

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

LIST E

S CI 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 2004 TIMBERCORP CITRUS PROJECT
(ARSN 108 887 538) AND THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)
AND ORS ACCORDING TO THE SCHEDULE

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 23 February 2011

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
Ref (mkwm:cchm:306250099)
Matthew.Whittle@aar.com.au
Clint.Hinchen@aar.com.au

This is the exhibit marked '**PWK3**' now produced and shown to PAUL WILLIAM KIRK at the time of swearing his affidavit on 23 February 2011.

Before me



DANIELLE RUTH NAHUM
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

Exhibit 'PWK3'

**Copy of TOT RE and Timbercorp
Parent Lease for the 2004 and 2005
Citrus Projects, dated 26 May 2004**

MEMORANDUM OF LEASE

C 2004 004

CERTIFICATES OF TITLE BEING LEASED

First, whole of land in CT Volume 5097 Folio 564 Secondly, whole of land in CT Volume 5097 Folio 565 Thirdly, whole of land in CT Volume 5097 Folio 566 Fourthly, portion of land in CT Volume 5097 Folio 567 being portion marked "A" in GP 73/2004 Fifthly, whole of land in CT Volume 5131 Folio 66 Sixthly, whole of land in CT Volume 5509 Folio 65 Seventhly, whole of land in CT Volume 5509 Folio 66 Eighthly, whole of land in CT Volume 5171 Folio 743

ESTATE AND INTEREST

First to Eighthly in fee simple

ENCUMBRANCES First, subject to mortgage 9759035 Secondly, subject to mortgage 9759035 Thirdly, subject to mortgage 9759035 Fourthly, subject to mortgage 9759035 and Lease 9759033 Fifthly, subject to mortgage 9759035 Sixthly, subject to mortgage 9759035 Seventhly, subject to mortgage 9759035 Eighthly, subject to mortgage 9759034 and mortgage 9759035

LESSOR (Full Name and Address)

Orchard Investments Management Limited ACN 105 684 231 of Level 2, 613 St Kilda Road Melbourne Vic 3000

LESSEE (Full Name, Address and Mode of Holding)

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

RevenueSA - Stamp Duty - ABN 19 040 349 865 ©	
RevNetID/PRA Bundle No.: 103468501	
Orig/Copy	2 of with 2 copies
Consideration/Value/Security:	\$ 6,053,119-
SA Proportion (if applicable):	\$ -
SD:	\$ 60532-00 LTO Fees: \$ -
Int:	\$ - Pen/Add Tax: \$ -
Signature:	Date: 26/05/04

TERM OF LEASE

COMMENCING ON THE 31st day of December 2003

EXPIRING ON THE 30th day of June 2026

3 of 72

LEASE
[Kangara Estate]

Orchard Investments Management
Limited

Timbercorp Limited

Timbercorp Securities Limited

COPY

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000
Telephone: 9600 3525
Facsimile: 9600 3527

Table of Contents

DETAILS OF THIS LEASE	1
1. DEFINITIONS AND INTERPRETATION	2
1.1 DEFINITIONS	2
1.2 INTERPRETATION	7
1.2 MASTER LEASE	7
1.3 HEADINGS	7
2. CAPACITY AND LIABILITY OF THE LESSOR	7
2.1 CAPACITY OF LESSOR	7
2.2 BENEFIT TO LESSOR	8
2.3 LIMITATION OF LIABILITY	8
3. GRANT AND TERM OF LEASE	8
3.1 GRANT AND TERM OF LEASE	8
3.2 REPRESENTATIONS	8
4. ESTABLISHMENT AND MAINTENANCE OF VINEYARD	8
4.1 WARRANTY BY LESSOR AS TO THE EXISTING VINEYARD	8
4.2 AGREEMENT BY LESSOR AS TO THE NEW VINEYARD	9
4.3 ACKNOWLEDGMENTS AND OPTION TO PURCHASE	10
4.4 ACKNOWLEDGMENTS BY THE LESSOR	11
4.5 CULTIVATION AND MAINTENANCE OBLIGATIONS IN RELATION TO THE VINEYARD	11
4.6 LESSEE'S OBLIGATIONS UPON TERMINATION	12
5. ESTABLISHMENT AND MAINTENANCE OF CITRUS ORCHARD	13
5.1 WARRANTY BY LESSOR AS TO THE EXISTING CITRUS ORCHARDS	13
5.2 AGREEMENT BY LESSOR AS TO THE NEW CITRUS ORCHARDS	13
5.3 ACKNOWLEDGMENTS AND OPTION TO PURCHASE	14
5.4 ACKNOWLEDGMENTS BY THE LESSOR	16
5.5 CULTIVATION AND MAINTENANCE OBLIGATIONS IN RELATION TO THE CITRUS ORCHARD	16
5.6 LESSEE'S OBLIGATIONS UPON TERMINATION	17
6. WATER LICENCES	17
6.1 REQUIRED WATER LICENCES	17
6.2 USE OF REQUIRED WATER LICENCES	18
6.3 ACKNOWLEDGMENTS	18
7. RENT PAYMENTS	18
7.1 RENT	18
7.2 ADJUSTMENTS TO RENT FOR INDEXATION	20
7.3 DISCONTINUANCE OR SUSPENSION OF CPI	21
7.4 COST INCLUSIVE PRICE	21
7.5 RENT REDUCTION DUE TO DEFERRED PAYMENT	21
7.6 DEFINITIONS	22
7.7 PURPOSE OF THIS CLAUSE 7	24
8. LESSOR'S OBLIGATIONS AND RIGHTS	24
8.1 OBLIGATIONS	24
8.2 RIGHTS	25
9. RATES, TAXES AND CHARGES	25
10. INSURANCE	25
10.1 LESSEE MUST MAINTAIN INSURANCE	25
10.2 CLAIMS UNDER INSURANCE POLICIES	26
10.3 INSURANCE PROCEEDS	26

10.4	PARTIES NOT TO AFFECT RIGHTS UNDER INSURANCE.....	26
10.5	DAMAGE TO, OR DESTRUCTION OF, OF THE CITRUSLOTS, VINELOTS OR CAPITAL WORKS	26
11.	USE OF CHIQUITA LAND	27
11.1	PERMITTED USE	27
11.2	LESSEE'S DUTIES	27
11.3	INDEMNITY	28
11.4	STRUCTURAL WORK	28
12.	ASSIGNMENTS, SUB-LEASES AND MORTGAGES	28
12.1	ASSIGNMENT BY LESSEE	28
12.2	LESSOR CONSENTS TO LESSEE SUB-LETTING.....	29
12.3	LESSEE MUST NOT MORTGAGE ITS INTEREST	29
12.4	ASSIGNMENT OR MORTGAGE BY LESSOR	29
12.5	DELEGATION	30
13.	DEFAULT AND RE-ENTRY	30
13.1	DEFAULT BY LESSEE	30
13.2	RE-ENTRY BY LESSOR	30
13.3	RE-ENTRY DOES NOT PREJUDICE LESSOR'S RIGHTS	30
13.4	LESSOR DISCHARGED FROM OBLIGATIONS	31
13.5	LESSOR'S RIGHTS SUBJECT TO GROWERS' RIGHTS	31
14.	TERMINATION	31
14.1	TERMINATION OF DEED BY THE LESSOR	31
14.2	TERMINATION OF DEED BY THE LESSEE	31
14.3	EFFECT OF TERMINATION	32
14.4	ATTORNEYS	32
14.5	LIMITED RIGHT OF TERMINATION	32
15.	LEGAL COSTS.....	32
16.	NOTICES	33
16.1	FORM OF NOTICE	33
16.2	RECEIPT OF NOTICE	33
17.	PROPER LAW.....	33
18.	SEVERANCE.....	33
19.	ENTIRE AGREEMENT	33
20.	GST	33
21.	STATUTORY PROVISIONS.....	34
22.	CAVEAT.....	34
23.	FURTHER ASSURANCES.....	35
24.	DISPUTES	35
	SCHEDULE 1	I
	SCHEDULE 2.....	II

Details of this Lease

Date of this Deed:

This Deed is made on 26 May 2004

Parties to this Deed:

1. Orchard Investments Management Limited

ACN 105 684 231
Level 2, 613 St Kilda Road
Melbourne, Victoria, 3004

in its capacity as responsible entity
of the Timbercorp Orchard Trust

(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)

Background

- A. The Lessor is the registered proprietor of the Chiquita Land.
- B. The Lessor will lease the Chiquita Land to the Lessee in accordance with this Deed, The Chiquita Land under this Lease does not include the Excluded Chiquita Land, which will be leased by the Lessor to Kangara Foods Pty Limited, a wholly owned subsidiary of Chiquita.
- C. The Lessee will sub-lease part of the Chiquita Land from time to time to TSL under Project Sub-Leases for use in the Projects that TSL establishes.
- D. The Lessor consents to the Lessee entering into the Project Sub-Leases and to TSL entering into the Occupancy Agreements with the Growers in the Projects.

- E. The Lessee will also license part of the Chiquita Land to Chiquita.
- F. The Lessee will pay rent in respect of the Chiquita Land 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:

Administrator:	has the same meaning as defined in section 9 of the Corporations Act;
Authority:	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 Chiquita Land or any part of them or anything about them;
Best Horticultural Practice:	sound horticultural and environmental practices and industry practices for similar vineyards and citrus orchards, as the case requires;
Business Day:	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;
Capital Works:	<p>(a) the infrastructure and capital works, including any Irrigation Infrastructure, that have been carried out on the Chiquita Land, as the case requires, before it was purchased by the Lessor;</p> <p>(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 Chiquita Land, as the case requires;</p>
Chiquita:	Chiquita Brands South Pacific Limited (ACN 002 687 961);
Chiquita Land:	any one or more of the Citrus Land, the Wine Grape Land or the Vacant Land, as the case requires, but does not include the "Excluded Chiquita Land";
Chiquita Lease:	the 99-year lease granted by the Lessor to Kangara Foods over the Excluded Land;
Chiquita Licence Agreement:	a licence granted by the Lessee to Chiquita over some or all of the Chiquita Land in accordance with paragraph 11.1(b)(iv);
Chiquita Mortgage:	the mortgage granted by the Lessor to Kangara Foods over the Vacant Land to secure the payment of the balance of the purchase price under the contract of sale relating to the Vacant

	Land;
Citrus Crop:	the products, rights, benefits or credits derived from the Citrus Trees on the Chiquita Land;
Citrus Land:	the whole of the land described in Schedule 1 of this Deed as the citrus land, and the Capital Works, the Required Water Licences and other improvements attributable to such citrus land for the purposes of this Deed;
Citruslot:	an Existing Citrus Orchard or a New Citrus Orchard, as the case requires;
Citrus Orchard:	the citrus orchard established or to be established on the Chiquita Land and includes the Existing Citrus Orchard and a New Citrus Orchard, as the context requires;
Citrus Projects:	the citrus managed investment schemes to be conducted by TSL on the Chiquita Land, whether registered or unregistered;
Citrus Trees:	the citrus trees growing or to be grown on the Chiquita Land;
Commencement Date:	31 December 2003;
Constitution:	the constitution of a Project;
Controller:	has the same meaning as defined in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
CPI:	<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 7.3;</p>
Encumbrance:	<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>
Excluded Chiquita Land:	approximately 2 hectares which is part of the Chiquita Land described in Certificate of Title Register Book Volume 5097 Folio 567 on which the Chiquita processing and packing plants and general administration buildings are situated;
Existing Citrus Development:	the Existing Citrus Orchards;
Existing Citrus Orchards:	the existing citrus orchard of 355 hectares with citrus trees of various ages ranging from 1 year to 9+ years of age, established on the Citrus Land on or before 30 June 2003;
Existing Wine	the Existing Vineyard;

Grape Development:	
Existing Vineyard:	the existing wine grape vineyards on the Wine Grape Land comprising a total of 455 hectares of established wine grape vineyards;
Financial Year:	<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>
Force Majeure:	<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>
Government Body:	<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>
Grower:	a "Participant Grower" as defined in the relevant Constitution;
GST:	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Indexed:	<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 (the Adjustment Date) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published</p>

	<p>and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" 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>
Irrigation Infrastructure:	water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on the Chiquita Land;
Kangara Foods:	Kangara Foods Pty Limited (ACN 093 583 049);
Lease:	the lease granted by this Deed;
New Citrus Orchards:	each new Citrus Orchard to be established on approximately 500 hectares of the Citrus Land that is undeveloped, in accordance with a Project Sub-Lease;
New Vineyard	each established new vineyard or new vineyard that may be established on the Wine Grape Land in accordance with a Project Sub-lease;
Occupancy Agreements:	the sub-leases, licences or other occupancy rights proposed to be granted by TSL over the Chiquita Land 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;
Orchard Trust:	the Timbercorp Orchard Trust (ARSN 106 557 297);
Orchard Trust Constitution:	the constitution of the Orchard Trust;
Project Sub-Lease:	a sub-lease granted by TSL to the Lessee in relation to a Project;
Projects:	the Citrus and Wine Grape Projects and such other projects undertaken on the Chiquita Land from time to time by the Timbercorp Group or other responsible entities or managers of a horticultural or viticultural nature, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;
Quarter:	<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>
Rent:	the amount specified in clause 7 as varied under this Deed;
Required Water	the water licences that are, or will be, owned or acquired by the

Licences:	Lessor or the Lessee (where the Lessee, at its cost, develops a New Citrus Orchard or New Vineyard) and that are attributed to the Chiquita Land as required from time to time, and that provide for a maximum licence entitlement specified in clause 6.1, 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;
Responsible Entity:	the responsible entity for the time being under the Orchard Trust Constitution, which is currently the Lessor;
Security Interest:	<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 ordinary course of business whether arising by operation of law or by contract;</p>
Term:	the term of this Lease, as described in clause 3;
Timbercorp:	Timbercorp Ltd (ACN 055 185 067);
Timbercorp Group:	Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";
TSL:	Timbercorp Securities Limited (ACN 092 311 469);
Vacant Land	the whole of the land described in Schedule 1 of this Deed as the vacant land;
Vinelot:	an area of land on the Existing Vineyard and/or a New Vineyard, as the case requires on which a Grower in a Project carries on or will carry on a business of cultivating and growing wine grapes;
Vines:	the vines growing or to be grown on the Chiquita Land;
Vineyard:	the wine grape vineyards established or to be established on the Chiquita Land and includes the Existing Vineyard and each New Vineyard as the context requires;
Wine Grape Land:	the whole of the land described in Schedule 1 of this Deed as the wine grape land, and the Capital Works, the Required Water Licences and other improvements attributable to such wine grape land for the purposes of this Deed;
Wine Grape Projects:	the wine grape managed investment schemes to be conducted by TSL on the Chiquita Land, whether registered or unregistered;
Wine Grapes:	the products, rights, benefits or credits derived from the Vines on the Chiquita Land.

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 conditions that are to apply in respect of the Chiquita Land 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.

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 Responsible Entity under the Orchard Trust Constitution; 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 Lease 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 responsible entity 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 the Responsible Entity 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.

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 Citrus Orchard, Wine Grape Land and the Vacant Land and the Capital Works, and a licence of the Required Water Licences, to use and occupy the Citrus Orchard, Wine Grape Land and 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 14, expiring on 30 June 2026 (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; and
 - (b) any consents which may be required to the granting of the Lease have been obtained.
-

4. ESTABLISHMENT AND MAINTENANCE OF VINEYARD

4.1 Warranty by Lessor as to the Existing Vineyard

The Lessor warrants and represents to the Lessee that, to its knowledge, the Existing Vineyard on the Wine Grape Land has been established in accordance with Best Horticultural Practice 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 Vineyard is located has been prepared to ensure that the Vines 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 Vines on the Existing Vineyard;
- (c) drainage work and other works have been carried out to help prevent soil erosion on all Wine Grape Land on which the Existing Vineyard is located;

- (d) as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Vines on the Existing Vineyard have been eradicated;
- (e) Vines on the Existing Vineyard have been planted and staked and where applicable, trellising has been constructed in accordance with Best Horticultural Practice so that the Vines can be harvested commercially;
- (f) the Vines on the Existing Vineyard were planted by 30 June 2003; 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 Agreement by Lessor as to the New Vineyard

- (a) Subject to paragraph (c), the Lessor agrees with the Lessee that upon receiving a request or requests from the Lessee or TSL, the Lessor must, at its cost, establish or procure the establishment of one or more New Vineyards on the Vacant Land for each Wine Grape Project in accordance with Best Horticulture Practice and construct the necessary infrastructure and carry out the necessary Capital Works. Without limiting the generality of this paragraph (a), the Lessor must:
 - (i) prepare that part of Vacant Land on which a New Vineyard is located to ensure that the Vines can grow satisfactorily, subject to any Force Majeure;
 - (ii) install appropriate irrigation equipment and carry out the necessary irrigation works to ensure proper reticulation of water to the Vines on a New Vineyard;
 - (iii) carry out drainage work and other works to help prevent soil erosion on all Vacant Land on which a New Vineyard is to be located;
 - (iv) eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Vines on a New Vineyard;
 - (v) plant Vines on each New Vinelot, erect stakes and where applicable, construct trellising in accordance with good horticultural practices so that the Vines can be harvested commercially; and
 - (vi) provide or undertake, as the case requires, such other capital works, services or things which, in the reasonable opinion of the Lessor, are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.2(a)(i) to (v) above.
- (b) The Lessor will use its best endeavours to complete the Capital Works in respect of each New Vineyard for each Wine Grape Project in full by the end of the financial year in which the Wine Grape Project is created or established or such later date as may be agreed between the Lessor and the Lessee. The Lessor will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Lessee arising from any delay in so doing caused for any reason other than the negligence of the Lessor, its officers, employees or agents.
- (c) The Lessor and the Lessee agree that if:
 - (i) the Lessor notifies the Lessee within 30 days of receiving such request or requests that it will not be able to raise or otherwise secure necessary funds on terms satisfactory to it to enable it to

undertake the development of a New Vineyard; or it cannot otherwise reasonably undertake the development of the New Vineyard by a date reasonably nominated by the Lessee having regard to the obligations of the Lessee or TSL under a Wine Grape Project,

the Lessee may, at its cost, undertake or procure the development of the New Vineyard.

4.3 Acknowledgments and option to purchase

- (a) The Lessee acknowledges that the Capital Works and Vines on, and the Required Water Licences attaching to the Existing Vineyard are, and will at all times remain, the property of the Lessor, subject to any rules or regulations made by any Authority.
- (b) The parties acknowledge and agree as follows:
 - (i) the Capital Works and the Vines on, and the Required Water Licences to be attributed to, a New Vineyard will at all times remain the property of the party which undertakes the development of the New Vineyard, subject to any rules and regulations made by any Authority;
 - (ii) for the avoidance of doubt, it is declared that if the Lessee undertakes the development of a Vineyard in accordance with paragraph 4.2(c), the Capital Works and Vines on the New Vineyard will be tenant fixtures owned by the Lessee, and the Required Water Licences purchased and attributed to a New Vineyard will be the property of the Lessee; and
 - (iii) if the Lessee undertakes the development of a New Vineyard in accordance with paragraph 4.2(c) the following provisions apply:
 - (A) the Lessor grants to the Lessee an option to purchase the land or lands on which each New Vineyard is located on the following terms:
 - Price: the market value of the land or lands as determined under sub-paragraph (D);
 - Payment terms: 10% payable to the Lessor on the exercise of the option with the balance of the price payable 3 months after the date of the contract of sale;
 - all other terms and conditions as are consistent with good conveyancing practice in South Australia;
 - (B) the option to purchase must be exercised within 3 months of the date of expiration of this Lease;
 - (C) the option may be exercised by delivery of written notice of exercise to the Lessor;
 - (D) for the purpose of sub-paragraph (A), the market value of the land or lands will be the value agreed between the parties or, failing agreement, that determined by a valuer appointed by the President or other senior officer of the Australian Property Institute Incorporated or its successor. The valuer must:
 - (1) be experienced in the assessment of rural

- properties in South Australia;
- (2) be a member or members of the Australian Property Institute Incorporated or its successor;
 - (3) call for and consider submissions from the Lessor and the Lessee;
 - (4) consider all factors relevant to that determination;
 - (5) act as an expert and not as an arbitrator;
 - (6) promptly deliver the determination to the Lessor and the Lessee;
- (E) the Lessor must jointly pay the fee of the valuer; and
 - (F) if a valuer has not been appointed within 21 days of the request to the President of the Australian Property Institute Incorporated or its successor, the Lessee may appoint an arbitrator to determine the market value and the arbitration is to be conducted in accordance with the Commercial Arbitration Act 1984.
- (c) if at any time the Lessor wishes to offer to sell a New Vineyard, the Lessor must notify the Lessee of the sale proposal and the sale price and the Lessee may within 30 days of receipt of the notice notify the Lessor that it is willing to purchase the relevant New Vineyard at a price nominated in the proposal. If the Lessee does not respond to the proposal or exercise its rights to purchase the relevant New Vineyard within the 30 day response time or the parties cannot enter into and complete a sale agreement in respect of the New Vineyard within 60 days following the response time, the Lessor will be entitled to seek offers regarding the sale of the New Vineyard and negotiate, enter into and complete a sale agreement with a third party at a price no less than the price specified in the proposal.
 - (d) for the purpose of paragraphs (b) and (c) the parties agree to negotiate in good faith the subdivision of any land and the grant or creation of easements and other rights reasonably necessary to enable the Lessee to purchase the New Vineyard and operate it after completion of the sale;
 - (e) 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 4.31.1(e) will not apply in the case of wilful default, dishonesty or fraud or breach of this Deed.

4.4 Acknowledgments by the Lessor

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

4.5 Cultivation and maintenance obligations in relation to the Vineyard

The Lessee, at its cost and expense, must cultivate, maintain and manage the Vines, the Vineyard and the Chiquita Land, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice

including the following, having regard to good workmanlike and commercially responsible standards and Best Horticultural Practice:

- (a) **Irrigation and fertilisation:** provide the Vineyard with necessary irrigation water, irrigate the Vineyard 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 Vine development and Wine Grape production, including impediments, such as weeds, brambles, briars, blackberries or other noxious growth;
- (c) **Vermin:** keep the Vineyard free from vermin;
- (d) **Insects and Diseases:** use its reasonable endeavours to keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines;
- (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 Vineyard and the Chiquita Land, 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 Wine Grapes or the Vines, which is apparent to the Lessee;
- (g) **Destruction:** destroy any Vines which a reasonable horticulturist would destroy having regards to the best interests of the remaining unaffected Vines and promptly advise the Lessor in writing of the Vines destroyed and the reasons for destroying the Vines;
- (h) **Fencing:** maintain any fencing, trellising, staking or netting used on the Vineyard in accordance with Best Horticultural Practice; and
- (i) **Other viticultural activities:** otherwise use and maintain the Vines, the Vineyard and the Chiquita Land, in accordance with the constitution and other Project documents for the relevant Project.

4.6 Lessee's Obligations upon Termination

- (a) At the end of this Lease, the Lessee must return the Wine Grape Land and any Capital Works and the relevant Vineyard to the Lessor in good condition in accordance with the obligations of the Lessee under clause 4.5, but the Lessee is not required to remove the Vines or restore the Capital Works and the relevant Vineyard 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 must be removed from the relevant Vineyard within 30 days after the end of this Lease. If the Lessee does not comply, or procure TSL or the Grower to comply, with this requirement then all structures and plant and equipment remaining on the relevant Vineyard 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 Vineyard that become the absolute property of the Lessor in accordance with paragraph 4.6(b).

5. ESTABLISHMENT AND MAINTENANCE OF CITRUS ORCHARD

5.1 Warranty by Lessor as to the Existing Citrus Orchards

The Lessor warrants and represents to the Lessee that, to its knowledge, the Existing Citrus Orchards on the Citrus Land have been established in accordance with Best Horticultural Practice and that the necessary infrastructure and other capital works have been constructed and carried out, and without limiting the generality of this clause 5.1, 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 all Citrus Land on which the Existing Citrus Orchards are located;
- (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 Orchards have been eradicated;
- (e) Citrus Trees on the Existing Citrus Orchard have been planted and staked in accordance with Best Horticultural Practice so that the Citrus Trees can be harvested commercially;
- (f) the Citrus Trees on the Existing Citrus Orchards were planted at various times on or before 30 June 2003; 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 5.1(a) to (f) above, have been provided or undertaken, as the case requires.

5.2 Agreement by Lessor as to the New Citrus Orchards

- (a) Subject to paragraph (c), the Lessor agrees with the Lessee that upon receiving a request or requests from the Lessee or TSL, the Lessor must, at its cost, establish or procure the establishment of one or more New Citrus Orchards on the Vacant Land for each Citrus Project in accordance with Best Horticulture Practice and construct the necessary infrastructure and carry out the necessary Capital Works. Without limiting the generality of this paragraph (a) the Lessor must:
 - (i) prepare that part of Vacant Land on which a New Citrus Orchard is located to ensure that the Citrus Trees can grow satisfactorily, subject to any Force Majeure;
 - (ii) install appropriate irrigation equipment and carry out the necessary irrigation works to ensure proper reticulation of water to the Citrus Trees on a New Citrus Orchard;
 - (iii) carry out drainage work and other works to help prevent soil erosion on all Vacant Land on which a New Citrus Orchard is to be located;
 - (iv) eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Citrus Trees on a New Citrus Orchard;

- (v) plant Citrus Trees on each New Citruslot, erect stakes and where applicable, construct trellising in accordance with good horticultural practices so that the Citrus Trees can be harvested commercially; and
 - (vi) provide or undertake, as the case requires, such other capital works, services or things which, in the reasonable opinion of the Lessor, are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 5.2(a)(i) to (v) above.
- (b) The Lessor will use its best endeavours to complete the Capital Works in respect of each New Citrus Orchard for each Citrus Project in full by the end of the financial year in which the Citrus Project is created or established or such later date as may be agreed between the Lessor and the Lessee. The Lessor will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Lessee arising from any delay in so doing caused for any reason other than the negligence of the Lessor, its officers, employees or agents.
- (c) The Lessor and the Lessee agree that if:
- (i) the Lessor notifies the Lessee within 30 days of receiving such request or requests that it will not be able to raise or otherwise secure necessary funds on terms satisfactory to it to enable it to undertake the development of a New Citrus Orchard; or
 - (ii) it cannot otherwise reasonably undertake the development of the New Citrus Orchard by a date reasonably nominated by the Lessee having regard to the obligations of the Lessee or TSL under a Citrus Project,

the Lessee may, at its cost, undertake or procure the development of the New Citrus Orchard.

5.3 Acknowledgments and option to purchase

- (a) The Lessee acknowledges that the Capital Works and Citrus Trees on, and the Required Water Licences attaching to 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.
- (b) The parties acknowledge and agree as follows:
 - (i) the Capital Works and the Citrus Trees on, and the Required Water Licences to be attributed to, a New Citrus Orchard will at all times remain the property of the party which undertakes the development of the New Citrus Orchard, subject to any rules and regulations made by any Authority;
 - (ii) for the avoidance of doubt, it is declared that if the Lessee undertakes the development of a New Citrus Orchard in accordance with paragraph 5.2(c), the Capital Works and Citrus Trees on the New Citrus Orchard will be tenant fixtures owned by the Lessee, and the Required Water Licences purchased and attributed to a New Citrus Orchard will be the property of the Lessee; and
 - (iii) if the Lessee undertakes the development of a New Citrus Orchard in accordance with paragraph 5.2(c) the following provisions apply:
 - (A) the Lessor grants to the Lessee an option to purchase the land or lands on which each New Citrus Orchard is located on the following terms:

- Price: the market value of the land or lands as determined under sub-paragraph (D);
 - Payment terms: 10% payable to the Lessor on the exercise of the option with the balance of the price payable 3 months after the date of the contract of sale;
 - all other terms and conditions as are consistent with good conveyancing practice in South Australia;
- (B) the option to purchase must be exercised within 3 months of the date of expiration of this Lease;
- (C) the option may be exercised by delivery of written notice of exercise to the Lessor;
- (D) for the purpose of sub-paragraph (A), the market value of the land or lands will be the value agreed between the parties or, failing agreement, that determined by a valuer appointed by the President or other senior officer of the Australian Property Institute Incorporated or its successor. The valuer must:
- (1) be experienced in the assessment of rural properties in South Australia;
 - (2) be a member or members of the Australian Property Institute Incorporated or its successor;
 - (3) call for and consider submissions from the Lessor and the Lessee;
 - (4) consider all factors relevant to that determination;
 - (5) act as an expert and not as an arbitrator;
 - (6) promptly deliver the determination to the Lessor and the Lessee;
- (E) the Lessor must jointly pay the fee of the valuer; and
- (F) if a valuer has not been appointed within 21 days of the request to the President of the Australian Property Institute Incorporated or its successor, the Lessee may appoint an arbitrator to determine the market value and the arbitration is to be conducted in accordance with the Commercial Arbitration Act 1984.
- (c) if at any time the Lessor wishes to offer to sell a New Citrus Orchard, the Lessor must notify the Lessee of the sale proposal and the sale price and the Lessee may within 30 days of receipt of the notice notify the Lessor that it is willing to purchase the relevant New Citrus Orchard at a price nominated in the proposal. If the Lessee does not respond to the proposal or exercise its rights to purchase the relevant New Citrus Orchard within the 30 day response time or the parties cannot enter into and complete a sale agreement in respect of the New Citrus Orchard within 60 days following the response time, the Lessor will be entitled to seek offers regarding the sale of the New Citrus Orchard and negotiate, enter into and complete a sale agreement with a third party at a price no less than the price specified in the proposal.
- (d) for the purpose of paragraphs (b) and (c) the parties agree to negotiate in good faith the subdivision of any land and the grant or creation of easements

and other rights reasonably necessary to enable the Lessee to purchase the New Citrus Orchard and operate it after completion of the sale;

- (e) 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 5.3(e) will not apply in the case of wilful default, dishonesty or fraud or breach of this Deed.

5.4 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).

5.5 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 and the Citrus Land, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice including the following, 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;
- (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 Chiquita Land, 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;
- (j) **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 and the Citrus Land, in accordance with the constitution and other Project documents for the relevant Project.

5.6 Lessee's Obligations upon Termination

- (a) At the end of this Lease, subject to the Growers' rights to continue to occupy the Chiquita Land in accordance with paragraph 12.2(b) and clause 13.5, the Lessee must return the Citrus Land 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 5.5, 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 must be removed from the relevant Citruslots within 30 days after the end of this Deed, subject to the Growers' rights to continue to occupy the Citrus Land in accordance with paragraph 12.2(b) and clause 13.5. 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 4.6(b).

6. WATER LICENCES

6.1 Required Water Licences

The required water per hectare:

Year	Required Water Licences, being a maximum licence entitlement of:
<u>Existing Citrus Development</u>	
15 August 2004	2,388 megalitres
15 August 2005	2,678 megalitres
15 August 2006	2,895 megalitres
15 August 2007	3,040 megalitres
15 August 2008	3,145 megalitres
15 August 2009 and thereafter	3,187 megalitres
<u>Existing Wine Grape Development</u>	
15 August 2004 and thereafter	3,010 megalitres
New Citrus Orchard (if any) developed by the Lessor	such number of megalitres to be agreed by the parties from time to time
New Vineyard (if any) developed by the Lessor	such number of megalitres to be agreed by the parties from time to time

6.2 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 Vinelots 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.

6.3 Acknowledgments

The Lessee acknowledges that:

- (a) the Lessor may purchase water licences, in addition to the Required Water Licences, and provide water under those additional water licences to the Lessee; and
- (b) such additional water licences will at all times remain the property of the Lessor.

7. RENT PAYMENTS

7.1 Rent

- (a) Subject to paragraphs 7.1(b), 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:

Quarter:	Rent for Quarter:
For the December 2003 Quarter, March 2004 Quarter and June 2004 Quarter	<p>the aggregate of:</p> <ul style="list-style-type: none"> (i) Existing Wine Grape Development: the amount which is 11% of the Existing Wine Grape Development CIP; plus (ii) Existing Citrus Development: the amount which is 11% of the Existing Citrus Development CIP; plus (ii) Undeveloped Chiquita Land: the amount which is 11% of the Undeveloped Chiquita Land CIP, <p>multiplied by the number of days in the relevant Quarter divided by 365;</p>
For the September 2004 Quarter, December 2004 Quarter and	<p>the aggregate of:</p> <ul style="list-style-type: none"> (i) Existing Wine Grape Development: the amount which is 11% of the Existing Wine Grape Development CIP; plus

Quarter and March 2005 Quarter	<p>(ii) <u>Existing Wine Grape Development Stage 1 Water Budget:</u> the amount which is 11% of the Existing Wine Grape Development Water Budget; plus</p> <p>(iii) <u>Existing Citrus Development:</u> the amount which is 11% of the Existing Citrus Development CIP; plus</p> <p>(iv) <u>Existing Citrus Development Water Budget:</u> the amount which is 11% of the Existing Citrus Development Water Budget; plus</p> <p>(v) <u>Vacant Land:</u> the amount which is 11% of the Vacant Land CIP, plus</p> <p>(vi) <u>Existing Wine Grape Development Excess Water Cost:</u> the amount which is 11% of the Existing Wine Grape Development Excess Water Cost, if any, as at the last day of the immediately preceding Quarter; plus</p> <p>(vii) <u>Existing Citrus Development Excess Water Cost:</u> the amount which is 11% of the Existing Citrus Development Excess Water Cost, if any, as at the last day of the immediately preceding Quarter,</p> <p>multiplied by the number of days in the relevant Quarter divided by 365;</p>
For the June 2005 Quarter and each Quarter thereafter	<p>the aggregate of:</p> <p>(i) <u>Existing Wine Grape Development:</u> the amount which is 11% of the Existing Wine Grape Development CIP; plus</p> <p>(ii) <u>Existing Wine Grape Development Water Budget:</u> the amount which is 11% of the Existing Wine Grape Development Water Budget; plus</p> <p>(iii) <u>Existing Citrus Development:</u> the amount which is 11% of the Existing Citrus Development CIP; plus</p> <p>(iv) <u>Existing Citrus Development Stage 2 Water Budget:</u> the amount which is 11% of the Existing Citrus Development Water Budget; plus</p> <p>(v) <u>Vacant Land:</u> the amount which is 11% of the Vacant Land CIP, plus</p> <p>(vi) <u>Existing Wine Grape Development Excess Water Cost:</u> the amount which is 11% of the Existing Wine Grape Development Excess Water Cost, if any, as at the last day of the immediately preceding Quarter; plus</p> <p>(vii) <u>Existing Citrus Development Excess Water Cost:</u> the amount which is 11% of the Existing Citrus Development Excess Water Cost, if any,</p>

	as at the last day of the immediately preceding Quarter, multiplied by the number of days in the relevant Quarter divided by 365;
--	--

- (b) The Rent for the December 2003 Quarter is payable on the Commencement Date.
- (c) The Rent payable under this Deed is subject to any adjustments under clauses 7.2, 7.4 and 7.5.

7.2 Adjustments to Rent for Indexation

The amounts used in clause 7.1 to calculate the Rent payable by Lessee must be adjusted as follows:

- (a) the Existing Wine Grape Development CIP must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date with any adjustments to the Existing Wine Grape Development CIP under clause 7.4 also being adjusted under this paragraph 7.2(a);
- (b) the Existing Wine Grape Development Stage 1 Water Budget must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date;
- (c) the Existing Wine Grape Development Stage 2 Water Budget must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date;
- (d) the Existing Citrus Development CIP must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date with any adjustments to the Existing Citrus Development CIP under clause 7.4 also being adjusted under this paragraph 7.2(d);
- (e) the Existing Citrus Development Water Budget must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date;
- (f) the Existing Wine Grape Development Excess Water Cost must be Indexed as at 31 December of each year, beginning on 31 December 2004,
 - (i) by calculating the Existing Wine Grape Development Excess Water Cost expended in each Half Year; and
 - (ii) using the last day of each relevant Half Year as the Base Date in the respect of the Existing Wine Grape Development Excess Water Cost expended in that Half Year;
- (g) the Existing Citrus Development Excess Water Cost must be Indexed as at 31 December of each year, beginning on 31 December 2004,
 - (i) by calculating the Existing Citrus Development Excess Water Cost expended in each Half Year; and
 - (ii) using the last day of each relevant Half Year as the Base Date in the respect of the Existing Citrus Development Excess Water Cost expended in that Half Year;
- (h) the Vacant Land CIP must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date with any adjustments to the Existing Wine Grape Development CIP

under clause 7.4 also being adjusted under this paragraph 7.2(h).

7.3 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 7.3 must be borne equally between the Lessor and the Lessee.

7.4 Cost Inclusive Price

- (a) Subject to paragraph 7.4(c), the Cost Inclusive Price of purchasing:
 - (i) the Existing Wine Grape Development is estimated as at the Commencement Date to be \$19,352,992;
 - (ii) the Existing Citrus Development is estimated as at the Commencement Date to be \$12,200,558;
 - (iii) the Vacant Land is estimated as at the Commencement Date to be \$2,505,625.
- (b) The Cost Inclusive Price of purchasing the Existing Citrus Development, the Existing Wine Grape Development and the Vacant Land, as the case requires, and the Rent is to be re-calculated once the actual cost included in the Cost Inclusive Price of the Existing Citrus Development, the Existing Wine Grape Development or the Vacant Land, as the case requires is ascertained.
- (c) Upon the Cost Inclusive Price of purchasing the Existing Citrus Development, the Existing Wine Grape Development or the Vacant Land, as the case requires, being re-calculated to reflect the correct Cost Inclusive Price, the Rent payable under this clause 7 will be adjusted, including any adjustment required under clause 7.2, to reflect the new Cost Inclusive Price for the Existing Citrus Development, the Existing Wine Grape Development or the Vacant Land, as the case requires. 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 7.2, to the Lessor on the next date for payment of the Rent.
- (d) The Rent may be adjusted under this clause 7.4 on more than one occasion.

7.5 Rent reduction due to deferred payment

During the period between the Commencement Date and payment of the balance of the purchase price under the contract of sale in respect of the Vacant Land and part of the Wine Grape Land which is deferred until after the Commencement Date, the Rent payable under this clause 7, will be reduced in accordance with the following formula:

$$A = B - [C * D * E]$$

where: A is the Rent for the Quarters during the period between the

Commencement Date and payment under of the balance of the purchase price under the contract of sale in respect of the Vacant Land and part of the Wine Grape Land which is deferred until after the Commencement Date;

- B is the amount of the Rent for the Quarter, as adjusted under clauses 7.2 and 7.4;
- C is the unpaid purchase price under the contract of sale in respect of the Vacant Land and part of the Wine Grape Land which is deferred until after the Commencement Date;
- D the rate per annum agreed to by the parties, and in the absence of agreement the 30 Day Bank Bill Swap Reference Rate less 1%;
- E the number of days in the relevant Quarter divided by 365.

7.6 Definitions

In this clause 7, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

Cost Inclusive Price:	the total cost inclusive price (excluding GST) paid by the Lessor in purchasing: <ul style="list-style-type: none"> (a) that part of the Chiquita Land on which the Existing Wine Grape Development is situated, including all stamp duty, registration and legal costs; (b) that part of the Chiquita Land on which the Existing Citrus Development is situated, including all stamp duty, registration and legal costs; (c) that part of the Chiquita Land on which the Vacant Land is situated, including all stamp duty, registration and legal costs;
Existing Citrus Development:	all of the Chiquita Land on which the Existing Citrus Orchards are situated and adjacent land, being the land described as the Citrus Land, including the Required Water Licences attributed to such Chiquita Land that have been purchased with the Chiquita Land;
Existing Citrus Development CIP:	the Cost Inclusive Price of acquiring the Existing Citrus Development, excluding the cost of any Required Water Licences purchased after acquisition of the Existing Citrus Development and attributed to the Existing Citrus Development;
Existing Citrus Development Excess Water Cost:	the cost (excluding GST) of purchasing the Required Water Licences to be attributed to the Existing Citrus Development after its acquisition, in excess of the Existing Citrus Development Water Budget;
Existing Citrus Development Water Budget:	\$3,006,363, which has been budgeted as the cost (excluding GST) of acquiring the Required Water Licences to be attributed to the Existing Citrus Development after its acquisition during that period;
Existing Wine Grape Development:	all of the Chiquita Land on which the Existing Vineyard is situated and adjacent land, being the land described as the Wine Grape Land, including the Required Water Licences attributed to such Chiquita Land that have been purchased with the Chiquita Land;

Existing Wine Grape Development CIP:	the Cost Inclusive Price of acquiring the Existing Wine Grape Development, excluding the cost of any Required Water Licences purchased after acquisition of the Existing Wine Grape Development and attributed to the Existing Wine Grape Development;
Existing Wine Grape Development Excess Water Cost:	for the period: (a) from the Commencement Date until 31 March 2005, the cost (excluding GST) of purchasing the Required Water Licences to be attributed to the Existing Wine Grape Development after its acquisition, in excess of the Existing Wine Grape Development Stage 1 Water Budget; (b) on and from 1 April 2005, the cost (excluding GST) of purchasing the Required Water Licences to be attributed to the Existing Wine Grape Development after its acquisition, in excess of the Existing Wine Grape Development Stage 2 Water Budget;
Existing Wine Grape Development Stage 1 Water Budget:	for the period from the Commencement Date until 31 March 2005, \$320,820, which has been budgeted as the cost (excluding GST) of acquiring the Required Water Licences to be attributed to the Existing Wine Grape Development after its acquisition during that period;
Existing Wine Grape Development Stage 2 Water Budget:	on and from 1 April 2005, \$641,640, which has been budgeted as the cost (excluding GST) of acquiring the Required Water Licences to be attributed to the Existing Wine Grape Development after its acquisition, including the Existing Wine Grape Development Stage 1 Water Budget;
Half Year:	the 6 month period ending on the last day of June or December with the exception of: (a) the first Half Year which commences on the Commencement Date and ends on the day before the first day of the next Half Year; and (b) the last Half Year which commences on the day after the last day of the last preceding Half Year and ends on the day of termination of this Deed;
180 Day Bank Bill Swap Reference Rate:	(a) the most recent Bank Bill Swap Reference Rate for a period of 180 days published in the Australian Financial Review on the last Business Day of the immediately preceding calendar year; or (b) if the rate described in paragraph (a) of this definition is no longer published, any other similar rate published on a regular basis that is agreed by the Lessor and the Lessee having regard to comparable indices then available, and in absence of agreement as determined by an expert in accordance with clause 24;
Vacant Land CIP:	the Cost Inclusive Price of acquiring the Vacant Land.

7.7 Purpose of this clause 7

In calculating the Rent under this clause 7 and in interpreting the provisions of this clause 7, the parties must have regard to the objective underlying this clause 7, being that the Lessor is to receive an 11% return on:

- (a) the Existing Wine Grape Development CIP in relation to the Existing Wine Grape Development;
- (b) the Existing Wine Grape Development Stage 1 Water Budget in relation to the Required Water Licences to be attributed to the Existing Wine Grape Development during the period from the Commencement Date until 31 March 2005;
- (c) the Existing Wine Grape Development Stage 2 Water Budget in relation to the Required Water Licences to be attributed to the Existing Wine Grape Development on and from 1 April 2005;
- (d) the Existing Citrus Development CIP in relation to the Existing Citrus Development;
- (e) the Existing Citrus Development Water Budget in relation to the Required Water Licences to be attributed to the Existing Citrus Development;
- (f) the Existing Wine Grape Development Excess Water Cost in relation to the Required Water Licences to be attributed to the Existing Wine Grape Development;
- (g) the Existing Citrus Development Excess Water Cost in relation to the Required Water Licences to be attributed to the Existing Citrus Development;
- (h) the Vacant Land CIP in relation to the Vacant Land,

as adjusted for CPI and reduced by the interest that the Lessor will earn on the unpaid purchase price under the contract of sale in respect of the Vacant Land from time to time.

8. LESSOR'S OBLIGATIONS AND RIGHTS

8.1 Obligations

The Lessor must:

- (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 Citrus Orchards, Vineyards, Citruslots and Vinelots;
- (b) subject to the terms of this Deed, allow the Lessee to peaceably and quietly hold and enjoy the Chiquita Land 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, Vineyards, Citruslots and Vinelots;
- (d) not create any Encumbrances over the whole or any part of the Chiquita Land, Citrus Orchards, Vineyards, the Citruslots or Vinelots ranking in priority to the interests of the Lessee, TSL or the Growers who may sub-lease, licence or otherwise occupy the Chiquita Land, Citrus Orchards, Vineyards or the Citruslots or Vinelots 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.

8.2 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 Chiquita Land 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 Chiquita Land;
- (b) is entitled to full and free access with or without vehicles to the Chiquita Land 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 Chiquita Land detailing such matters as the Lessor reasonably considers appropriate.

9. RATES, TAXES AND CHARGES

- (a) The Lessee must pay when due all taxes, charges and assessments levied upon the Chiquita Land 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.
- (b) The Lessor must promptly deliver to the Lessee all rates and notices received by the Lessor in respect of the Chiquita Land.

10. INSURANCE

10.1 Lessee must maintain insurance

The Lessee must:

- (a) in connection with the Chiquita Land, 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 Vines, 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 10.1(a); and
- (c) notify the Lessor immediately if an insurance policy required by this clause 10.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the Chiquita Land.

10.2 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.

10.3 Insurance proceeds

- (a) Insurance proceeds (even if of a policy in the Lessee's name only in breach of paragraph 10.1(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.

10.4 Parties not to affect rights under insurance

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Chiquita Land, Citrus Orchards, Vineyards, including the Capital Works, the Citruslots, the Citrus Trees, the Vinelots or the Vines or result in the premiums for such insurances being increased.

10.5 Damage to, or destruction of, of the Citruslots, Vinelots or Capital Works

- (a) Upon damage to, or destruction of, part or all of the Citruslots, Vinelots 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, Vinelots 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, Vinelots or Capital Works, as agreed under paragraph 10.5(a)(i).
- (b) In the event that the Lessor and the Lessee are unable to agree under paragraph 10.5(a) within 30 days, the matter is to be determined under clause 24.
- (c) The Lessee may in its absolute discretion use its own funds to replace and

reinstate Citruslots, Vinelots 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 10.3 to assist the Lessee in replacing and reinstating the relevant Citruslots, Vinelots or Capital Works;
- (ii) agrees and acknowledges that the Lessee may undertake the reinstatement and replacement of the relevant Citruslots, Vinelots or Capital Works provided such works are done in accordance with Best Horticultural Practice.

11. USE OF CHIQUITA LAND

11.1 Permitted use

- (a) The Lessee must only use the Chiquita Land in accordance with this Deed and Best Horticultural Practice, including:
 - (i) harvesting and processing the Citrus Crop and Wine Grapes;
 - (ii) removing and selling or otherwise dealing in the Citrus Crop and Wine Grapes and retaining all income from such sale or dealing.
- (b) Subject to paragraph 11.1(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;
 - (iii) the Lessee and TSL may grant sub-leases, licences or other occupancy rights to any other person over the Chiquita Land in their absolute discretion; and
 - (iv) the Lessee may grant a licence over some or all of the Chiquita Land to Chiquita, on substantially the same terms and conditions of the Chiquita Licence Agreement attached as Schedule 2, subject to any necessary modifications,

provided that any such agreements do not grant any greater rights than those which are granted to the Lessee under this Deed.
- (c) The Lessee may only use the Chiquita Land 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.

11.2 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 relevant Citruslots and Vinelots and the Chiquita Land;
- (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 relevant Citruslots and Vinelots 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 relevant Citruslots and Vinelots, and the Chiquita Land, from time to time with or without equipment for the purposes of observing the state of repair of the relevant Citruslots and Vinelots; and
- (g) permit the Lessor and its employees, agents and contractors to enter upon the relevant Citruslots and Vinelots, and the Chiquita Land, from time to time with or without equipment for the purpose of performing its obligations under this Deed.

11.3 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 an occurrence at the Chiquita Land, other than that attributable to act or omission of the Lessor and its officers, directors, employees or agents, or the use by the Lessee or the Lessee's invitees, employees and agents of the Chiquita Land 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.

11.4 Structural work

- (a) The Lessee need not carry out structural work to the Chiquita Land 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 11.4(a), must be undertaken in accordance with Best Horticultural Practice.
- (c) Subject to paragraph 11.4(d), the Lessee may in its reasonable discretion, and at its cost and expense, carry out structural work to the Chiquita Land provided that the Lessee obtains the prior written consent of the Lessor which consent must not be unreasonably withheld or delayed.
- (d) The Lessor's consent under paragraph 11.4(c) is not required if the structural work is being carried out by the Lessee in accordance with clause 10.5.

12. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

12.1 Assignment by Lessee

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

12.2 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;
 - (iii) the Lessee and TSL granting sub-leases, licences or other occupancy rights to any other person over the Chiquita Land in their absolute discretion; and
 - (iv) the Lessee granting a licence over some or all of the Chiquita Land to Chiquita, on substantially the same terms and conditions of the Chiquita Licence Agreement attached as Schedule 2, subject to any necessary modifications,

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 Chiquita Land granted under the Occupancy Agreements.
- (c) The Lessor agrees and acknowledges that:
 - (i) paragraph 12.2(b) is for the benefit of all the Growers in Projects that are to be established;
 - (ii) the relevant Growers, or the responsible entity or manager of a Project on behalf of the relevant Growers, may take action to enforce paragraph 12.2(b) independently of any other party taking action to enforce it.

12.3 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 Chiquita Land.
- (c) In any other case, the consent must not be unreasonably withheld by the Lessor.

12.4 Assignment or mortgage by Lessor

- (a) The Lessor must not dispose of or Encumber any interest in the Lessor's rights under this Deed except where:
 - (i) 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 Responsible Entity, 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 8.1(d); or
 - (ii) the Lessor is being replaced as the Responsible Entity of the Orchard Trust.
- (b) The Lessee agrees and acknowledges that the Lessor will be entitled to grant the Chiquita Mortgage on or about the Commencement Date without giving

any notice to the Lessee under paragraph 12.4(a).

12.5 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.

13. DEFAULT AND RE-ENTRY

13.1 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 13.1(a) must specify the breach and request the breach to be remedied.

13.2 Re-entry by Lessor

The Lessor has the right to re-enter and take possession of the Chiquita Land if an act of default in clause 13.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within the period of notice specified in clause 13.1.

13.3 Re-entry does not prejudice Lessor's rights

Should the Lessor exercise its rights under clause 13.2, it will do so without prejudice to any action or other remedy, which the Lessor has for arrears of rent or breach of

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

13.4 Lessor discharged from obligations

Where the Lessor exercises its rights under clause 13.2, 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.

13.5 Lessor's rights subject to Growers' rights

The Lessor's rights under this clause 13 are subject to the rights granted by:

- (d) the Lessee or TSL to the Growers under the Occupancy Agreements in accordance with this Deed; and
- (e) the Lessor to the Growers under paragraph 12.2(b).

14. TERMINATION

14.1 Termination of Deed by the Lessor

Without prejudice to the Lessor's rights under clause 13, the Lessor may terminate this Deed in respect of all or part of the Chiquita Land, with immediate effect, if an act of default in clause 13.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within the period of notice specified in clause 13.1.

14.2 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;
 - (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 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 Existing Vineyard, New Vineyard, Existing Citrus Orchard, New Citrus Orchard, Vinelots 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 Existing Vineyard, New Vineyard, Existing Citrus Orchard, New Citrus Orchard, Vinelots or the Citruslots, the Lessor and the Lessee must:
 - (i) negotiate in good faith to determine how to best replace and reinstate the relevant Existing Vineyard, New Vineyard, Existing Citrus Orchard, New Citrus Orchard, Vinelots or Citruslots;
 - (ii) the Lessor and Lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Existing Vineyard, New Vineyard, Existing Citrus Orchard, New Citrus Orchard, Vinelots or the Citruslots, as agreed under paragraph 14.2(c)(i).

14.3 Effect of Termination

- (a) Termination of the whole of this Deed under clauses 14.1 or 14.2, 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.

14.4 Attorneys

Upon termination of the whole or part of this Deed under clauses 14.1 or 14.2, 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 14 of the whole or part of this Deed, as the case requires.

14.5 Limited right of termination

- (a) Except as expressly provided in this clause 14, a party may not terminate or rescind this Deed and the Lessor will not be entitled to re-enter the Chiquita Land or forfeit this Deed at any time prior to the expiration of the Term.
- (b) Without limiting the generality of paragraph 14.5(a), damage to, or destruction of, part or all of the Vinelots and the Citruslots, by fire or any other cause whatsoever, will not entitle the Lessee to terminate this Deed.

15. 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.

16. NOTICES

16.1 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.

16.2 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.

17. 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.

18. 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.

19. 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.

20. GST

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

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 20(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 20 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 20(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.

21. 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.

22. 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.
- (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 22.

-
- (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 22(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 22(d).
-

23. FURTHER ASSURANCES

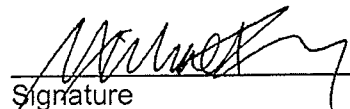
Each party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other party to give effect to this Deed.

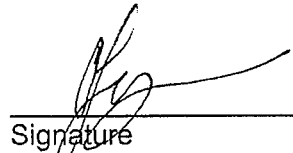
24. DISPUTES

- (a) If a 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 24(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 Law Institute of Victoria at a place in Melbourne 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.
-

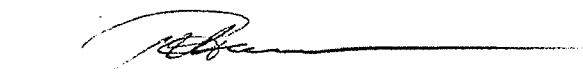
Executed as a Deed:

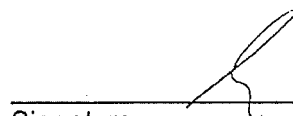
EXECUTED by ORCHARD)
 INVESTMENTS MANAGEMENT)
 LIMITED in accordance with)
 section 127 of the Corporations)
 Act:


 Signature
 MICHAEL EMERY
 Full Name
 Director
 Position Held

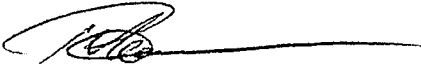

 Signature
 Richard O'Sullivan
 Full Name
 Director
 Position Held

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


 Signature
 Robert J Hance
 Full Name
 Director
 Position Held


 Signature
 Mark H Pryn
 Full Name
 Secretary
 Position Held


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



 Signature
 Robert J Hance

 Full Name
 Director

 Position Held



 Signature
 Mark H Pryn

 Full Name
 Secretary

 Position Held

SCHEDULE 1

DESCRIPTION OF THE LAND

(Clause 1.1)

1. The "Chiquita Land" comprises the following pieces of land, subject to paragraph 2:

Property Name	Particulars	Area (Ha)
Citrus Land		
Citrus (100% of the property)	Allotment 51/ DP 19611 on CT 5097/564	52.90
Citrus (100% of the property)	Allotment 52/ DP 19611 on CT 5097/565	50.87
Citrus ([55]% of the property)	Allotment 53/ DP 19611 on CT 5097/566	92.31
Citrus ([50]% of the property)	Allotment 54/ DP 19611 on CT 5097/567	113.6
Citrus (20% of the property)	Allotment 55/ DP 19611 on CT 5131/62	479.8
Citrus (70% of the property)	Allotment 282/ FP 177488 on CT 5509/65	20.23
Citrus (80% of the property)	Allotment 283/ FP 177489 on CT 5509/66	40.47
Wine Grape Land		
Wine Grape (3% of the property)	Allotment 9/ FP 106444 on CT 5171/743	598.14
Wine Grape ([45]% of the property)	Allotment 53/ DP 19611 on CT 5097/566	92.31
Wine Grape ([35]% of the property)	Allotment 54/ DP 19611 on CT 5097/567	113.6
Wine Grape (70% of the property)	Allotment 55/ DP 19611 on CT 5131/62	479.8
Wine Grape (20% of the property)	Allotment 282/ FP 177488 on CT 5509/65	20.23
Wine Grape (10% of the property)	Allotment 283/ FP 177489 on CT 5509/66	40.47
Vacant Land		
Undeveloped Land (97% of the property)	Allotment 9/ FP 106444 on CT 5171/743	598.14

SCHEDULE 2

CHIQUITA LICENCE AGREEMENT

(Clause 1.1)

45 of 72

Licence Agreement
The Chiquita Citrus & Wine Grape
Land

Timbercorp Limited

Chiquita Brands South Pacific Limited

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000
Telephone: 9600 3525
Facsimile: 9600 3527

Table of Contents

DETAILS OF THIS LICENCE AGREEMENT	1
1. DEFINITIONS AND INTERPRETATION	2
1.1 DEFINITIONS	2
1.2 INTERPRETATION	6
1.2 HEADINGS	7
2. GRANT AND TERM OF LICENCE	7
2.1 GRANT AND TERM OF LICENCE	7
2.2 REPRESENTATIONS	7
2.3 ACKNOWLEDGMENTS BY THE LICENSEE	7
3. CONDITIONS PRECEDENT	8
3.1 CONDITIONS PRECEDENT	8
3.2 REASONABLE ENDEAVOURS	8
4. THE VINEYARD	8
4.1 ACKNOWLEDGMENTS BY THE LICENSEE	8
4.2 LICENSEE'S OBLIGATIONS UPON TERMINATION	8
4.3 CULTIVATION AND MAINTENANCE OBLIGATIONS IN RELATION TO THE VINEYARD	9
5. THE CITRUS ORCHARD	9
5.1 ACKNOWLEDGMENTS BY THE LICENSEE	9
5.2 LICENSEE'S OBLIGATIONS UPON TERMINATION	9
5.3 CULTIVATION AND MAINTENANCE OBLIGATIONS IN RELATION TO THE CITRUS ORCHARD	10
6. WATER LICENCES	10
6.1 USE OF WATER LICENCES	10
6.2 ACKNOWLEDGMENTS	11
6.3 INCREASING AND REDUCING THE SPECIFIED WATER LICENCES	11
6.4 CONTRACT OF SALE	11
7. LICENCE FEE PAYMENTS	11
7.1 LICENCE FEE	11
7.2 ADJUSTMENTS TO LICENCE FEES FOR INDEXATION	12
7.3 DISCONTINUANCE OR SUSPENSION OF CPI	12
7.4 LICENCE FEE REDUCTION UPON ENTRY INTO A PROJECT SUB-LEASE AGREEMENT	13
8. LICENSOR'S OBLIGATIONS AND RIGHTS	13
8.1 OBLIGATIONS	13
8.2 RIGHTS	14
9. RATES, TAXES AND CHARGES	14
10. USE OF LICENSED LAND	15
10.1 PERMITTED USE	15
10.2 OWNERSHIP AND SALE OF PRODUCE	15
10.3 LICENSOR'S DUTIES	15
10.4 LICENSEE'S DUTIES	15
10.5 INDEMNITY	16
11. ASSIGNMENTS, SUB-LICENCES AND MORTGAGES	16
11.1 ASSIGNMENT BY LICENSEE	16
11.2 LICENSEE MUST NOT MORTGAGE ITS INTEREST	16
11.3 DELEGATION	16
12. DEFAULT AND RE-ENTRY	16

12.1	DEFAULT BY LICENSEE	16
12.2	TAKING EXCLUSIVE POSSESSION	17
12.3	RE-ENTRY DOES NOT PREJUDICE LICENSOR'S RIGHTS	17
12.4	LICENSOR DISCHARGED FROM OBLIGATIONS	17
13.	TERMINATION	17
13.1	TERMINATION OF AGREEMENT BY THE LICENSOR	17
13.2	TERMINATION OF LICENCE AGREEMENT BY THE LICENSEE	18
13.3	REDUCTION UPON ENTRY INTO A PROJECT SUB-LEASE AGREEMENT	18
13.4	EFFECT OF TERMINATION	18
13.5	ATTORNEYS	18
13.6	LIMITED RIGHT OF TERMINATION	19
13.7	ADJUSTMENT UPON TERMINATION	19
14.	LICENSEE'S RISK	19
15.	NOTICES	19
15.1	FORM OF NOTICE	19
15.2	RECEIPT OF NOTICE	20
16.	PROPER LAW	20
17.	SEVERANCE	20
18.	ENTIRE AGREEMENT	20
19.	GST	20
20.	STATUTORY PROVISIONS	21
21.	INSURANCE	21
22.	FURTHER ASSURANCES	21
23.	DISPUTES	21
24.	INDEMNITIES	22
	SCHEDULE 1	1

Details of this Licence Agreement

Date of this Licence Agreement:

This Agreement is made on 16 October 2003

Parties to this Licence Agreement:

1. **Timbercorp Limited**
ABN 87 055 185 067
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

(Licensor)

2. **Chiquita Brands South Pacific Limited**
ACN 002 687 961
Level 2, 768 Lorimer Street
PORT MELBOURNE VIC 3207

(Licensee)

Background

- A. The Licensee, or its related body corporate, was previously the registered proprietor of the Chiquita Land, and conducted fruit and vine production and harvesting on the Chiquita Land.
- B. The Owner has acquired the Chiquita Land from the related body corporate of the Licensee, and will lease the Chiquita Land to the Licensor under a Lease Agreement between the Owner and Licensor.
- C. The Licensee is granted an exclusive licence under this Agreement to occupy and harvest the Citrus Crop from the Citrus Land for one year from the Commencement Date of this Agreement, or until the relevant Citrus Land becomes subject to a Project Sub-lease Agreement relating to a Project if that occurs before the one year period has expired.
- D. The Licensee is granted an exclusive licence under this Agreement to occupy and harvest the Wine Grapes from the Wine Grape Land for three years from the Commencement Date of this Agreement, or until the relevant Wine Grape Land becomes subject to a Project Sub-lease Agreement relating to a Project if that occurs before the three year period has expired.
- E. The Licensee's rights to occupy the Citrus Land and Wine Grape Land include the right to deal with any Citrus Crop or Wine Grapes, as the case may be, grown on the Chiquita Land during the Term of the Licence, and until termination of this Licence, any

Citrus Crop or Wine Grapes, as the case may be, grown will be the property of the Licensee.

- F. TSL, in its capacity as responsible entity of the Projects, will sub-lease part of the Chiquita Land from the Licensor from time to time to use in the Projects pursuant to the Project Sub-lease Agreements.
- G. The Citrus Land or Wine Grape Land that becomes the subject of a Project Sub-lease Agreement for a Project, between the Licensor and TSL, as responsible entity of the Project, ceases to be subject to this Agreement, on and from the commencement of the Project Sub-lease Agreement relating to that Project.
- H. Upon commencement of a Project, the Licensee will be engaged by the Licensor to provide on-going management and capital development services under a Management Agreement and Capital Works Agreement.
- I. Until Citrus Land or Wine Grape Land ceases to be subject to this Agreement, the Licensee will pay a licence fee in respect of that Citrus Land or Wine Grape Land in accordance with this Agreement.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Administrator:	has the same meaning as in the Corporations Act;
Best Horticultural Practice:	sound horticultural and environmental practices and industry practices for similar vineyards or citrus orchards, as the case requires;
Business Day:	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;
Capital Works:	<p>(a) the infrastructure and capital works that have been carried out on the Citrus Land or Wine Grape Land, as the case requires, before the Commencement Date, including any new Irrigation Infrastructure;</p> <p>(b) the infrastructure and capital works carried out on the Licensed Land after the Commencement Date, including any new Irrigation Infrastructure;</p>
Chiquita Land:	any one or more of the Citrus Land, the Wine Grape Land or Vacant Land, as the case requires;
Citrus Crop:	All citrus fruits produced on the Citrus Trees or orchard lots, whether harvested or unharvested;
Citrus Land:	the whole of the land described in Schedule 1 of this Agreement as the citrus land on which citrus trees are planted or to be

	planted, and the Capital Works, Water Licences and other improvements attributable to such citrus land for the purposes of this Agreement;
Citrus Orchard:	the citrus orchards established or to be established on the Citrus Land;
Citrus Projects:	the citrus managed investment schemes to be conducted by the Licenser on the Citrus Land, whether registered or unregistered;
Citrus Trees:	the citrus trees growing or to be grown on the Citrus Land;
Commencement Date:	<p>(a) the date the Licenser is entitled to possession of the Citrus Land or Wine Grape Land under the Lease Agreement, being the date on which the Owner is entitled to become registered as the proprietor of the Chiquita Land; or</p> <p>(b) such other date as agreed between the Licenser and the Licensee;</p>
Constitution:	the constitution of a Project;
Contract of Sale:	the Contract of Sale (including schedules) for the Chiquita Land as originally executed by the Owner and Kangara Foods on or about the date of this Agreement and as it may from time to time be amended in accordance with its terms and conditions;
Controller:	has the same meaning as in the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
CPI:	<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 7.3;</p>
Encumbrance:	<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>
Financial Year:	<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 this Agreement;</p>

Government Body:	<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>
Grower:	a "Participant Grower" as defined in the relevant Constitution;
GST:	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Law:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Indexed:	<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 (the Adjustment Date) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the CPI for the full calendar quarter published immediately before the Adjustment Date;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" 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>
Irrigation Infrastructure:	water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on the Licensed Land;
Kangara Foods:	Kangara Foods Pty Limited (ACN 093 583 049);
Lease Agreement:	the lease agreement between the Owner and the Licensor in relation to the Citrus Land, Wine Grape Land and Vacant Land, entered into on or about the date of this Agreement;
Licence Fee:	the amounts specified in clause 7 as varied under this Agreement;

Licensed Land:	any one or more of the Citrus Land and the Wine Grape Land;
Ninety Day Bank Bill Swap Reference Rate:	<p>(a) the most recent Bank Bill Swap Reference Rate for a period of 90 days published in the Australian Financial Review on the last Business Day of the preceding Quarter; or</p> <p>(b) if the rate described in paragraph (a) of this definition is no longer published, any other similar rate published on a regular basis that is agreed by the Licensor and the Licensee having regard to comparable indices then available, and in absence of agreement as determined by an expert in accordance with clause 23;</p>
Owner:	Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN []);
Project Sub-lease Agreement:	the sub-lease agreements between the Licensor and TSL or another Timbercorp Group entity, as responsible entity of the Projects, in relation to the Citrus Land and Wine Grape Land respectively, to be entered into from time to time as the Timbercorp Group establishes the Projects;
Projects:	the Citrus and Wine Grape Projects;
Quarter:	<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 Agreement;</p>
Security Interest:	<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 ordinary course of business whether arising by operation of law or by contract;</p>
Specified Water Licences:	<p>the water licences that are, or will be, owned or acquired by the Licensor and that are attributed to the Licensed Land as required from time to time, that provide for:</p> <p>(a) in respect of the Citrus Land, a maximum licence entitlement of 970 megalitres of water, 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</p>

	<p>purpose for which it may be taken, or prohibiting the taking of water or the purpose of its use;</p> <p>(b) in respect of the Wine Grape Land, a maximum licence entitlement of 2,534 megalitres of water, 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,</p> <p>as adjusted under clause 6.3;</p>
Term:	the term of this Agreement, as described in clause 2.
Timbercorp Group:	Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";
Timbercorp Securities:	Timbercorp Securities Limited (ACN 092 311 469);
Vacant Land	the whole of the land described in Schedule 1 of this Agreement as the vacant land, and the Capital Works, Water Licences and other improvements attributable to such vacant land;;
Vines:	the vines growing or to be grown on the Wine Grape Land;
Vineyard:	the wine grape vineyard established or to be established on the Wine Grape Land;
Wine Grape Land:	the whole of the land described in Schedule 1 of this Agreement as the wine grape land on which Vines are planted or to be planted, and the Capital Works, Water Licences and other improvements attributable to such wine grape land for the purposes of this Agreement;
Wine Grape Projects:	the wine grape managed investment schemes to be conducted by the Mortgagor on the Wine Grape Land, whether registered or unregistered;
Wine Grapes:	all grapes produced on the Chiquita Land whether harvested or unharvested.

1.2 Interpretation

In this Agreement, 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 Agreement;
- (i) if a party comprises two or more persons, this Agreement 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 Headings

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

2. GRANT AND TERM OF LICENCE

2.1 Grant and Term of Licence

The Licenser grants to the Licensee:

- (a) the sole and exclusive licence to use and occupy the Citrus Land and the Capital Works and the Water Licences attributable to such Citrus Land for one year from the Commencement Date of this Agreement, subject to clause 13 (or such earlier or later date as may be determined by the parties in writing);
- (b) the sole and exclusive licence to use and occupy the Wine Grape Land and the Capital Works and the Water Licences attributable to such Wine Grape Land for three years from the Commencement Date of this Agreement, subject to clause 13 (or such earlier or later date as may be determined by the parties in writing),

in accordance with the terms and conditions of this Agreement.

2.2 Representations

- (a) The Licenser represents and warrants that:
 - (i) it is entitled to grant the licence under this Agreement;
 - (ii) any consents which may be required to the granting of the licence under this Agreement have been obtained; and
 - (iii) it will not grant or create any licence or interest in relation to the Licensed Land which is in conflict with the rights of the Licensee under this Agreement.
- (b) The Licensee agrees and acknowledges that the Licenser makes no representation and warranty in relation to the Licensed Land, including as to the state, quality, condition, fitness for purpose or suitability of the Licensed Land.

2.3 Acknowledgments by the Licensee

The Licensee agrees and acknowledges that it is aware of all of the matters in relation to the Licensed Land described in the Contract of Sale and that Kangara Foods is

aware of, and that it takes the licence of the Licensed Land subject to all such matters.

3. CONDITIONS PRECEDENT

3.1 Conditions Precedent

This Agreement is subject to, and conditional on, the Lease Agreement being on foot in accordance with its terms and not void or voidable, as at the Commencement Date.

3.2 Reasonable Endeavours

Each of the Licensor and Licensee must use all reasonable endeavours to ensure that the condition specified in clause 3.1 is satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

4. THE VINEYARD

4.1 Acknowledgments by the Licensee

- (a) The Licensee acknowledges that the Capital Works and Vines on, and the Water Licences attaching to, the Wine Grape Land are, and will at all times remain, the property of the Owner.
- (b) The Licensee agrees and acknowledges that the Licensor and the Owner will not be liable for any loss or damage incurred by the Licensee arising out of or in connection with any act or omission of the Licensor and the Owner or their officers, directors, employees or agents under this Agreement, except where the liability arises out of the misconduct, dishonesty or fraud of the Licensor or the Owner.

4.2 Licensee's Obligations upon Termination

- (a) At the end of this Agreement in respect of any part of the Wine Grape Land, the Licensee must return the relevant Wine Grape Land to the Licensor in good repair and condition, subject to any reasonable wear and tear during the Term of this Licence.
- (b) Any structures or plant and equipment of any description which belong to the Licensee must be removed from the relevant Wine Grape Land within 30 days after the end of this Agreement in respect of the relevant Wine Grape Land. If the Licensee does not comply with this requirement then, as between the Licensor and the Licensee, all structures and plant and equipment remaining on the relevant Wine Grape Land at the time will become the absolute property of the Licensor.
- (c) The Licensor has no obligation to pay the Licensee any compensation at the end, or on termination, of this Agreement in respect of any part of the Wine Grape Land, including for any structures and plant and equipment remaining on the relevant Wine Grape Land that become the absolute property of the Licensor in accordance with paragraph 4.2(b).

4.3 Cultivation and maintenance obligations in relation to the Vineyard

The Licensee, at its cost and expense, must cultivate, maintain and manage the Vines, the Vineyard and the Wine Grape Land, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice including the following, having regard to good workmanlike and commercially responsible standards and Best Horticultural Practice:

- (a) **Irrigation and fertilisation:** provide the Vineyard with necessary irrigation water, irrigate the Vineyard 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 Vine development and wine grape production;
- (c) **Vermin:** keep the Vineyard free from Vermin;
- (d) **Insects and Diseases:** use its reasonable endeavours to keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines;
- (e) **Spray diaries:** prepare and provide the Licensor upon request with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Vineyard and the Wine Grape Land, which records must detail the types and quantities or concentrations applied and the times at which they were applied;
- (f) **Advise the Licensor of deterioration or impurity:** promptly advise the Licensor of any deterioration of or impurity in the wine grapes, which is apparent to the Licensee;
- (g) **Destruction:** destroy any Vines which a reasonable horticulturist would destroy having regards to the best interests of the remaining unaffected Vines.

5. THE CITRUS ORCHARD

5.1 Acknowledgments by the Licensee

- (a) The Licensee acknowledges that the Capital Works and Citrus Trees on, and the Water Licences attaching to, the Citrus Land are, and will at all times remain, the property of the Owner.
- (b) The Licensee agrees and acknowledges that the Licensor and the Owner will not be liable for any loss or damage incurred by the Licensee arising out of or in connection with any act or omission of the Licensor and the Owner or their officers, directors, employees or agents under this Agreement, except where the liability arises out of the misconduct, dishonesty or fraud of the Licensor or the Owner.

5.2 Licensee's Obligations upon Termination

- (a) At the end of this Agreement in respect of any part of the Citrus Land, the Licensee must return the relevant Citrus Land to the Licensor in good repair and condition, subject to any reasonable wear and tear during the Term of the Licence.
- (b) Any structures or plant and equipment of any description which belong to the

Licensee must be removed from the relevant Citrus Land within 30 days after the end of this Agreement in respect of the relevant Citrus Land. If the Licensee does not comply with this requirement then, as between the Licensor and the Licensee, all structures and plant and equipment remaining on the relevant Citrus Land at the time will become the absolute property of the Licensor.

- (c) The Licensor has no obligation to pay the Licensee any compensation at the end, or on termination, of this Agreement in respect of any part of the Citrus Land, including for any structures and plant and equipment remaining on the relevant Citrus Land that become the absolute property of the Licensor in accordance with paragraph 5.2(b).

5.3 Cultivation and maintenance obligations in relation to the Citrus Orchard

The Licensee, at its cost and expense, must cultivate, maintain and manage the Citrus Trees, the Citrus Orchard and the Citrus Land, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice including the following, 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 crop production;
- (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 Licensor upon request with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Citrus Orchard and the Citrus Land, which records must detail the types and quantities or concentrations applied and the times at which they were applied;
- (f) **Advise the Licensor of deterioration or impurity:** promptly advise the Licensor of any deterioration of or impurity in the citrus crop, which is apparent to the Licensee;
- (g) **Destruction:** destroy any Citrus Trees which a reasonable horticulturist would destroy having regards to the best interests of the remaining unaffected Citrus Trees.

6. WATER LICENCES

6.1 Use of Water Licences

Subject to clause 6.4, the Licensor must:

- (a) do all things necessary to ensure that its rights under the Specified Water Licences are fully exploited to maximise the use and enjoyment of them by the Licensee;

- (b) take all steps to avoid interfering with the supply of water to the relevant Citrus Land or Wine Grape Land and to avoid any actions that would prejudice the Licensee's rights under this Agreement;
- (c) maintain the Specified Water Licences during the term of this Agreement; and
- (d) provide all other reasonable assistance to the Licensee to ensure sufficient water is available for the Chiquita Land subject to the Licence from time to time during the Term, subject to paragraph 6.2(c).

6.2 Acknowledgments

The Licensee acknowledges that:

- (a) the Owner may purchase water licences, additional to the Specified Water Licences, and provide water under those additional water licences to the Licensor;
- (b) such additional water licences do not attach to the Citrus Land or Wine Grape Land and will at all times remain the property of the Owner; and
- (c) the Licensee must at its cost and expense purchase any water licences, in excess of the Specified Water Licences, which are required for the Licensee to meet its obligations under this Agreement, but before doing so the Licensee must consult with the Licensor.

6.3 Increasing and reducing the Specified Water Licences

- (a) This clause 6 does not apply to Citrus Land or Wine Grape Land which becomes subject to a Project Sub-lease Agreement.
- (b) The Specified Water Licences attributable to the Citrus Land and Wine Grape Land will be:
 - (i) reduced in proportion to the area of the Citrus Land or Wine Grape Land in respect of which termination of this Agreement under clause 13.3 is deemed to have become effective;
 - (ii) increased in proportion to the area of the Citrus Land or Wine Grape Land which has again become subject to this Agreement in accordance with paragraph 13.3(c).

6.4 Contract of Sale

The Licensor's obligations under this clause 6 are suspended to the extent that the water licences being purchased by the Owner under the Contract of Sale have not been transferred or assigned to the Owner by Kangara in accordance with clause 13 of the Contract of Sale.

7. LICENCE FEE PAYMENTS

7.1 Licence Fee

- (a) Subject to paragraphs 7.1(b), (c) and (d), and clause 7.2, the Licensee must pay to the Licensee:
 - (i) in respect of the Citrus Land, a licence fee of \$1,278.750.00 per annum from the Commencement Date until expiry of the licence under paragraph 2.1(a), payable quarterly in advance on the last day of each preceding Quarter;

- (ii) in respect of the Wine Grape Land, a licence fee of \$2,035,000.00 per annum from the Commencement Date until the first anniversary of the Commencement Date, and thereafter until expiry of the licence under paragraph 2.1(b), a licence fee adjusted under paragraphs 7.1(b), (c) and (d) and clause 7.2, payable quarterly in advance on the last day of each preceding Quarter.
- (b) The Licensee must pay to the Licensor on the Commencement Date, the Licence Fees for the Citrus Land and the Wine Grape Land which are payable in respect of the 2 Quarters beginning on the Commencement Date ending on 31 March 2004.
- (c) Upon the total cost inclusive price of purchasing the Citrus Land and the Wine Grape Land paid by the Owner, including the purchase price and all stamp duty, registration and legal costs (**the Cost Inclusive Prices**), being calculated the Licence Fees per annum specified in paragraph 7.1(a) will be adjusted to equal 11% of the Cost Inclusive Price for each of the Citrus Land and the Wine Grape Land. Any adjustment to the Licence Fees will have effect from the Commencement Date and the Licensee must pay any difference due to such adjustments to the Licensor on the next date for payment of the Licence Fees. Any adjustment to the Licence Fees under this clause 7.1(c) to calculate the Cost Inclusive Price must be made on or before 30 June 2004.
- (d) The Licence Fees payable under this Agreement are subject to any adjustments under clause 7.4.
- (e) The Licence Fees for any Quarter which is not a full Quarter is to be proportionate to the number of days in the relevant Quarter.

7.2 Adjustments to licence fees for Indexation

The Licence Fees per annum specified in paragraph 7.1(a) that are payable by Licensee must be adjusted as at 31 December of each year during the Term, beginning on 31 December 2004 as follows:

- (a) in respect of the Citrus Land, amount equal to 11% of the Cost Inclusive Price for each of the Citrus Land Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date with any adjustments to Cost Inclusive Price of the Citrus Land under paragraph 7.1(c) also being adjusted under this clause 7.2; and
- (b) in respect of the Wine Grape Land, amount equal to 11% of the Cost Inclusive Price for each of the Wine Grape Land Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date with any adjustments to Cost Inclusive Price of the Wine Grape Land under paragraph 7.1(c) also being adjusted under this clause 7.2.

7.3 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 Licensor and the Licensee 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 7.3 must be borne equally between the Licensor and the Licensee.

7.4 Licence fee reduction upon entry into a Project Sub-lease Agreement

- (a) Subject to paragraph 7.4(c), upon termination of this Agreement in respect of part of the Licensed Land under clause 13.3, the Licence Fees payable under this clause 7, will be reduced in accordance with the following formula:

$$A = B * [C / D]$$

- where: A are the Licence Fees for the period following termination of this Agreement in respect of part of the Licensed Land under clause 13.3 becoming effective;
- B is the amount of the Licence Fees, as adjusted under clauses 7.1 and 7.2;
- C is the total area of the Licensed Land in respect of which termination of this Agreement under clause 13.3 is deemed to have become effective, less the total area of the Licensed Land which has again become subject to this Agreement in accordance with paragraph 13.3(c);
- D is the total area of the Licensed Land licensed to the Licensee as at the Commencement Date.

- (b) This clause 7.4 may operate successively on more than one occasion.
- (c) If any Licensed Land again becomes subject to this Agreement under paragraph 13.3(c), the Licence Fees payable under this clause 7, will be increased in accordance with the formula specified in paragraph 7.4(a), from the date the relevant Licensed Land again becomes subject to this Agreement.

8. LICENSOR'S OBLIGATIONS AND RIGHTS

8.1 Obligations

The Licensor must:

- (a) allow the Licensee to peaceably and quietly hold and enjoy the Licensed Land without any interruption by the Licensor or any person claiming through or under the Licensor;
- (b) 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 Licensed Land;
- (c) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Licensor are properly controlled and supervised; and
- (d) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Licensor.

8.2 Rights

The Licensor:

- (a) is entitled to full and free reasonable access for the purposes of carrying out its obligations and exercising its rights under this Agreement with or without vehicles to the Licensed Land along any road or track or any neighbouring land owned or occupied by the Licensor, the Owner, the Licensee or Growers which gives access to the Licensed Land;
- (b) is entitled to full and free reasonable access with or without vehicles to the Licensed Land for the purpose of accessing neighbouring land owned or occupied by the Licensor, the Owner or Growers;
- (c) may at its own expense erect and maintain a sign on the Licensed Land detailing such matters as the Licensor reasonably considers appropriate, provided any such sign erected pursuant to this clause 8.2(c) does not interfere with the Licensee's rights under this Licence; and
- (d) is entitled to full and free reasonable access with or without vehicles to the Licensed Land for the purposes of carrying out any works required for the establishment of Projects, provided any such access pursuant to this clause 8.2(c) does not interfere with the Licensee's rights under this Licence.

9. RATES, TAXES AND CHARGES

- (a) The Licensee must pay all taxes, charges and assessments levied upon the Licensed Land which are incurred during the Term, but only to the extent to which they relate to the Term in respect of the Licensed Land or part thereof, 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.
- (b) The Licensor must promptly deliver to the Licensee all rates and notices received by the Licensor in respect of the Licensed Land.
- (c) If the Licensee pays any amount under paragraph 9(a) which does not relate to the Term in respect of the Licensed Land or part thereof, the Licensor will reimburse the Licensee to the extent that the payment was in excess of the Licensee's obligation under paragraph 9(a).
- (d) Without limiting the generality of paragraph 9(a), the Licensee must:
 - (i) pay all charges, assessments and penalties which are incurred during the Term in connection with the Licensee taking water in relation to the Licensed Land at levels which exceed the maximum entitlement under the Specified Water Licences prior to or during the Term;
 - (ii) indemnify and keep indemnified the Licensor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Licensor may suffer or incur in connection with, or arising from, the Licensee taking water in relation to the Licensed Land at levels which exceed the maximum entitlement under the Specified Water Licences prior to or during the Term, including any charges, assessments and penalties incurred by

the Licensor after the Term in excess of what would have been incurred by the Licensor, but for the Licensee taking water in relation to the Licensed Land at levels which exceeded the maximum entitlement under the Specified Water Licences.

10. USE OF LICENSED LAND

10.1 Permitted use

- (a) The Licensee must only use the Licensed Land in accordance with this Agreement, including:
 - (i) cultivating, growing, harvesting and processing the Citrus Crop and Wine Grapes; and
 - (ii) removing and selling or otherwise dealing in the Citrus Crop and Wine Grapes and retaining all income from such sale or dealing.
- (b) The Licensee may only use the Licensed Land in any other manner with the prior and express written consent of the Licensor, which consent may be given or refused at the absolute discretion of the Licensor.

10.2 Ownership and sale of Produce

Subject to clause 13.7, the parties acknowledge and agree that, for the Term of this Licence:

- (a) the Citrus Crop and Wine Grapes are and remain the property of the Licensee; and
- (b) the Licensee has the right to sell or otherwise deal with the Citrus Crop and Wine Grapes and retain all income from such sale or dealings.

10.3 Licensor's duties

The Licensor agrees that it will not do anything as Licensor or lessee of the Wine Grape Land or Citrus Land which could impact upon the Licensee's ability to harvest the Citrus Crop or Wine Grapes, as the case may be.

10.4 Licensee's duties

The Licensee must, at its cost and expense, ensure that it:

- (a) complies with good horticultural and environmental practices;
- (b) complies with all laws and regulations relating to the use and occupancy of the Licensed Land;
- (c) takes all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (d) maintains the Licensed Land in accordance with good horticultural practices including, without limitation, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) repair and maintain all Capital Works to a reasonable standard equal to Best Horticultural Practice;
- (f) permits the Owner and the Licensor and their employees, agents and contractors, acting reasonably, to enter upon the Licensed Land from time to time with or without equipment for the purposes of observing the state of

repair of the Licensed Land; and

- (g) permits the Owner and the Licensors and their employees, agents and contractors, acting reasonably, to enter upon the Licensed Land from time to time with or without equipment for the purpose of performing its obligations under this Agreement.

10.5 Indemnity

The Licensee must indemnify the Licensors from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Licensors may suffer or incur in connection with, or arising from :

- (a) an occurrence on, the Licensed Land, other than that attributable to act or omission of the Licensors and the Owner or their officers, directors, employees or agents;
- (b) the use by the Licensee or the Licensee's invitees, employees and agents of the Licensed Land.

11. ASSIGNMENTS, SUB-LICENCES AND MORTGAGES

11.1 Assignment by Licensee

The Licensee must not assign its interest under this Agreement or transfer, sub-licence or part with possession of the Licensed Land or any part of the Licensed Land other than as authorised by this Agreement, without the prior written consent of the Licensors, which consent is not to be unreasonably withheld.

11.2 Licensee must not mortgage its interest

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

11.3 Delegation

The Licensors and the Licensee are each entitled to:

- (a) delegate any of their obligations under this Agreement to; and
 - (b) exercise any of their rights under this Agreement through,
- its employees, agents and contractors, but any delegation by the Licensors or the Licensee does not release the Licensors from liability under this Agreement.

12. DEFAULT AND RE-ENTRY

12.1 Default by Licensee

- (a) The Licensors and the Licensee covenant and agree the following are events of default under this Agreement:

- (i) if the Licensee fails or neglects to make a payment within the time required under this Agreement, including failing to pay the licence fees payable under this Agreement by the due date, and such amount is not paid within 30 days after the Licensor has served a written notice on the Licensee requiring the Licensee to pay the amount and specifying the amount due; or
 - (ii) the Licensee commits or permits to occur any material breach or default in the due and punctual performance of any of its obligations under this Agreement, and fails to remedy the breach or make reasonable compensation in money within 60 days after the Licensor has served a written notice on the Licensee requiring the Licensee to remedy the breach or make reasonable compensation in money, except where the Licensee, as appropriate, has advised the Licensor of a plan of remedial action to satisfy any such duty and has substantially completed such plan within 60 days of the written notice served on the Licensee.
- (b) The written notice referred to in paragraph 12.1(a) must specify the breach and request the breach to be remedied.

12.2 Taking exclusive possession

The Licensor will have the right to take exclusive possession of the Licensed Land if an act of default in clause 12.1 has not been rectified by the Licensee to the Licensor's reasonable satisfaction within the period of notice specified in clause 12.1.

12.3 Re-entry does not prejudice Licensor's rights

Should the Licensor exercise its rights under clause 12.2, it will do so without prejudice to any action or other remedy, which the Licensor has for arrears of licence fees or breach of covenant or for damages as a result of any breach of the terms of this Agreement by the Licensee.

12.4 Licensor discharged from obligations

Where the Licensor exercises its rights under clause 12.2, and upon the Licensor taking exclusive possession of the Licensed Land, the Licensor will be freed and discharged from any action, suit, claim or demand by, or obligation, to the Licensee under or by virtue of this Agreement.

13. TERMINATION

13.1 Termination of Agreement by the Licensor

Without prejudice to the Licensor's rights under clause 12, the Licensor may terminate this Agreement in respect of all the Licensed Land, with immediate effect, if:

- (a) an act of default in clause 12.1 has not been rectified by the Licensee to the Licensor's reasonable satisfaction within the period of notice specified in clause 12.1;
- (b) the Licensee goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Licensee or any part of its undertaking;
- (c) the Licensee ceases to carry on business.

13.2 Termination of Licence Agreement by the Licensee

The Licensee may terminate this Agreement by notice in writing to the Licensors immediately, if:

- (a) the Licensors go into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Licensors or any part of its undertaking;
- (b) the Licensors cease to carry on business; or
- (c) the Licensors fail or neglect to pay any moneys due to the Licensee, or is in default of any material obligation under this Agreement and such default continues for a period of 60 days after receipt by the Licensors of written notice from the Licensee specifying the default and requesting that the default be remedied, except where the Licensors, as appropriate, has advised the Licensee of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

13.3 Reduction upon entry into a Project Sub-lease Agreement

- (a) This Agreement terminates, at the absolute discretion of the Licensors without penalty subject to clause 13.7, in respect of so much of the Licensed Land that becomes the subject of a Project Sub-lease Agreement.
- (b) Termination under this clause 13.3 takes effect on and from the relevant Project Sub-lease Agreement commencing.
- (c) However, all of the Licensed Land the subject of a Project Sub-lease Agreement that has not been allocated to Growers during the "Offer Period" (as defined in the Product Disclosure Statement for the Project) will:
 - (i) be excluded from the "Licensed Land" leased under the relevant Project Sub-lease Agreement on the first day after the end of the Offer Period; and
 - (ii) become subject to this Agreement again on the first day after the end of the Offer Period.

13.4 Effect of Termination

- (a) Termination of the whole of this Agreement under clauses 13.1 or 13.2 or termination of part of this Agreement under clause 13.3, is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Agreement in respect of part of the Licensed Land under clause 13.3 does not affect the rights or obligations of the parties in respect of any other part of the Licensed Land remaining the subject of this Agreement.
- (c) The termination of this Agreement will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.

13.5 Attorneys

Upon termination of the whole of this Agreement under clauses 13.1 or 13.2 or termination of part of this Agreement under clause 13.3, the Licensee appoints the Licensors 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 Agreement, as the case requires.

13.6 Limited right of termination

Except as expressly provided in this clause 13, a party may not terminate or rescind this Agreement and the Licensor will not be entitled to take exclusive possession of the Licensed Land or forfeit this Agreement at any time prior to the expiration of the Term.

13.7 Adjustment upon termination

The parties agree that:

- (a) upon termination or surrender of this licence in respect of the Land or any part thereof, other by reason of the Licensor terminating this Agreement under clause 13.1:
 - (i) subject to the Licensor's compliance with this clause, ownership of the Citrus Crop or Wine Grapes on the Land terminated or surrendered passes to the Licensor; and
 - (ii) the Licensor will compensate the Licensee for the value of the Citrus Crop and Wine Grapes, as at the date of such termination or surrender, in accordance with clause 13.7(b);
- (b) in determining the amount of compensation payable to the Licensee pursuant to clause 13.7(a), the parties will meet and agree in good faith an amount of compensation, having regard to the size, quality and variety of the Citrus Crop or Wine Grapes (as the case may be); and
- (c) the compensation payable under this clause 13.7 must be paid either by:
 - (i) set-off from any outstanding Licence Fees or;
 - (ii) if no Licence Fees are outstanding, the Licensor will pay the agreed amount to the Licensee within 60 days from the date of termination.

14. LICENSEE'S RISK

The Licensee is to assume all risk of loss, damage or injury by fire or otherwise to person or the Licensee's property by reason of the condition of the Licensed Land or any plant, equipment, fixtures or fittings on the Licensed Land.

15. NOTICES

15.1 Form of Notice

Any notice to be given under or in connection with this Agreement 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 the notice has not been properly posted on a business day, then 48 hours after the first business day; 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.

16. PROPER LAW

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

17. SEVERANCE

This Agreement, so far as possible, must be constructed 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 Agreement.

18. ENTIRE AGREEMENT

Each party acknowledges that this Agreement 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 Agreement.

19. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Licensor 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 Agreement, 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 Agreement.

- (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 Agreement, 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 Agreement, 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 Agreement 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 Agreement 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.

20. STATUTORY PROVISIONS

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

21. INSURANCE

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Citrus Land, the Citrus Trees, the Wine Grape Land or the Vines or result in the premiums for such insurances being increased.

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 Agreement.

23. DISPUTES

- (a) If a any dispute, question or difference of opinion arises out of or in connection with this Agreement 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 resolved in accordance with paragraph 23(b), then the Chief Executive Officers of each party must meet and use their best endeavours to resolve the dispute.
- (d) If the dispute is not settled promptly by the parties in accordance with paragraph 23(c), 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 Law Institute of Victoria at a place in Melbourne 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.

24. INDEMNITIES

- (a) The indemnities in this agreement are continuing obligations, independent from the other obligations of the Licensee under this Agreement and continue after this Agreement ends.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

Executed as an Agreement:

EXECUTED by CHIQUITA)
 BRANDS SOUTH PACIFIC)
 LIMITED in accordance with)
 section 127 of the Corporations)
 Act:

Signature

MANO LABIOLAKIS

Full Name

DIRECTOR

Position Held

Signature


DAVID GREEN

Full Name

SECRETARY

Position Held

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



Signature

ROBERT HANCE
Full Name

DIRECTOR
Position Held



Signature

Sol Rabinowicz
Full Name

Director
Position Held

SCHEDULE 1

DESCRIPTION OF THE LAND (Clause 1.1)

1. The "Licensed Land" comprises the following pieces of land:

Property Name	Particulars	Area (Ha)
Citrus Land		
Citrus (100% of the property)	Allotment 51/ DP 19611 on CT 5097/564	52.90
Citrus (100% of the property)	Allotment 52/ DP 19611 on CT 5097/565	50.87
Citrus ([]% of the property)	Allotment 53/ DP 19611 on CT 5097/566	92.31
Citrus ([]% of the property)	Allotment 54/ DP 19611 on CT 5097/567	113.6
Citrus (20% of the property)	Allotment 55/ DP 19611 on CT 5131/62	479.8
Citrus (20% of the property)	Allotment 282/ FP 177488 on CT 5509/65	20.21
Citrus (90% of the property)	Allotment 283/ FP 177489 on CT 5509/66	40.4
Wine Grape Land		
Wine Grape (10% of the property)	Allotment 9/ FP 106444 on CT 5171/743	598.12
Wine Grape ([]% of the property)	Allotment 53/ DP 19611 on CT 5097/566	92.31
Wine Grape ([]% of the property)	Allotment 54/ DP 19611 on CT 5097/567	113.6
Wine Grape (80% of the property)	Allotment 55/ DP 19611 on CT 5131/62	479.8
Wine Grape (80% of the property)	Allotment 282/ FP 177488 on CT 5509/65	20.21
Wine Grape (10% of the property)	Allotment 283/ FP 177489 on CT 5509/66	40.4

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene Section 32 Development Act 1993

Permanent Nominees (Aust.) Limited ACN 000 154 441 of Level 4, 35 Clarence Street Sydney NSW 2000 as mortgagee pursuant to mortgage number 9759035 hereby consents to the within Lease

Kangara Foods Pty Ltd ACN 000 154 441 of Level 4, 691 Burke Road Camberwell Vic 3124 as mortgagee pursuant to mortgage number 9759034 hereby consents to the within Lease

EXECUTED by Permanent Nominees (Aust.) Limited
by the authority of the directors

EXECUTED by Kangara Foods Pty Ltd 093 583 049
by the authority of the directors

.....Director/Sole Director and Sole Secretary

.....Director/Sole Director

and Sole Secretary

.....Print full name

.....*Director/Secretary

.....Print full name

<p>PERMANENT NOMINEES (AUST.) LIMITED ACN 000 154 441 by its Attorneys who state that they have no notice of revocation of the Power of Attorney dated 2nd June 1993, whereby they execute this deed document or instrument. Registered Number:</p>	
<p>Group A Attorney</p>	<p>*Director/Sole Secretary</p>
<p>Signature</p>	<p>.....</p>
<p>Name</p>	<p>.....Print full name</p>

(*please delete the inapplicable title)

Note: Please affix common seal if required by the Company's Constitution

DATED 26th May 2004

EXECUTION

Lessor

EXECUTED by Orchard Investments Management Limited
by the authority of the directors

.....Director/Sole Director and Sole Secretary

.....Print full name

.....*Director/Secretary

.....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 J Hance

.....Print full name

.....*Director/Secretary

Mark H Flynn

.....Print full name

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

548

Lessors Copy

9852713

15:18 26-May-2004


Fees: \$0.00

Series No.	Prefix
	L

BELOW THIS LINE FOR OFFICE USE ONLY

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

CORRECTION	PASSED
------------	--------

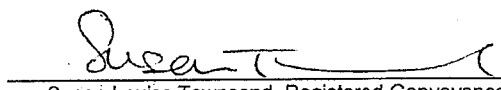
REGISTERED - 8 SEP 2004
 REGISTRAR-GENERAL

LANDS TITLES REGISTRATION
OFFICE
SOUTH AUSTRALIA

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: 

Correction to: TOWNSENDS 91 HALIFAX STREET ADELAIDE TOWN

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

1. ct'S 5097/564 5097/565 5097/566 5097/567
2. 5131/62
3. 5509/65 5509/66.....
4. 5171/743.....
5.

Assessor

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

1.
2.
3.

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

ITEM(S)	AGENT CODE
CT'S 5097/564,565,566,567	TOWN
CT 5131/62	TOWN
CT 5509/65,66	TOWN
CT 5171/743	Bun