. Vendor's and Receivers' Warranties

19.1 Vendor's Warranties

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

19.2 Receivers' Warranties

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

19.3 Continued operation

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

20. GST

20.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Contract, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the *GST Amount*). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided.

20.2 Liability net of GST

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

20.3 Adjustment events

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

20.4 Farming business

- (a) The parties intend that the Land sold under this Contract (other than the land on which the packing shed is located) comprises farm land supplied for farming under section 38-480 of the GST Law. Despite that intention, if GST-free treatment is not accepted by the Commissioner of Taxation, each Purchaser must pay the relevant GST Amount in accordance with Special Condition 20.1.
- (b) Each Purchaser warrants to the Vendor and the Receivers that it intends that a farming business (as defined in the GST Law) be carried on, on the Land (other than the land on which the packing shed is located).
- (c) Each Purchaser indemnifies each of the Vendor and the Receivers against all loss, liability, cost, penalty, interest or other amount that arises as a result of that Purchaser's breach of the warranty in Special Condition 20.4(b) above.

20.5 Supply as a going concern

In relation to the Land on which the packing shed is located which is to be purchased by Kingston:

- (a) the recipient of the supply warrants that it is registered for GST purposes and will remain registered until the completion of this Contract;
- (b) the parties acknowledge and agree that the sale of the assets under this Contract together with the supply of anything else by the Vendor to Kingston under this Contract constitutes a GST free supply of a going concern; and

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- (c) if at any time the supply or supplies under this Contract do not constitute a supply of a going concern, the recipient will pay to the supplier an amount equal to the GST payable on the supply in accordance with Special Condition 20.1.

20.6 Survival

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

20.7 Definitions

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

21. Confidentiality

21.1 Confidentiality

Subject to Special Condition 21.2, the existence and terms of this Contract (and all Disclosure Material and all books, documents and information made available to any party for the purposes of entering into this Contract or in the course of the performance of this Contract) must be kept confidential and must not be disclosed to any other person without the written consent of the other parties.

21.2 Permitted disclosure

Special Condition 21.1 shall not apply in the following circumstances:

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

21.3 Public announcements

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

21.4 Confidentiality deed unaffected

If the Purchaser has entered into any separate deed or agreement to keep confidential the confidential information of the Vendor or in relation to the Property, nothing in this Special Condition 21 limits or otherwise affects the terms of that deed or agreement.

22. Notices

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

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

- (i) To the Vendor and the Receivers: **Attention: Paul William Kirk**
PricewaterhouseCoopers Australia
Address: Freshwater Place, Level 23
2 Southbank Boulevard, Victoria, 3006
Facsimile: +61 3 8613 4852.

- Copy to: **Attention: Steve Clifford**
Level 29, 530 Collins St
Melbourne, Victoria 3000
Allens Arthur Robinson
Facsimile: +61 3 9614 4661

- (ii) To the Purchaser: **Agriproperty Pty Ltd**
Attention: Robert Costa / John Harris
Level 1, 170 Little Malop Street
Geelong, Victoria 3220
Facsimile: +61 3 8645 1672

- Kingston Vineyards Pty Ltd**
Attention: Bill Moularadellis
1 Sturt Highway
Kingston-on-Murray, SA 5331
Facsimile: +618 8583 0304

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

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

23. Entire agreement

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

24. No waiver

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

25. Rights cumulative

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

26. Amendment

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

27. Further assurances

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

28. No merger

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

29. Costs and stamp duty

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

30. Severability of provisions

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

31. Governing law and jurisdiction

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

32. Counterparts

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

Schedule 1

Purchaser's Warranties

The Purchaser

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

Due authorisation

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

Schedule 2

Vendor's Warranties

1. The Vendor is the sole responsible entity of TOT.
2. The Vendor is empowered by the TOT Trust Deed to:
 - (a) own property and carry out its business; and
 - (b) enter into and perform its obligations under this Contract,in its capacity as responsible entity of TOT.
3. The Vendor has full corporate power and lawful authority to execute and deliver this Contract and to consummate and perform or cause to be performed its obligations under this Contract and each transaction contemplated by this Contract to be performed by it.
4. The Vendor is duly incorporated and validly exists under the law of its place of incorporation.
5. At Settlement the Purchaser will acquire the full legal and beneficial ownership of the Property free and clear of all encumbrances, other than those referred to in General Condition 5 and Special Condition 9.5.
6. This Contract constitutes a legal and binding obligation of the Vendor enforceable in accordance with its terms by appropriate legal remedy.

Schedule 3

Receivers' Warranties

1. The Receivers are validly and legally appointed as receivers and managers of the Property in accordance with the requirements of the Corporations Act.
2. The Receivers have full power and authority to cause the Vendor to enter into this Contract.

Schedule 4

Details of Land purchased by each Purchaser

A map of the Land that is to be purchased by each Purchaser either in their own names or in joint names is attached.

The Land is to be transferred to each Purchaser as follows:

Nos	Certificate of Title	Transferee and proportions transferred
1	Volume 5097 Folio 564	Agriproperty
2	Volume 5097 Folio 565	Agriproperty
3	Volume 5097 Folio 566	Agriproperty
4	Volume 5509 Folio 65	Agriproperty
5	Volume 5509 Folio 66	Agriproperty
6	Volume 5131 Folio 62	Kingston
7	Volume 6018 Folio 804	Kingston
8	Volume 6018 Folio 805	Agriproperty
9	Volume 6018 Folio 807	Agriproperty

