

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

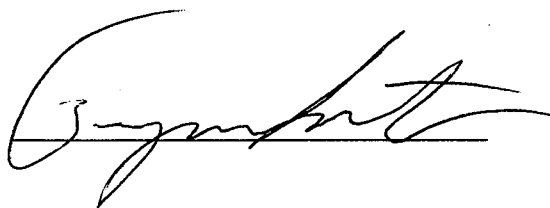
Prepared by:

**Allens Arthur Robinson**  
Lawyers  
530 Collins Street  
Melbourne VIC 3000

Solicitor code: 21455  
DX 30999 Melbourne  
Tel 9614 1011 Fax 9614 4661  
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[Matthew.Whittle@aar.com.au](mailto:Matthew.Whittle@aar.com.au)  
[Clint.Hinchen@aar.com.au](mailto:Clint.Hinchen@aar.com.au)

This is the exhibit marked '**DLM-13**' 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-13'**

**Copy of Solora Grower  
Rights Deed**



Allens Arthur Robinson



## Solara Grower Rights Deed

**OIM #2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997)**  
in its capacity as trustee for the Timbercorp Orchard Trust #2

**David Laurence McEvoy and Paul William Kirk**  
in their capacities as Receivers and Managers of the assets of OIM#2

**Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)**  
in its personal capacity and in its capacity as responsible entity for  
the 2005 Timbercorp Citrus Project

**Timbercorp Limited (In Liquidation) (ACN 055 185 067)**

**Mark Anthony Korda and Leanne Kylie Chesser**  
in their capacities as Liquidators of TSL and Timbercorp

Allens Arthur Robinson  
Level 27  
530 Collins Street  
Melbourne VIC 3000 Australia  
Tel +61 3 9614 1011  
Fax +61 3 9614 4661  
[www.aar.com.au](http://www.aar.com.au)

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# Solara Grower Rights Deed

Allens Arthur Robinson



## Date

2009

## Parties

1. **OIM #2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997)** as trustee for the Timbercorp Orchard Trust #2 of Level 33, 360 Collins Street, Melbourne, Victoria, 3000 (**OIM#2**).
2. **David Laurence McEvoy and Paul William Kirk** in their capacity as joint and several receivers and managers of the relevant assets charged by OIM#2 of Level 23, Freshwater Place, 2 Southbank Boulevard, Southbank, Victoria, 3006 (**Receivers**).
3. **Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)** in its personal capacity and in its capacity as responsible entity for the 2005 Timbercorp Citrus Project (ARSN 114 091 299) c/o KordaMentha of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 (**TSL**).
4. **Timbercorp Limited (In Liquidation) (ACN 055 185 067)** c/o KordaMentha of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 (**Timbercorp**).
5. **Mark Anthony Korda and Leanne Kylie Chesser** in their capacities as liquidators of TSL and Timbercorp of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 (**Liquidators**).

## Recitals

- A OIM#2 is the owner of the Property.
- B The Property is currently used in connection with the 2005 Citrus Project and, for that purpose, is encumbered by a head-lease, a sub-lease and licence agreements which were entered into by certain companies in the Timbercorp group of companies, the Growers, and OIM#2.
- C In connection with the receivership of OIM#2, the Receivers are conducting a sales process for the sale of the Property.
- D This Deed sets out arrangements with respect to the extinguishment of the Grower Rights in respect of the Property and the surrender of the Head Leases.

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

*Citrus Project* means the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

*Claimant* means each person who has any rights to all or any part of the Net Proceeds, to be determined by the Court in the Rights Proceeding.

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

*Costa Heads of Agreement* means the Costa Heads of Agreement dated 24 July 2009 between OIM#2, TSL, Timbercorp, the Liquidators and others.

*Court* means the Supreme Court of Victoria.

*Grower Licences* mean, in respect of the Citrus Project, the licence agreements granted to Growers in respect of the Property on which the Citrus Project is conducted.

*Grower Rights* means all of the right, title and interest (if any) of the Growers in the assets the subject of the Sale Agreement, including their rights under the Grower Licences.

*Growers* means the investors in the Citrus Project.

*GST* has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

*Head Leases* means the following leases:

- (a) Lease between OIM#2 (as lessor) and Timbercorp (as lessee) and TSL dated 19 May 2005 (in relation to the Citrus Project); and
- (b) Sublease between Timbercorp (as underlessor) and TSL (as underlessee) dated 19 May 2005 (in relation to the Citrus Project).

*Liquidators' Acts* means the activities undertaken by or on behalf of the Liquidators, TSL or Timbercorp in respect of:

- (a) negotiating, preparing and executing the extensions of the Costa Heads of Agreement in respect of the Property;
- (b) providing documents and other assistance to the Receivers at their request (or at the request of their legal advisers) in respect of the sales process being conducted by the Receivers and other matters relevant to the Receivers' receivership;
- (c) negotiating, preparing and executing this Deed;
- (d) preparing for, convening and holding meetings of the Committee of Inspection of TSL or any other Timbercorp company in relation to this Deed, the Court applications, the Sale Agreement or the Surrender Deeds or the deeds to effect the surrender of the Head Leases;

- (e) preparing, filing and appearing at any Court applications contemplated by clause 4.1 of this Deed; and
- (f) preparing and executing the Surrender Deeds or the deeds to effect the surrender of the Head Leases as contemplated by clause 4.2 of this Deed.

**Liquidators' Costs** has the meaning given in clause 6 of this Deed.

**Net Proceeds** means the net proceeds of sale of the Property after payment of:

- (a) the costs and expenses of the Receivers referable to the preservation and realisation of the assets the subject of the Sale Agreement;
- (b) the Receivers' selling costs and expenses;
- (c) the Liquidators' costs and expenses which are to be reimbursed by the Receivers pursuant to clause 6; and
- (d) retentions (if any).

**Property** has the meaning given to "Property" in the Sale Agreement.

**Sale Agreement** means the contract of sale of real estate to be entered into between OIM#2, the Receivers, Agriproperty Pty Ltd (ACN 140 954 874) and CostaExchange Limited (ACN 002 687 961) for the sale of the Property on or about the date of this Deed.

**Secured Creditor** means Australia and New Zealand Banking Group Limited.

**Settlement** has the meaning given in the Sale Agreement.

**Solara Rights Proceeding** means a proceeding to determine which person or persons have any rights to all or any part of the Net Proceeds.

**Surrender Deeds** means the deeds to be executed by TSL in respect of the Citrus Project as agent and attorney for Growers under the Citrus Project, under which TSL surrenders the Grower Licences, and TSL extinguishes all of the Grower Rights, in respect of the Property with effect on and from Settlement, in a form acceptable to OIM#2 (acting reasonably).

## 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, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.



- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) 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 conduct includes an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to *dollars* and \$ is to Australian currency.
- (m) All references to time are to Melbourne time.
- (n) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (o) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

## 1.3 Consents or approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

## 2. Liquidators' Obligations

### 2.1 Obligations

The obligations of the Liquidators under this Deed are subject to and conditional upon the due and proper execution of the Sale Agreement.

### 2.2 Notice of execution of Sale Agreements

The Receivers must notify the Liquidators in writing forthwith after the Sale Agreement is executed.

### 2.3 Termination

If the Receivers have not provided a notice to the Liquidators under clause 2.2 on or before 12 pm on 29 January 2010 then the Liquidators or the Receivers may give written notice to the other terminating this Deed with immediate effect.



## 3. Receivers' Confirmations

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### 3.1 Exercise of Power of Sale

The Receivers confirm to the Liquidators that, in exercising their power of sale in respect of the Property, they have complied with their obligations under section 420A of the Corporations Act.

## 4. Grower Rights

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### 4.1 Court Application

On or before 4 pm on 29 January 2010 (or such other date as the parties reasonably agree), the Liquidators will file an application with the Court seeking orders, declarations and/or directions that:

- (a) the Liquidators (in their capacity as Liquidators of TSL) are justified in procuring TSL, in its capacity as responsible entity of the Citrus Project, to extinguish all of the Grower Rights;
- (b) the Liquidators (in their capacity as Liquidators of TSL) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to enable OIM#2 and the Receivers to perform the Sale Agreement according to its terms;
- (c) upon settlement of any sale under the Sale Agreement, the Net Proceeds of sale of the Property be held by the Receivers in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act) pending the hearing and determination of the Solara Rights Proceeding and to be held on trust for the Claimants or until further order of the Court;
- (d) insofar as the Secured Creditor has any rights to the assets the subject of the Sale Agreement, whether under its securities over those assets or otherwise, nothing in the release of those securities upon settlement of the Sale Agreement will prejudice those rights for the purposes of their claim to all or any part of the Net Proceeds of sale of the Property; and
- (e) insofar as the Growers have any rights to the assets the subject of the Sale Agreement nothing in the orders referred to in (a) to (d) above, or any action taken thereunder by the Liquidators, will prejudice those rights for the purposes of their claim to all or any part of the Net Proceeds of sale of the Property.

### 4.2 Surrender Deeds

As soon as possible after obtaining the orders, declarations and/or directions from the Court referred to in clause 4.1, the Liquidators, TSL and Timbercorp will execute the Surrender Deeds in order to surrender or disclaim the Grower Licences and extinguish all of the Grower Rights in respect of the Property and the deeds to effect the surrender of the Head Leases, subject to and in accordance with the terms of the relevant deed.





## 5. Reasonable Endeavours

### 5.1 Liquidators

The Liquidators will:

- (a) use all reasonable endeavours to procure the hearing of the Court application made for the purposes of satisfying their obligations under clause 4.1 within 14 days after the date of filing of the application or as soon as possible thereafter (having regard to the Court's availability to hear the application);
- (b) provide to OIM#2 and the Receivers a copy of the Court documents filed in connection with the application made for the purposes of satisfying their obligations under clause 4.1, promptly after that application is filed, and the Liquidators consent to the Receivers providing a copy of the Court documents to the other parties to the Sale Agreement;
- (c) provide to OIM#2 and the Receivers a copy of the Surrender Deeds executed for the purposes of satisfying their obligations under clause 4.2, promptly after those deeds are executed.

### 5.2 Receivers

The Receivers will promptly provide to the Liquidators all such assistance, prepare and file all such documents, take all such actions and make all such appearances at any Committee of Inspection meetings or Court application, as the Liquidators reasonably require in connection with the Court application made for the purposes of satisfying the Liquidators' obligations under clause 4.1 or the execution of the Surrender Deeds or the deeds to effect the surrender of the Head Leases for the purposes of satisfying their obligations under clause 4.2.

## 6. Liquidators' Costs

- (a) Following settlement of the Sale Agreement, the Receivers will reimburse the Liquidators:
  - (i) \$55,000 (plus GST) in full satisfaction of the costs and expenses incurred by the Liquidators in respect of all of the Liquidators' Acts prior to 17 December 2009; and
  - (ii) for the costs and expenses (plus GST) incurred by the Liquidators in respect of the Liquidators' Acts after 17 December 2009.

*(Liquidators' Costs).*
- (b) The Parties agree and acknowledge that the Liquidators' Costs are costs incurred with respect to the OIM#2 receivership and are only required to be paid by the Receivers from the proceeds of the Sale Agreement.

## 7. GST

### 7.1 Definitions

For the purposes of this clause 7, Taxable Supply and Consideration will have the meaning given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

## 7.2 Exclusive of GST

If anything done, or required to be done, under this Deed, or anything done in settlement of the consequences of a breach of any warranty or other clause of this Deed, constitutes a Taxable Supply by one party to another party, unless otherwise provided in this Deed, the Consideration for that Taxable Supply will be exclusive of any GST.

## 7.3 Consideration to be increased

If the party making the Taxable Supply is liable for any GST on that Taxable Supply, subject to that party issuing a valid tax invoice (or adjustment note) to the party that receives the Taxable Supply, the Consideration received will be increased so that the party making the Taxable Supply receives, net of the GST liability, the Consideration otherwise calculated pursuant to this Deed.

## 8. Notices

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

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Deed:

- (i) to OIM#2 and the Receivers:      Attention: David Laurence McEvoy  
Address: Freshwater Place, Level 23,  
2 Southbank Boulevard, Victoria, 3006  
Fax No: +61 3 8613 2602

Email: david.mcevoy@au.pwc.com

with a copy to:

Attention: Steve Clifford  
Address: Level 29, 530 Collins Street,  
Melbourne, Victoria, 3000

Fax No: +61 3 9614 4661

Email: Steve.Clifford@aar.com.au

- (ii) to the Liquidators, TSL and  
Timbercorp:

Attention: Mark Anthony Korda

Address: Level 24, 333 Collins Street,  
Melbourne, Victoria, 3000

Fax No: +61 3 8623 3399

Email: mkorda@kordamentha.com

with a copy to:

Attention: Jane Sheridan

Address: Level 21, 333 Collins Street,  
Melbourne, Victoria 3000

Fax No: +61 3 9229 9900

Email: jsheridan@abl.com.au

- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4 pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

## 9. Entire Agreement

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This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties in connection with its subject matter.

## 10. Amendment

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This Deed may be amended only by another deed executed by all the parties.

## 11. Assignment

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No party may assign, transfer or otherwise deal with this Deed or any right or obligation under this Deed, or attempt or purport to do so, without the prior written consent of each other party, which must not be unreasonably withheld.

## 12. No Waiver

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

## 13. Further Assurances

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Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.



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## 14. No Merger

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

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## 15. Stamp Duty

All stamp duty (including fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under any transaction evidenced by this Deed must be borne by OIM#2.

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## 16. Severability of Provisions

Any provision of this Deed 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 Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

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## 17. Governing Law and Jurisdiction

This Deed is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there with respect to any legal action or proceedings arising out of or in connection with or in any way related to this Deed or its subject matter.

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## 18. Counterparts

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

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## 19. Capacity and Liability of OIM#2

The parties acknowledge that OIM#2 enters into this Deed only in its capacity as trustee of Timbercorp Orchard Trust #2 (*TOT#2*). A liability arising under or in connection with this Deed can be enforced against OIM#2 only to the extent to which OIM#2 is actually indemnified in respect of that liability out of the assets of TOT#2. No party will be entitled to:

- (a) claim from or commence proceedings against OIM#2 in respect of any liability under this Deed in any capacity other than as trustee of TOT#2; or
- (b) enforce or seek to enforce any judgment in respect of a liability under this Deed against any property of OIM#2 other than property held by OIM#2 as trustee of TOT#2.

# Solara Grower Rights Deed

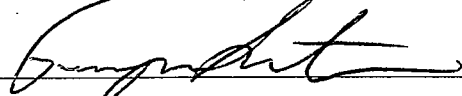
Allens Arthur Robinson



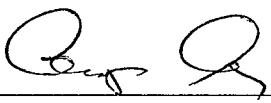
## Executed and delivered as a Deed in Melbourne.

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

Signed sealed and delivered for  
**OIM #2 Pty Ltd (Receivers and Managers  
Appointed)** as trustee for the Timbercorp  
Orchard Trust #2 in the presence of:

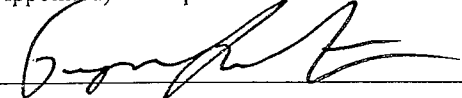
  
Witness Signature

BENJAMIN RECHTER  
Name of Witness

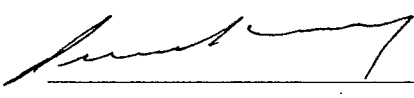
  
Signature of Receiver

DAVID N. SWAY  
Name of Receiver

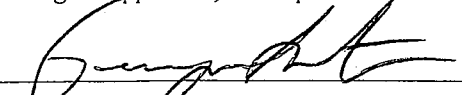
Signed sealed and delivered by Paul William  
Kirk in his capacity as receiver and manager of  
OIM #2 Pty Ltd (Receivers and Managers  
Appointed) in the presence of:

  
Witness Signature

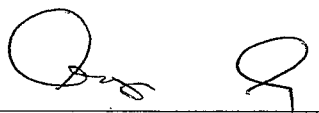
BENJAMIN RECHTER  
Name of Witness

  
Signature of Paul William Kirk

Signed sealed and delivered by David  
Laurence McEvoy in his capacity as receiver  
and manager of OIM #2 Pty Ltd (Receivers and  
Managers Appointed) in the presence of:

  
Witness Signature

BENJAMIN RECHTER  
Name of Witness

  
Signature of David Laurence McEvoy

# Solara Grower Rights Deed

Allens Arthur Robinson

Signed sealed and delivered by

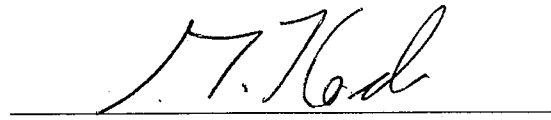
Mark Anthony Korda in his capacity as  
Liquidator of Timbercorp Securities Limited (In  
Liquidation) and Timbercorp Limited (In  
Liquidation) in the presence of:



Witness Signature

**JOANNE ZAFIRAKOS**

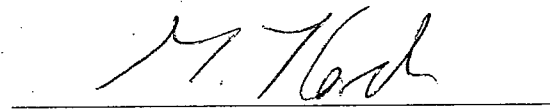
Name of Witness

  
Signature of Mark Anthony Korda

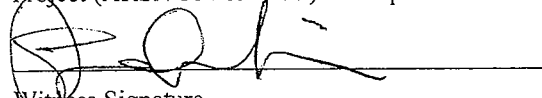
Signed sealed and delivered by Mark Anthony  
Korda for and on behalf of Leanne Kylie  
Chesser under a power of attorney dated 25  
October 2007 in her capacity as Liquidator of  
Timbercorp Securities Limited (In Liquidation)  
and Timbercorp Limited (In Liquidation) in the  
presence of:

  
Witness Signature  
**JOANNE ZAFIRAKOS**

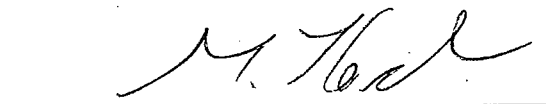
Name of Witness

  
Signature of Attorney

Signed sealed and delivered by Timbercorp  
Securities Limited (In Liquidation) in its  
personal capacity and in its capacity as  
responsible entity for the 2005 Timbercorp Citrus  
Project (ARSN 114 091 299) in the presence of:

  
Witness Signature  
**JOANNE ZAFIRAKOS**

Name of Witness

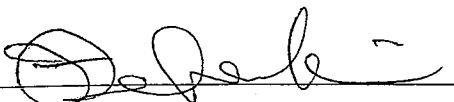
  
Signature of Liquidator  
**MARK KORDA**

Name of Liquidator

# Solara Grower Rights Deed

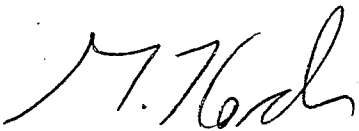
Allens Arthur Robinson +

Signed sealed and delivered by  
Timbercorp Limited (In Liquidation) in the  
presence of:

  
\_\_\_\_\_  
Witness Signature

**JOANNE ZAFIRAKOS**

\_\_\_\_\_  
Name of Witness

  
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Signature of Liquidator

**MARK KORDA**

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Name of Liquidator