

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

LIST E

SCI 2010

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(IN LIQUIDATION)

ACN 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469 IN ITS CAPACITY AS RESPONSIBLE ENTITY  
OF THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)  
AND ORS ACCORDING TO THE SCHEDULE

Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 25 January 2010

Filed on behalf of: The Plaintiffs


Prepared by:

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This is the exhibit marked '**DLM-1**' now produced and shown to DAVID LAURENCE MCEVOY at  
the time of swearing this affidavit on 25 January 2010.

Before me



**BENJAMIN PETER RECHTER**  
of 530 Collins Street, Melbourne  
Victoria 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

**Exhibit 'DLM-1'**

**Copy of Lease between  
OIM#2 and TL dated  
19/05/05**



**MEMORANDUM OF LEASE****CERTIFICATES OF TITLE BEING LEASED**

First: The whole of the land comprised in Certificate of Title Register Book Volume 5278 Folio 11,  
Secondly: Whole CT Volume 5278 Folio 12, Thirdly: Whole CT Volume 5471 Folio 442 Fourthly: Whole  
CT Volume 5519 Folio 293 Fifthly : Crown Lease 1595 / 11

**ESTATE AND INTEREST**

First - Fourthly: in fee simple  
Fifthly : an estate as lessee pursuant to  
Underlease 4983702 Crown Lease Perpetual 5345

**ENCUMBRANCES**

NIL

**LESSOR (Full Name and Address)**

OIM #2 Pty Ltd (ACN 112 691 997) of Level 2, 613 St Kilda Road Melbourne Victoria 3004

RevenueSA - Stamp Duty - ABN 19 040 349 865 0	
RevNetID/PRA Bundle No:	107 322 536
Orig/Copy	1 of with 2 copies
Consideration/Value/Security:	\$ -
SA Proportion (if applicable):	\$ -
SD:	\$ - LTO Fees: \$ 98.00
Int:	\$ - Pen/Add Tax: \$ -
Signature:	Suse T Date: 1/6/05

**LESSEE (Full Name, Address and Mode of Holding)**

Timbercorp Limited ACN 055 185 067 of Level 8, 461 Bourke Street Melbourne Vic 3000

**TERM OF LEASE**

COMMENCING ON THE 30<sup>th</sup> day of May 2005

EXPIRING ON THE 30<sup>th</sup> day of June 2027

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

The rent and manner of payment will be as is set out in Section 6 of this Lease

OPERATIVE CLAUSE <sup>(a)</sup> delete the inapplicable

The Lessor LEASES TO THE LESSEE the land <sup>(a)</sup> ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed <sup>(a)</sup> herein / in Memorandum No. \_\_\_\_\_ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

Not applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

**LEASE**  
**[Solora Estate]**

OIM #2 Pty Ltd

Timbercorp Limited

Timbercorp Securities Limited

**Timbercorp Orchard Trust #2 – Solora Estate**  
**Parent Lease**

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## Details of this Lease

### Date of this Deed:

This Deed is made on 19 May 2005

### Parties to this Deed:

1. **OIM #2 Pty Ltd**  
ACN 112 691 997  
Level 6, 505 St Kilda Road  
Melbourne, Victoria, 3004

in its capacity as trustee for the Timbercorp Orchard Trust #2  
(Lessor)

2. **Timbercorp Limited**  
ACN 055 185 067  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Lessee)

3. **Timbercorp Securities Limited**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(TSL)

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## Background

- A. The Lessor is the registered proprietor or is entitled to become the registered proprietor of the Solara Estate.
- B. The Lessor will lease the Solara Estate to the Lessee in accordance with this Deed.
- C. The Lessee will sub-lease the Existing Citrus Orchard located on the Solara Estate to TSL under a Project Sub-Lease for use in a Project.
- D. The Lessor consents to the Lessee entering into further Project Sub-Leases from time to time, and to TSL entering into Occupancy Agreements with Growers in Projects from time to time.
- E. The Lessee will pay rent in respect of the Solara Estate in accordance with this Lease.

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

<b>Administrator:</b>	has the same meaning as defined in section 9 of the Corporations Act;
<b>Authority:</b>	includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Solora Estate or any part of them or anything about them;
<b>Best Horticultural Practice:</b>	sound horticultural and environmental practices and industry practices that have been adopted in relation to similar citrus orchards;
<b>Business Day:</b>	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Adelaide, South Australia;
<b>Capital Works:</b>	<ul style="list-style-type: none"><li>(a) the infrastructure and capital works, including any Irrigation Infrastructure, that have been carried out on the Solora Estate, as the case requires, before it was purchased by the Lessor;</li><li>(b) the infrastructure and capital works that the Lessor has carried out or agreed to carry out, and any other works that the Lessor may in absolute discretion carry out, including any new Irrigation Infrastructure, at its cost, on the Solora Estate, as the case requires; and</li><li>(c) any Lessee's Works that the Lessee may in its absolute discretion carry out;</li></ul>
<b>Citrus Crop:</b>	the products, rights, benefits or credits derived from the Citrus Trees on the Solora Estate;
<b>Citruslot:</b>	an area of land on the Existing Citrus Orchard or a New Citrus Orchard as the case requires, on which a Grower in a Project carries on or will carry on a business of cultivating and growing citrus;
<b>Citrus Orchard:</b>	the Existing Citrus Orchard and a New Citrus Orchard (if any) established on the Vacant Land;
<b>Citrus Trees:</b>	the citrus trees growing or to be grown on the Solora Estate;
<b>Commencement Date:</b>	the date of this Deed;
<b>Constitution:</b>	the constitution of a Project;



<b>Controller:</b>	has the same meaning as defined in section 9 of the Corporations Act;
<b>Corporations Act:</b>	the <i>Corporations Act 2001 (Cth)</i> and the <i>Corporations Regulations</i> ;
<b>CPI:</b>	<p>(a) the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics; or</p> <p>(b) such other index number that replaces it in accordance with clause 6.4;</p>
<b>Encumbrance:</b>	<p>in relation to any property means anything which:</p> <p>(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or</p> <p>(b) prevents, restricts or delays the exercise of any right over the property or the registration by any person of any interest in or right over the property,</p> <p>and includes a Security Interest;</p>
<b>Existing Citrus Orchard:</b>	the existing citrus orchard established on the Solora Estate comprising of approximately 309 hectares and consisting of citrus trees of various ages ranging from 1 to 45 years of age;
<b>Financial Year:</b>	<p>the 12 month period ending on the last day of June with the exception of:</p> <p>(a) the first Financial Year which commences on the Commencement Date and ends on the day before the first day of the next Financial Year; and</p> <p>(b) the last Financial Year which commences on the day after the last day of the last preceding Financial Year and ends on the day of termination of the Project;</p>
<b>Force Majeure:</b>	<p>(a) an event or circumstance (or a combination of events or circumstances) that is beyond the control of the Lessor, including Acts of God, natural disasters, fire and explosions, riots, civil commotion, war, attack or other acts of hostility; acts of terrorism, revolution and radioactive contamination, but</p> <p>(b) not including a lack of funds on the part of the Lessor or the inability of the Lessor to use available funds resulting from an event or circumstance described in paragraph (a);</p>
<b>Further Term:</b>	the further term of 6 years after the Initial Term which is described in clause 3.3(a);
<b>Government Body:</b>	<p>(a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;</p> <p>(b) any public authority constituted by or under a law of any country or political sub-division of any country; and</p> <p>(c) any person deriving a right directly or indirectly from any other Government Body;</p>

<b>Grower:</b>	a "Participant Grower" as defined in the relevant Constitution;
<b>GST:</b>	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;
<b>Indexed:</b>	<p>the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (<b>the Adjustment Date</b>) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p><math>A_t</math> = the amount on the Adjustment Date;</p> <p><math>A_0</math> = the amount being adjusted;</p> <p><math>\text{CPI}_t</math> = the highest CPI for a full calendar quarter published between the date <math>\text{CPI}_0</math> is published and the Adjustment Date, including <math>\text{CPI}_0</math>;</p> <p><math>\text{CPI}_0</math> = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (<b>the Base Date</b>), provided that if no Base Date is specified, "<math>\text{CPI}_0</math>" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date.</p>
<b>Initial Term:</b>	the period commencing on the Commencement Date, and, subject to clause 13, expiring on 30 June 2027;
<b>Irrigation Infrastructure:</b>	water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on or servicing the Solora Estate or on other lands for use in connection with the Solora Estate;
<b>Lease:</b>	the lease granted by this Deed;
<b>Lessee's Approvals:</b>	all certificates, consents, approvals, licences and permits that will be necessary or required by any Authority in order for the Lessee's Works to be carried out;
<b>Lessee's Budget:</b>	the costs budget prepared by the Lessee in connection with the execution of the Lessee's Works approved by the Lessor under clause 24;
<b>Lessee's Plans and Specifications:</b>	the plans and specifications prepared by the Lessee for the execution of the Lessee's Works approved by the Lessor under clause 24;
<b>Lessee's Works:</b>	<p>(a) the Citrus Trees planted in place of existing Citrus Trees;</p> <p>(b) the replacement of any infrastructure, including Irrigation Infrastructure; and</p> <p>(c) any other improvements of a structural nature,</p>

	authorised by the Lessor, and undertaken at the Lessee's cost and expense, in accordance with clause 24;
<b>New Citrus Orchard:</b>	each new citrus orchard (if any) to be established on the Vacant Land from time to time;
<b>Occupancy Agreements:</b>	the sub-leases, licences or other occupancy rights proposed to be granted by TSL over the Solara Estate to Growers in a Citrus Project or Wine Grape Project, as they may from time to time be amended in accordance with their terms and conditions, provided that such agreements must not grant the Growers any greater rights than those that are granted to the Lessee under this Deed;
<b>Orchard Trust:</b>	the Timbercorp Orchard Trust #2;
<b>Orchard Trust Constitution:</b>	the constitution of the Orchard Trust made on 25 February 2005 (as amended);
<b>Project Sub-Lease:</b>	a sub-lease granted or to be granted by the Lessee to TSL in relation to a Project established by TSL;
<b>Projects:</b>	the citrus projects and such other projects of a horticultural nature undertaken on the Solara Estate from time to time by the Timbercorp Group or other responsible entities or managers, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;
<b>Quarter:</b>	<p>the three month period ending on the last day of March, June, September or December with the exception of:</p> <p>(a) the first Quarter which commences on the Commencement Date and ends on the day before the first day of the next Quarter; and</p> <p>(b) the last Quarter which commences on the day after the last day of the last preceding Quarter and ends on the day of termination of this Deed;</p>
<b>Rent:</b>	the amount specified in clause 6 as varied under this Deed;
<b>Required Water Licences:</b>	the water licences that are, or will be, owned or acquired by the Lessor and that are attributed to the Solara Estate as required from time to time, and that provide for a maximum entitlement specified in clause 5.1, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken, or prohibiting the taking of water, or the purpose of its use;
<b>Security Interest:</b>	<p>an interest or right:</p> <p>(a) reserved over property; or</p> <p>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</p> <p>by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the</p>

	ordinary course of business whether arising by operation of law or by contract;
<b>Solara Estate:</b>	means the Existing Citrus Orchard and the Vacant Land, and includes the residential land described in Schedule 1 which is situated on the land that comprises the Existing Citrus Orchard;
<b>TAT:</b>	Timbercorp Agribusiness Trust;
<b>TAT Trustee:</b>	the trustee of TAT, which at the date of this Deed is Orchard Investments Management Limited (ACN 105 684 231);
<b>Term:</b>	the term of this Lease, as described in clause 3;
<b>Timbercorp:</b>	Timbercorp Ltd (ACN 055 185 067);
<b>Timbercorp Group:</b>	Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";
<b>Trustee:</b>	the trustee of the Orchard Trust, which at the date of this Deed is OIM #2 Pty Ltd (ACN 112 691 997);
<b>Vacant Land:</b>	means the vacant land situated on the Solara Estate consisting of approximately 150 hectares, as described in Schedule 1, other than the vacant land on which any part of a Citrus Orchard is situated.

## 1.2 Interpretation

In this Deed, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Deed;
- (i) if a party comprises two or more persons, this Deed binds them jointly and each of them severally; and
- (j) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be read as if the expression "(but not limited to)" immediately followed such word.

## 1.2 Master Lease

- (a) This Deed is intended to operate as a master deed containing the terms and

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conditions that are to apply in respect of the Solora Estate and each further area of land that the Lessor and the Lessee agree in future to make subject to this Deed.

- (b) A new Schedule is to be prepared and annexed to this Deed in respect of each new area of land leased by the Lessor to the Lessee and the parties must initial the Schedule.

### **1.3 Headings**

Headings are for convenience only and do not affect the interpretation of this Deed.

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## **2. CAPACITY AND LIABILITY OF THE LESSOR**

### **2.1 Capacity of Lessor**

The parties acknowledge that:

- (a) the Lessor has entered into this Deed in its capacity as Trustee for the Orchard Trust; and
- (b) the Lessor has full, complete and valid authority and power to enter into this Deed under the terms of the Orchard Trust Constitution.

### **2.2 Benefit to Lessor**

The parties to this Deed acknowledge and agree that every agreement and condition in this Deed for the benefit of the Lessor benefits the Lessor personally and in its capacity as Trustee under the Orchard Trust Constitution.

### **2.3 Limitation of Liability**

The parties agree that the Lessor will in no circumstances be required to satisfy any liability owed to the Lessee or to any party claiming through the Lessee for breach of any obligation pursuant to, or in respect of, this Deed out of any funds, property or assets other than the assets held as Trustee under the Orchard Trust Constitution under the Lessor's control and in its possession and available to be properly resorted to by the Lessor, except that the limitation contained in this clause 2.3 does not apply in the case of any fraud or breach of trust on the part of the Lessor.

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## **3. GRANT AND TERM OF LEASE**

### **3.1 Grant and Term of Lease**

Subject to the terms of this Deed the Lessor grants to the Lessee a lease of the Solora Estate and the Capital Works, and a licence of the Required Water Licences, to use and occupy the Existing Citrus Orchard, the Vacant Land and the Capital Works and to use the Required Water Licences in accordance with the terms and conditions of this Deed for a period commencing on the Commencement Date and, subject to clause 13, expiring on 30 June 2027 (or such earlier or later date as may be determined by the parties).

### **3.2 Representations**

The Lessor represents and warrants that:

- 
- (a) the Lessor is entitled to grant the Lease under this Deed; and
  - (b) any consents which may be required to the granting of the Lease under this Deed have been or will be obtained.

### **3.3 Option to renew**

- (a) This Deed will automatically be renewed for a further term of 6 years if the Lessee:
  - (i) gives notice in writing to the Lessor at least three months before the end of the Initial Term that it wishes to take a new lease;
  - (ii) has during the Initial Term duly and promptly paid the Rent;
  - (iii) the Lessee has not during the Initial Term been frequently in default of its material obligations under this Deed, even though those defaults may have been rectified; and
  - (iv) is not in default of this Deed at the time it gives the notice under clause 3.3(a)(i) and at the expiry of the Initial Term,unless this Deed has been previously terminated.
- (b) If the requirements in clause 3.3(a) are satisfied, the Lessor will, at the Lessee's cost (inclusive of stamp duty and the Lessor's reasonable legal costs), grant a new lease to the Lessee on the same terms and conditions that are contained in this Deed, except that:
  - (i) this clause 3.3 will be deleted;
  - (ii) the Commencement Date and the Term, and the obligations imposed on the parties upon the expiry of the Initial Term, are to be adjusted to reflect the renewal of the Lease for the Further Term;
  - (iii) the Rent during the Further Term is to continue to be determined and adjusted in accordance with clause 6, but with any references to "**Commencement Date**" in clause 6 being to the commencement date under this Deed; and
  - (iv) the new deed must reflect any variations to this Deed that become effective during the Initial Term.

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## **4. ESTABLISHMENT AND MAINTENANCE OF EXISTING CITRUS ORCHARD**

### **4.1 Warranty by Lessor as to the Existing Citrus Orchard**

The Lessor warrants and represents to the Lessee that, to its knowledge, the Existing Citrus Orchard has been established in accordance with Best Horticultural Practice having regard to the age of the orchard and that the necessary infrastructure and other capital works have been constructed and carried out, and without limiting the generality of this clause 4.1, it is satisfied:

- (a) that part of Land on which the Existing Citrus Orchard is located has been prepared to ensure that the Citrus Trees can grow satisfactorily;
- (b) appropriate irrigation equipment has been installed and the necessary irrigation works have been carried out to ensure proper reticulation of water to the Citrus Trees on the Existing Citrus Orchard;

- 
- (c) drainage work and other works have been carried out to help prevent soil erosion on the Existing Citrus Orchard;
  - (d) as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Citrus Trees on the Existing Citrus Orchard have been eradicated;
  - (e) Citrus Trees on the Existing Citrus Orchard have been planted in accordance with Best Horticultural Practice having regard to the age of the orchard so that the Citrus Trees can be harvested commercially;
  - (f) the Citrus Trees on the Existing Citrus Orchard were planted at various times over the past approximately 45 years; and
  - (g) such other capital works, services or things which, in the reasonable opinion of the Lessor, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.1(a) to (f) above, have been provided or undertaken, as the case requires.

## 4.2 Acknowledgments

- (a) The Lessee acknowledges that the Capital Works and Citrus Trees on, and the Required Water Licences for use on the Existing Citrus Orchard are, and will at all times remain, the property of the Lessor, subject to any rules or regulations made by any Authority and any Lessee's Works that are the property of the Lessee.
- (b) The Lessee agrees and acknowledges that the Lessor will not be liable for any loss or damage incurred by the Lessee, including where such loss or damage arises out of, or is in connection with, any act or omission of the Lessor or its officers, directors, employees, agents or agents under this Deed, whether or not constituting negligence, except that this paragraph 4.2(b) will not apply in the case of wilful default, dishonesty or fraud or breach of this Deed.

## 4.3 Acknowledgments by the Lessor

The Lessor acknowledges and agrees with the Lessee, that during Term of this Lease the Citrus Crop and all rights, benefits and credits derived from the Citrus Crop will be and will remain the property of the Lessee, TSL or the Growers (or any other person or entity deriving title to the Citrus Crop through the Lessee, TSL or the Growers).

## 4.4 Cultivation and maintenance obligations in relation to the Citrus Orchard

The Lessee, at its cost and expense, must cultivate, maintain and manage the Citrus Trees, the Citrus Orchard, the Vacant Land and the Solara Estate generally, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice including the following (as appropriate), having regard to good workmanlike and commercially responsible standards and Best Horticultural Practice:

- (a) **Irrigation and fertilisation:** provide the Citrus Orchard with necessary irrigation water, irrigate the Citrus Orchard and apply fertilisers and nutrients at the appropriate times. This includes efficient irrigation application management and salinity and groundwater monitoring and control;
- (b) **Weed control:** ensure no impediment to Citrus Tree development and Citrus Crop production, including impediments, such as weeds, brambles, briars, blackberries or other noxious growth;

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- (c) **Vermin:** keep the Citrus Orchard free from vermin;
  - (d) **Insects and Diseases:** use its reasonable endeavours to keep the Citrus Trees free from insects and diseases, which might damage or inhibit the growth of the Citrus Trees;
  - (e) **Spray diaries:** prepare and provide the Lessor upon request with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Citrus Orchard and the Solora Estate, which records must detail the types and quantities or concentrations applied and the times at which they were applied;
  - (f) **Advise the Lessor of deterioration or impurity:** promptly advise the Lessor of any deterioration of or impurity in the Citrus Crop or the Citrus Trees, which is apparent to the Lessee;
  - (a) **Destruction:** destroy any Citrus Trees which a reasonable horticulturist would destroy having regards to the best interests of the remaining unaffected Citrus Trees and promptly advise the Lessor in writing of the Citrus Trees destroyed and the reasons for destroying the Citrus Trees;
  - (g) **Fencing:** maintain any fencing, trellising, staking or netting used on the Citrus Orchard in accordance with Best Horticultural Practice; and
  - (h) **Other horticultural activities:** otherwise use and maintain the Citrus Trees, the Citruslots, the Citrus Orchard, in accordance with the constitution and other Project documents for the relevant Project.

#### **4.5 Lessee's Obligations upon Termination**

- (a) At the end, or on termination, of this Lease, subject to the Growers' rights to continue to occupy the Solora Estate in accordance with paragraph 11.2(b) and clause 12.5, the Lessee must return the Solora Estate and any Capital Works and the relevant Citrus Orchard to the Lessor in good condition in accordance with the obligations of the Lessee under clause 4.4, but the Lessee is not required to remove the Citrus Trees or restore the Capital Works and the relevant Citrus Orchard to their original condition, including making good any reasonable wear and tear during the Term.
  - (b) Any structures or plant and equipment of any description which belong to the Lessee, TSL or the Grower, other than the Lessee's Works, must be removed from the relevant Citruslots within 30 days after the end, or on termination, of this Deed, subject to the Growers' rights to continue to occupy the Solora Estate in accordance with paragraph 11.2(b) and clause 12.5. If the Lessee does not comply, procure TSL or the Grower to comply, with this requirement then all structures and plant and equipment remaining on the relevant Citrus Orchard at the time will become the absolute property of the Lessor.
  - (c) The Lessor has no obligation to pay the Lessee, TSL or the Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Citrus Orchard that become the absolute property of the Lessor in accordance with paragraph 4.5(b).
  - (d) The Lessee must ensure that the Required Water Licences in existence throughout the Term are preserved in full force and effect, and at the end, or on termination, of this Deed, are returned to the Lessor.
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## **5. WATER LICENCES**

### **5.1 Required Water Licences**

- (a) The required water licences for the Existing Citrus Orchard are 4,361.54 megalitres as at the Commencement Date.
- (b) The parties acknowledge that approximately 1,582.54 megalitres of the required water licences are excess to the water requirements of the Existing Citrus Orchard at full maturity. The Lessor agrees that the Lessee may trade such excess water.

### **5.2 Use of Required Water Licences**

The Lessor must at its cost:

- (a) use all reasonable endeavours to ensure that its rights under the Required Water Licences are maintained to enable the Lessee to maximise the use and enjoyment of them by the Lessee, TSL and the Growers;
- (b) take all reasonable steps to avoid interfering with the supply of water to the relevant Citruslots and to avoid any actions that would prejudice the Lessee's rights under this Deed, TSL's rights under the Project Sub-Leases and the Growers' rights under the Occupancy Agreements; and
- (c) except where any Force Majeure or any action or requirement of any Authority prevents or inhibits the Lessor, purchase and maintain the Required Water Licences during the Term of this Deed.

### **5.3 Acknowledgments**

The Lessee acknowledges that:

- (a) the Required Water Licences for the land specified in clause 5.1 need to be in place only by the dates specified in clause 5.1;
- (b) the Lessor may, at its cost, purchase water licences, in addition to the Required Water Licences, and provide water to the Lessee using such additional water licences; and
- (c) such additional water licences will at all times remain the property of the Lessor.

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## **6. RENT PAYMENTS**

### **6.1 Purpose of this clause 6**

- (a) In calculating the Rent under this clause 6 and in interpreting the provisions of this clause 6, the parties must have regard to the objective underlying this clause 6, being that the Lessor is to receive a return of 10.3% on the Solora Estate CIP, including the Required Water Licences purchased with the Solora Estate, as adjusted for CPI from time to time.
- (b) For the purpose of this clause 6, the "Solora Estate CIP" means the total cost inclusive price (excluding GST) paid or payable by the Lessor in purchasing the Solora Estate on which the Existing Citrus Orchard and the Vacant Land is situated and the Required Water Licences purchased with the Solora Estate, including all stamp duty, registration and legal costs.

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## **6.2 Rent**

- (a) Subject to paragraphs 6.2(b) and (c), the Lessee must pay to the Lessor Rent for each Quarter payable in advance on the last day of each immediately preceding Quarter, equal to the amount which is 10.3% of the Solora Estate CIP multiplied by the number of days in the relevant Quarter divided by 365.
- (b) The first Rent payment is payable on the Commencement Date.
- (c) The Rent payable under this Deed is subject to any adjustments under clauses 6.3, 6.4, and 6.5.

## **6.3 Adjustments to Rent for Indexation**

The Solora Estate CIP used in clause 6.2(b) to calculate the Rent payable by Lessee must be Indexed as at 31 December of each year, beginning on 31 December 2008, using the Commencement Date as the Base Date with any adjustments to the Solora Estate CIP under clause 6.5 also being adjusted under this clause 6.3.

## **6.4 Discontinuance or suspension of CPI**

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between the Lessor and the Lessee will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 6.4 must be borne equally between the Lessor and the Lessee.

## **6.5 Cost Inclusive Price**

- (a) Subject to paragraph 6.5(b), the Cost Inclusive Price of purchasing the Solora Estate is estimated as at the Commencement Date to be \$13,950,000;
- (b) The Solora Estate CIP and the Rent is to be re-calculated once the actual cost inclusive price of purchasing the Solora Estate (including all stamp duty, registration and legal costs) is ascertained.
- (c) Upon the Solora Estate CIP being re-calculated to reflect the correct cost inclusive price, the Rent payable under this clause 6 will be adjusted, including any adjustment required under clause 6.3, to reflect the new cost inclusive price for the Solora Estate. Any adjustment to the Rent will have effect from the Commencement Date and the Lessee must pay any difference due to such adjustments, including any adjustment required under clause 6.3, to the Lessor on the next date for payment of the Rent.
- (d) The Rent may be adjusted under this clause 6.5 on more than one occasion.

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# **7. LESSOR'S OBLIGATIONS AND RIGHTS**

## **7.1 Obligations**

The Lessor must:

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- (a) maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership by the Lessor of all the Solora Estate;
  - (b) subject to the terms of this Deed, allow the Lessee to peaceably and quietly hold and enjoy the Solora Estate without any interruption by the Lessor or any person claiming through or under the Lessor;
  - (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Citrus Orchards and Citruslots;
  - (d) not create any Encumbrances over the whole or any part of the Solora Estate, ranking in priority to the interests of the Lessee, TSL or the Growers who may sub-lease, licence or otherwise occupy the Solora Estate from the Lessee in the future, except where required to do so by an Authority;
  - (e) take all reasonable measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Lessor are properly controlled and supervised; and
  - (f) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor.

## **7.2 Rights**

The Lessor:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Deed with or without vehicles to the Solora Estate along any road or track or any neighbouring land owned or occupied by the Lessor, the Lessee, TSL or Growers which gives access to the Solora Estate;
- (b) is entitled to full and free access with or without vehicles to the Solora Estate for the purpose of accessing neighbouring land owned or occupied by the Lessor, the Lessee, TSL or Growers; and
- (c) may at its own expense erect and maintain a sign on the Solora Estate detailing such matters as the Lessor reasonably considers appropriate.

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## **8. RATES, TAXES AND CHARGES**

- (a) The Lessee must pay when due all taxes, charges and assessments levied upon the Solora Estate including:
    - (i) local authority rates;
    - (ii) sewerage rates; and
    - (iii) land tax and other State taxes,on or before the due date for such payments or as and when requested by the Lessor.
  - (b) The Lessor must promptly deliver to the Lessee all rates and notices received by the Lessor in respect of the Solora Estate.
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## **9. INSURANCE**

### **9.1 Lessee must maintain insurance**

The Lessee must:

- (a) in connection with the Solora Estate, maintain with insurers and on terms approved by the Lessor (which may not unreasonably withhold its approval) in the names of the Lessee, the Lessor and any other person named by the Lessor and the Lessee:
  - (i) public liability insurance for at least \$10 million (as varied by notice from the Lessor to the Lessee);
  - (ii) the replacement value of the Capital Works, including the Citrus Trees and the Irrigation Infrastructure; and
  - (iii) other insurances required by law or that, in the Lessor's reasonable opinion, a prudent lessee would take out having regard to the cost of such insurance;
- (b) give the Lessor evidence when asked to do so that the Lessee has complied with paragraph 9.1(a); and
- (c) notify the Lessor immediately if an insurance policy required by this clause 9.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the Solora Estate.

### **9.2 Claims under insurance policies**

- (a) The Lessor must not enforce, conduct, settle or compromise claims under any insurance policy required by this Deed, even if that policy also covers other property, if the Lessee gives the Lessor a notice that the Lessee wishes to do these things.
- (b) The Lessee must provide the Lessor with 21 days' prior written notice if the Lessee intends to enforce, conduct, settle or compromise claims under any insurance policy required by this Deed.

### **9.3 Insurance proceeds**

- (a) Insurance proceeds (even if of a policy in the Lessee's name only in breach of paragraph 9.1(a)) that the insurer does not require to be used for replacement or reinstatement must be paid into a separate joint account in the names of the Lessor, the Lessee and any other person the Lessor and the Lessee nominate.
- (b) The money must be used to settle claims in connection with the event insured against or to replace or reinstate the insured item and then any surplus shared between the account holders having regard to the effect on them of that event or their respective interests in that item.

### **9.4 Parties not to affect rights under insurance**

Each party agrees that it will not do or permit or suffer to be done any act, matter or thing which may prejudice or render void or voidable any insurances in respect of the Solora Estate, Citrus Orchard, including the Capital Works, the Citruslots or the Citrus Trees, or result in the premiums for such insurances being increased.

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## **9.5 Damage to, or destruction of, of the Citruslots or Capital Works**

- (a) Upon damage to, or destruction of, part or all of the Citruslots or Capital Works, the Lessor and the Lessee must:
  - (i) negotiate in good faith to determine how to best replace and reinstate the relevant Citruslots or Capital Works;
  - (ii) the Lessor and the Lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Citruslots or Capital Works, as agreed under paragraph 9.5(a)(i).
- (b) In the event that the Lessor and the Lessee are unable to agree under paragraph 9.5(a) within 30 days, the matter is to be determined under clause 23.
- (c) The Lessee may in its absolute discretion use its own funds to replace and reinstate Citruslots or Capital Works that have been damaged or destroyed, and in such event the Lessor:
  - (i) must use any insurance proceeds the Lessor receives in respect of such damage or destruction in accordance with clause 9.3 to assist the Lessee in replacing and reinstating the relevant Citruslots or Capital Works;
  - (ii) agrees and acknowledges that the Lessee may undertake the reinstatement and replacement of the relevant Citruslots or Capital Works provided such works are done in accordance with Best Horticultural Practice.

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## **10. USE OF SOLORA ESTATE**

### **10.1 Permitted use**

- (a) The Lessee must only use the Solora Estate in accordance with this Deed and Best Horticultural Practice, including:
  - (i) harvesting and processing the Citrus Crop;
  - (ii) removing and selling or otherwise dealing in the Citrus Crop and retaining all income from such sale or dealing; and
  - (iii) harvesting and processing any other horticultural or viticultural crop on the Vacant Land.
- (b) Subject to paragraph 10.1(c), the Lessor agrees and acknowledges that:
  - (i) the Lessee may grant a Project Sub-Lease to TSL in its absolute discretion;
  - (ii) TSL may enter into Occupancy Agreements in its absolute discretion; and
  - (iii) the Lessee and TSL may grant sub-leases, licences or other occupancy rights to any other person over the Solora Estate in their absolute discretion,

provided that any such agreements do not grant any greater rights than those which are granted to the Lessee under this Deed.

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- (c) The Lessee may only use the Solora Estate in any other manner with the prior and express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

## **10.2 Lessee's duties**

The Lessee must, at its cost and expense, ensure that it, TSL and the Growers:

- (a) comply with Best Horticultural Practice and this Deed;
- (b) comply with all laws and regulations relating to the use and occupancy of the Solora Estate;
- (c) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (d) maintain the Solora Estate in accordance with Best Horticultural Practice including, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) repair and maintain all Capital Works to a standard equal to Best Horticultural Practice;
- (f) permit the Lessor and its employees, agents and contractors to enter upon the Solora Estate, from time to time with or without equipment for the purposes of observing the state of repair of the Solora Estate or any part thereof; and
- (g) permit the Lessor and its employees, agents and contractors to enter upon the Solora Estate, from time to time with or without equipment for the purpose of performing its obligations under this Deed.

## **10.3 Indemnity**

The Lessee must indemnify the Lessor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Lessor may suffer or incur in connection with the loss of life and/or personal injury to any person or damage to any property wheresoever occurring arising from:

- (a) an occurrence at the Solora Estate, other than that attributable to act or omission of the Lessor and its officers, directors, employees or agents; or
- (b) the use by the Lessee or the Lessee's invitees, employees and agents of the Solora Estate,

except where the loss of life and/or personal injury or damage to property is the result of an act of default or neglect by the Lessor or the Lessor's invitees.

## **10.4 Structural work**

- (a) The Lessee need not carry out structural work to the Solora Estate unless the work is required because of the negligence or default of:
    - (i) the Lessee; or
    - (ii) the Lessee's officers, employees, agents, contractors or invitees;
    - (iii) TSL's officers, employees, agents, contractors or invitees; or
    - (iv) the Growers and their agents, contractors or invitees.
  - (b) Any work undertaken under paragraph 10.4(a), must be undertaken in accordance with Best Horticultural Practice.
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## **11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES**

### **11.1 Assignment by Lessee**

The Lessee must not assign its interest under this Deed or transfer, sublet or part with possession of the Solara Estate or any part of the Solara Estate other than as authorised by this Deed, without the prior written consent of the Lessor, which consent is not to be unreasonably withheld.

### **11.2 Lessor consents to Lessee sub-letting**

- (a) The Lessor consents to:
  - (i) the Lessee entering into deeds in relation to Project Sub-Leases with TSL in its absolute discretion;
  - (ii) TSL entering into Occupancy Agreements in its absolute discretion; and
  - (iii) the Lessee and TSL granting sub-leases, licences or other occupancy rights to any other persons over the Solara Estate in their absolute discretion,

provided that any such agreements do not grant any greater rights than those which are granted to the Lessee under this Deed.

- (b) Upon this Deed terminating for whatever reason, the Lessor irrevocably authorises and consents to the granting or continuation (or both) by the Growers of a right to occupy or use that part of the Solara Estate granted under the Occupancy Agreements.
- (c) The Lessor agrees and acknowledges that:
  - (i) paragraph 11.2(b) is for the benefit of all the Growers in Projects that are to be established; and
  - (ii) the Growers, or the responsible entity or manager of a Project on behalf of the relevant Growers, may take action to enforce paragraph 11.2(b) independently of any other party taking action to enforce it.

### **11.3 Lessee must not mortgage its interest**

- (a) The Lessee must not mortgage, charge or otherwise Encumber its estate or interest in this Deed without prior written consent of the Lessor.
- (b) The consent may be granted conditionally or refused if the security documents entitle the mortgagee to enter into possession of the Solara Estate.
- (c) In any other case, the consent must not be unreasonably withheld by the Lessor.

### **11.4 Assignment or mortgage by Lessor**

The Lessor must not dispose of or Encumber any interest in the Lessor's rights under this Deed except where:

- (a) the Lessor gives the Lessee 14 day's notice, before the Lessor disposes of, or Encumbers, any interest in its rights under this Deed to a third party, not being an incoming Trustee of the Orchard Trust, or enters into any agreement to do so, and the third party has agreed to, and acknowledged, the paramountcy of the Lessee's, TSL's and the Grower's rights, as described in paragraph 7.1(d); or

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- (b) the Lessor is being replaced as the Trustee of the Orchard Trust.

## **11.5 Delegation**

The Lessor and the Lessee are each entitled to:

- (a) delegate any of their obligations under this Deed to; and  
(b) exercise any of their rights under this Deed through,

its employees, agents and contractors, but any delegation by the Lessor or the Lessee does not release the Lessor from liability under this Deed, except as set out in clause 2.

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## **12. DEFAULT AND RE-ENTRY**

### **12.1 Default by Lessee**

- (a) The Lessor and the Lessee agree that the following are events of default under this Deed:
- (i) if the Lessee fails or neglects to make a payment within the time required under this Deed, including failing to pay the rent payable under this Deed by the due date, and such amount is not paid within 60 days after the Lessor has served a written notice on the Lessee requiring the Lessee to pay the amount; or
  - (ii) the Lessee commits or permits to occur any material breach or default in the due and punctual performance of any of its obligations under this Deed, and fails to remedy the breach or make reasonable compensation in money within 60 days after the Lessor has served a written notice on the Lessee requiring the Lessee to remedy the breach or make reasonable compensation in money, except where the Lessee:
    - (A) has within the period of 60 days after receipt of the written notice from the Lessor:
      - (1) advised the Lessor of a plan of remedial action to rectify any such default; and
      - (2) taken all reasonable steps to implement such plan of remedial action; and
    - (B) the Lessee implements the whole plan of remedial action as soon as reasonably practicable.
- (b) The written notice referred to in paragraph 12.1(a) must specify the breach and request the breach to be remedied.

### **12.2 Re-entry by Lessor**

The Lessor has the right to re-enter and take possession of the Solora Estate if an act of default in clause 12.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

### **12.3 Re-entry does not prejudice Lessor's rights**

Should the Lessor exercise its rights under clause 12.2, it will do so without prejudice to any action or other remedy, which the Lessor has for arrears of rent or breach of



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covenant or for damages as a result of any breach of the terms of this Deed by the Lessee.

#### **12.4 Lessor discharged from obligations**

Where the Lessor exercises its rights under clause 12.2, and upon re-entry by the Lessor, the Lessor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Lessee under or by virtue of this Deed.

#### **12.5 Lessor's rights subject to Growers' rights**

The Lessor's rights under this clause 12 are subject to the rights granted by:

- (a) the Lessee or TSL to the Growers under the Occupancy Agreements in accordance with this Deed; and
- (b) the Lessor to the Growers under paragraph 11.2(b).

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### **13. TERMINATION**

#### **13.1 Termination of Deed by the Lessor**

Without prejudice to the Lessor's rights under clause 12, the Lessor may terminate this Deed in respect of all or part of the Solara Estate, with immediate effect, if an act of default in clause 12.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

#### **13.2 Termination of Deed by the Lessee**

- (a) The Lessee may terminate this Deed by notice in writing to the Lessor immediately, if:
  - (i) the Lessor goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Receiver, Controller or Administrator is appointed in relation to the undertaking or any part of the undertaking of the Lessor or the Orchard Trust;
  - (ii) the Lessor ceases to carry on business as Trustee of the Orchard Trust;
  - (iii) the Orchard Trust is terminated;
  - (iv) the Lessor fails or neglects to make a payment within the time required under this Deed and such amount is not paid within 60 days after the Lessee has served a written notice on the Lessor requiring the Lessor to pay the amount; or
  - (v) the Lessor fails or neglects to pay any moneys due to the Lessee, or is in default of any material obligation under this Deed and such default continues for a period of 60 days after receipt by the Lessor of written notice from the Lessee specifying the default and requesting that the default be remedied, except where the Lessor:
    - (A) has within the period of 60 days after receipt of the written notice from the Lessee:
      - (i) advised the Lessee of a plan of remedial action to rectify any such default; and
      - (ii) taken all reasonable steps to implement such plan

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of remedial action; and

- (B) the Lessor implements the whole plan of remedial action as soon as reasonably practicable.
- (b) Damage to, or destruction of, part or all of the Citrus Orchard, or the Citruslots, by fire or any other cause whatsoever, will not entitle the Lessee to terminate this Deed.
- (c) Upon damage to, or destruction of, part or all of the Citrus Orchard or the Citruslots, the Lessor and the Lessee must:
  - (i) negotiate in good faith to determine how to best replace and reinstate the Citrus or Citruslots; and
  - (ii) the Lessor and Lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the Citrus Orchard or the Citruslots, as agreed under paragraph 13.2(c)(i).

### **13.3 Effect of Termination**

- (a) Termination of the whole of this Deed under clauses 13.1 or 13.2, is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) The termination of this Deed will terminate the rights and obligations of the parties under this Deed except to the extent that those rights and obligations are expressed to survive termination.

### **13.4 Attorneys**

Upon termination of the whole or part of this Deed under clauses 13.1 or 13.2, by the Lessor or the Lessee, as the case may be, the party terminating this Deed is hereby appointed by the other as its attorney to do all things and sign all documents necessary to give effect to the termination under this clause 13 of the whole or part of this Deed, as the case requires.

### **13.5 Limited right of termination**

- (a) Except as expressly provided in this clause 13, a party may not terminate or rescind this Deed and the Lessor will not be entitled to re-enter the Solara Estate or forfeit this Deed at any time prior to the expiration of the Term.
- (b) Without limiting the generality of paragraph 13.5(a), damage to, or destruction of, part or all of the Citruslots, by fire or any other cause whatsoever, will not entitle the Lessee to terminate this Deed.

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## **14. LEGAL COSTS**

The Lessee must pay the reasonable costs of the Lessor's solicitors of and incidental to the preparation, execution, stamping and registration of this Deed including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

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## **15. NOTICES**

### **15.1 Form of Notice**

Any notice to be given under or in connection with this Deed must be in writing and may be signed by an authorised representative of the party giving the notice. The notice may be served by:

- (a) hand delivery;
- (b) post or registered or certified mail, or
- (c) fax,

to such address or fax number of the party to whom the notice is directed as the addressee may notify prior to such notice being given.

### **15.2 Receipt of Notice**

Any notice will be effective and will be deemed to be received:

- (a) if hand delivered, then upon delivery;
- (b) if posted, then 48 hours after the notice has been properly posted if that falls on a business day, and if not, on the first business day afterwards; and
- (c) if sent by fax, then at the date and time of transmission as shown by the confirmation report from the sender's fax machine indicating that the notice has been received in full by the recipient's fax machine.

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## **16. PROPER LAW**

This Deed is governed by and to be interpreted in accordance with the laws of South Australia and the parties to this Deed submit to the non-exclusive jurisdiction of the courts of South Australia and courts of appeal from them for determining any dispute concerning this Deed or the transactions contemplated by this Deed.

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## **17. SEVERANCE**

This Deed, so far as possible, must be construed to give validity to all of its provisions. Any provision found to be prohibited by law will be ineffective so far as it is prohibited without invalidating any other part of this Deed.

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## **18. ENTIRE AGREEMENT**

Each party acknowledges that this Deed is not entered into in reliance on any representation or warranty, expressed or implied, whether oral, in writing or contained in any brochure, advertisement or otherwise, except as may be specifically set out in this Deed.

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## **19. GST**

- (a) If any supply made by a party ("Supplier") to another party ("Recipient")

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under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.

- (b) In addition to the GST Exclusive Amount for a taxable supply under this Deed, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate.
- (c) The GST payable under paragraph 19(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
- (d) The right of a Supplier to payment under this clause 19 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Deed, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 19(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Deed for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Deed and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.
- (i) This clause 19 does not apply to any amount payable by the Lessor under clause 24.10.

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## 20. STATUTORY PROVISIONS

To the extent permitted by law, all provisions implied by statute are expressly excluded from this Deed and the lease granted under this Deed.

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## 21. CAVEAT

- (a) The Lessee may at its own expense lodge a caveat at the Land Titles Office in respect of its interest under this Deed.
- (b) The Lessor agrees to provide to the Lessee all plans and other details reasonably necessary to enable the Lessee to lodge a caveat.

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- (c) Upon the expiration or earlier termination of this Deed, the Lessee must promptly withdraw at its own expense any caveat lodged under this clause 21.
  - (d) The Lessee irrevocably appoints the Lessor its attorney to execute a withdrawal of any caveat required to be withdrawn by the Lessee pursuant to paragraph 21(c) in the event of the Lessee failing promptly to do so.
  - (e) The Lessee agrees to ratify anything done by the attorney in accordance with paragraph 21(d).
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## **22. FURTHER ASSURANCES**

Each party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other party to give effect to this Deed.

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## **23. DISPUTES**

- (a) If any dispute, question or difference of opinion arises out of or in connection with this Deed then the party asserting the dispute must give the other parties a notice of dispute in writing adequately identifying and providing details of the dispute (the "**Notice of Dispute**").
  - (b) Within 7 days after service of the Notice of Dispute the parties must confer on a "without prejudice" basis to attempt to resolve the dispute.
  - (c) If the dispute is not settled promptly by the parties in accordance with paragraph 23(b), any party may by notice in writing to the other parties require that the matter be referred to a person nominated by the President for the time being of the Law Society of NSW at a place in Sydney and the nominee's determination will be final and binding and he must be deemed to be acting as an expert and not as an arbitrator.
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## **24. LESSEE'S WORKS**

### **24.1 Lessee's Works**

- (a) The Lessee may:
  - (i) plant Citrus Trees in place of existing Citrus Trees;
  - (ii) replace any infrastructure on the Solara Estate Land, including Irrigation Infrastructure; or
  - (iii) undertake other improvements of a structural nature, at its own cost and expense in accordance with this clause 24.
- (b) This clause 24 does not apply to any works that must be undertaken in accordance with:
  - (i) clause 4.4;
  - (ii) clause 9.5; and/or
  - (iii) clauses 10.4(a) and 10.4(b).

## 24.2 Lessee's Approvals

The Lessee must, at its own expense, seek all Lessee's Approvals required by law in connection with the Lessee's Works.

## 24.3 Approvals by the Lessor

- (a) Before commencing to carry out the Lessee's Works:
  - (i) the Lessee must submit to the Lessor for approval:
    - (A) the name of the contractors that will carry out the Lessee's Works, and which may include related entities of the Lessee;
    - (B) the form of contract between the Lessee and the contractors in relation to the Lessee's Works;
    - (C) the Lessee's Approvals;
    - (D) the Lessee's Budget; and
    - (E) the Lessee's Plans and Specifications.
  - (ii) the Lessor must not unreasonably withhold approval to the contractors where the Lessee has demonstrated to the Lessor that the contractors have the suitable skill, resources, experience and industrial relations record for the proper execution of the Lessee's Works;
  - (iii) the Lessor may refer the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications to the Lessor's advisers;
  - (iv) the Lessor must acting reasonably and without unnecessary delay either:
    - (A) grant approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications;
    - (B) grant approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications subject to such conditions or modifications as may be considered necessary by the Lessor and the Lessor's advisers having regard to Best Horticultural Practice;
    - (C) refuse approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications in which case the Lessor must give written notice to the Lessee with reasons for the disapproval and giving the Lessee reasonable time to provide further Lessee's Approvals, the Lessee's Budget and Lessee's Plans and Specifications,
- unless the Lessor exercises its discretion under clause 24.3(c).
- (b) The Lessee must pay to the Lessor, on demand, the reasonable costs of the Lessor's advisers reviewing the Lessee's Approvals, the Lessee's Budget the Lessee's Plans and Specifications.
- (c) The Lessee agrees and acknowledges that the Lessor may in its absolute discretion determine that it will carry out the proposed Lessee's Work at the Lessor's own cost and expense, in which case the parties must negotiate in good faith to agree on any additional rent to be paid by the Lessee having regard to the cost of the works and the purpose outlined in clause 6.1.
- (d) The Lessee may in its absolute discretion determine that it is no longer wishes to carry out the Lessee's Work, and it will be under no obligation to carry out

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such Lessee's Works provided it has not commenced carrying out such Lessee's Works.

#### **24.4 Changes to the Lessee's Plans and Specifications, the Lessee's Budget and Lessee's Approvals**

The Lessee must not make or permit to be made any amendments to the Lessee's Plans and Specifications, whether the same are required by any Authority or for any other reason, without the prior approval in writing of the Lessor first being obtained.

#### **24.5 Fitness of Lessee's Works**

The Lessee acknowledges, warrants and agrees that:

- (a) the Lessor has no responsibility for the design of the Lessee's Works or that the Lessee's Works will be suitable to the intended purpose of the Lessee;
- (b) the Lessee's Works will be sound and fit for the intended purpose of the Lessee;
- (c) the Lessee must indemnify and keep indemnified, and the Lessee hereby indemnifies the Lessor, from and against all claims, losses and damages in relation to, or arising from, the design or carrying out of the Lessee's Works, whether or not the Lessee's Works are fit for the intended purpose of the Lessee.

#### **24.6 Rent**

The Lessee agrees and acknowledges that the Rent payable to the Lessor under this Leases will not be adjusted for any Lessee's Works undertaken by the Lessee.

#### **24.7 Commencement of Lessee's Works**

The Lessee may only commence the execution of the Lessee's Works on the last of:

- (a) the date on which the Lessor has approved the contractors and the form of contract between the Lessee and the contractors;
- (b) the date on which the Lessor has approved the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications;
- (c) the date on which the Lessee has given to the Lessor all insurance policies the Lessor reasonably requires in the name of the Lessor and the Lessee to cover them each as the insured against any loss or damage to property or injury to any person which may arise in the course of the Lessee's Works;
- (d) the date on which the Lessee has secured all approvals required under clause 24.2;
- (e) the date on which the Lessee has paid the Lessor all costs payable under clause 24.3(b).

#### **24.8 Execution of Works**

In executing the Lessee's Works, the Lessee must:

- (a) comply with all laws and the requirements of Authorities (including all occupational health and safety requirements);
- (b) comply with all reasonable directions of the Lessor and the Lessor's advisers;
- (c) ensure that the Lessee's Works are carried out:
  - (i) substantially in accordance with the Lessee's Plans and

- Specifications and the Lessee's Budget approved by the Lessor;
- (ii) in accordance with Best Horticultural Practice;
  - (iii) in accordance with the Lessee's Approvals;
  - (iv) by the contractors approved by the Lessor;
  - (v) in a proper and workmanlike manner and with the most suitable materials of good quality for the time being available for this purpose and to the satisfaction of the Lessor; and
  - (vi) by the date specified in the Lessee's Plans and Specifications approved by the Lessor.
- (d) cause as little inconvenience as possible to other persons on Solora Estate; and
- (e) use all reasonable endeavours to not interfere with the remainder of the Capital Works, Citrus Orchards and Vineyards.

## 24.9 Indemnity

The Lessee indemnifies the Lessor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Lessor may suffer or incur in connection with:

- (a) the Lessee's Works;
- (b) delays in completing the Lessee's Works;
- (c) a failure to complete the Lessee's Works; and
- (d) any action taken (whether directly or indirectly) by the Lessor or any other person in relation to the Lessee's Works

except to the extent to which it is caused or contributed to by the negligence of the Lessor and its officers, directors, employees or agents.

## 24.10 Reimbursement of cost of Lessee's Works

- (a) Upon completion of the Lessee's Works, the Lessee must provide verification of the actual cost of the Lessee's Works to the reasonable satisfaction of the Lessor (including the Lessee producing documentary evidence and the Lessee's tax invoices in respect of all such costs) ("**Cost**").
- (b) The Lessor will pay to the Lessee an amount equal to the lower of the Cost and the net book value of the Lessee's Works in the Lessee's books and records (**inclusive of GST**) ("**Reimbursement**") upon:
  - (i) the sale of any part of Solora Estate on which such Lessee's Works are situated ("**Event 1**");
  - (ii) the expiry of the Term (as extended if the Lessee exercises its option to renew under clause 3.3) ("**Event 2**");
  - (iii) lawful termination of the Lease by the Lessee ("**Event 3**"),provided that:
  - (iv) the Lessee's Works are completed in accordance with the requirements of this Deed; and
  - (v) the Lessee is not in breach of this Deed.
- (c) Upon Event 1 occurring, the Lessor must pay the Reimbursement to the Lessee within 30 days of the later of the Lessor receiving:



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- (i) the Lessee's Works will become the absolute property of the Lessor; and
  - (ii) the Lessor has no obligation to pay the Lessee any compensation at the end, or on termination, of this Deed in respect of such Lessee's Works, except as required under clause 24.10.
- (c) Upon the sale of any part of Solora Estate on which Lessee's Works are situated before the end, or on termination, of this Deed:
- (iii) the relevant Lessee's Works will become the absolute property of the Lessor immediately before the completion of the sale; and
  - (iv) the Lessor has no obligation to pay the Lessee any compensation in respect of such Lessee's Works, except as required under clause 24.10.

## **24.12 Deductions from Reimbursement**

The Lessor may deduct from any Reimbursement any moneys then owing by the Lessee to the Lessor under this Deed.

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## **25. PAYMENTS**

### **25.1 Interest**

If the Lessee fails to make a payment of any amount under this Deed:

- (a) the Lessee must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be the Bank Bill Swap Reference Rate (being the 90 day rate from time to time published in the Australian Financial Review) plus 3.0%;
- (c) the interest is to be calculated on and from the day after the due date until the date payment is made.

### **25.2 Set-off**

All payments by the Lessee under this Deed must be made to the Lessor without set-off or counterclaim.

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## **26. TAT TRUSTEE**


- (a) Where the consent, waiver or agreement of the Lessor is required in connection with this Deed, the consent, waiver or agreement of the TAT Trustee must also be obtained at the same time.
- (b) Any notice that must be served on the Lessor, must also be served on the TAT Trustee at the same time.
- (c) The Lessee and TSL agree and acknowledge that the TAT Trustee may enforce any of the provisions of this Deed on behalf of the Lessor.

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**Executed as a Deed:**

EXECUTED by OIM #2 PTY LTD )  
AS TRUSTEE FOR THE )  
TIMBERCORP ORCHARD TRUST )  
#2 in accordance with section 127 )  
of the Corporations Act:

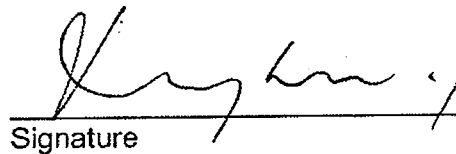
  
\_\_\_\_\_  
Signature

Michael Emery  
\_\_\_\_\_  
Full Name  
Director


  
\_\_\_\_\_  
Signature      **Director**      Sol Rabinowicz

\_\_\_\_\_  
Full Name  
Director/ Secretary

EXECUTED by TIMBERCORP )  
LIMITED in accordance with )  
section 127 of the Corporations )  
Act: )

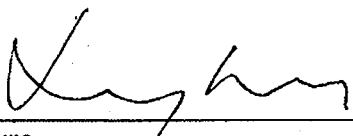
  
\_\_\_\_\_  
Signature

John Vaughan  
\_\_\_\_\_  
Full Name  
Director


  
\_\_\_\_\_  
Signature      **Mark H Pryor**

\_\_\_\_\_  
Full Name  
~~Director~~/ Secretary

EXECUTED by TIMBERCORP )  
SECURITIES LIMITED in )  
accordance with section 127 of )  
the Corporations Act: )

  
\_\_\_\_\_  
Signature  
**John Vaughan**

\_\_\_\_\_  
Full Name  
Director

  
\_\_\_\_\_  
Signature  
**Mark H Pryn**

\_\_\_\_\_  
Full Name  
~~Director~~ / Secretary

## SCHEDULE 1

### DESCRIPTION OF THE LAND

(Clause 1.1)

1. The "Solora Estate" comprises the following pieces of land:

Solora Estate	Particulars
<b>Existing Citrus Orchard</b>	
Citrus	Sections 633, 634 and 636 on CT 5278/12
Citrus	Section 726 on CT 5471/ 442
Citrus	Allotment 2/ DP 41712 on CT 5278/ 11
Citrus	Allotment 1/ DP 41712 on CT 5519/ 293
<b>Vacant Land</b>	
Vacant Land	Allotment 2, V 5278 F 11 – which is a total of 165.5 hectares (on which approximately 2284.72 hectares of Existing Citrus Orchards are situated and are to be excluded from the definition of "Vacant Land");  and  Allotment 1, V 5519 F 293 which is a total of 208.5 hectares (on which approximately 60.99 hectares of Existing Citrus Orchards are situated and are to be excluded from the definition of "Vacant Land").
<b>Residential Land</b>	
Residential Land	Sections 630 and 631 on CT 5278/12

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene Section 32 Development Act 1993

consents to the within Lease as pursuant to hereby

DATED 30 May 2005

EXECUTION

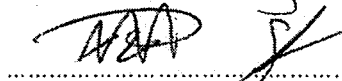
Lessor

EXECUTED by OIM #2 Pty Ltd

by the authority of the directors

 Director/~~Sole Director and Sole Secretary~~

Michael Emery Print full name

 \*Director/Secretary

Sol Rabinowicz

Print full name

(\*please delete the inapplicable title Note: Please affix common seal if required by the Company's Constitution

Lessee

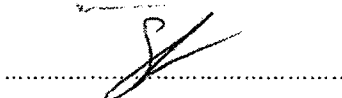
EXECUTED by Timbercorp Limited

by the authority of the directors

 Director/~~Sole Director and Sole Secretary~~

Robert Hance

Print full name

 \*Director/Secretary

Sol Rabinowicz

Print full name

(\*please delete the inapplicable title) Note: Please affix common seal if required by the Company's Constitution

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

Lessees Copy

10237316

15:38 2-Jun-2005

Fees: \$0.00

Lessees Copy

10237316A

15:38 2-Jun-2005

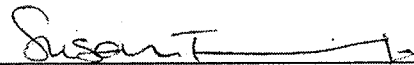
Fees: \$0.00

MEMORANDUM OF LEASE

FORM APPROVED BY THE REGISTRAR GENERAL

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES  
OF THE REAL PROPERTY ACT 1886

  
Susan Louise Townsend Registered Conveyancer

AGENT CODE

Lodged by:

TOWNSEND

Correction to: TOWNSENDS 91 HALIFAX STREET ADELAIDE

TOWN

**BELOW THIS LINE FOR OFFICE USE ONLY**

Date	Time	
FEES		
R.G.O.	POSTAGE	NEW C.T.

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH  
INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. ....
2. ....
3. ....
4. ....
5. ....


Assessor

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

1. ....
2. ....
3. ....

CORRECTION	PASSED

REGISTERED '19 JAN 2006

 REGISTRAR GENERAL

DELIVERY INSTRUCTIONS (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE  
UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE
LESSOR'S COPY LEASE	TOWN
LESSEE'S COPY LEASE	TOWN
UNLESSOR'S COPY LEASE	TOWN
UNLESSEE'S COPY LEASE	TOWN