

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 '**PWK42**' 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 '**PWK42**'

Side Letter dated 2 December 2010
to crop sale agreements



2 December 2010

By email

1. Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
in its capacity as responsible entity for the 2004 Timbercorp Citrus Project
ARSN 108 887 538
Email: lcnesser@kordamentha.com
cc: js Sheridan@abl.com.au
2. Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
in its capacity as responsible entity for the 2005 Timbercorp Citrus Project
ARSN 114 091 299
Email: lcnesser@kordamentha.com
cc: js Sheridan@abl.com.au
3. Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 (TSL)
Email: lcnesser@kordamentha.com
cc: js Sheridan@abl.com.au
4. Timbercorp Limited (In Liquidation) ACN 055 185 067 (Timbercorp Limited)
Email: lcnesser@kordamentha.com
cc: js Sheridan@abl.com.au
5. Align Funds Management Limited ACN 105 684 231
in its capacity as responsible entity of the Timbercorp Orchard Trust
ARSN 106 557 297 (Receivers and Managers Appointed) (Align)
Email: Michael.fung@au.pwc.com
cc: steve.clifford@aar.com.au
6. Mark Anthony Korda and Leanne Kylie Chesser
(in their capacities as Liquidators of each of TSL and Timbercorp Limited)
Email: lcnesser@kordamentha.com
cc: js Sheridan@abl.com.au
7. Michael Fung and Paul William Kirk (Receivers and Managers)
in their capacity as joint and several receivers and managers of the
relevant assets charged by Align
Email: Michael.fung@au.pwc.com
cc: steve.clifford@aar.com.au
8. AgriExchange Murtho Pty Ltd ACN 093 583 049 (AgriExchange)
Email: John.harris@costaexchange.com.au

Dear Sir/Madam

Sale of Citrus Agreement – 1 December 2009 to 30 June 2010 (2004 Project Agreement (FY 2010))
2004 Timbercorp Citrus Project – Kangara

Sale of Citrus Agreement – 1 December 2009 to 30 June 2010 (2005 Project Agreement (FY2010))
2005 Timbercorp Citrus Project – Kangara

Sale of Citrus Agreement – 2011 Financial Year (2004 Project Agreement (FY 2011))
2004 Timbercorp Citrus Project – Kangara

CostaExchange Ltd, Level 2, 768 Lorimer St, Port Melbourne VIC 3207, PO Box 5069, Garden City VIC 3207,
Australia

p | +61 3 8645 1600 f | +61 3 8645 1672 w | www.costaexchange.com.au abn | 41 002 687 961

**Sale of Citrus Agreement – 2011 Financial Year (2005 Project Agreement (FY 2011))
2005 Timbercorp Citrus Project – Kangara**

We refer to the 2004 Project Agreement (FY 2010), 2005 Project Agreement (FY 2010), 2004 Project Agreement (FY 2011) and the 2005 Project Agreement (FY 2011) (together, the **Agreements**) between all of you and CostaExchange Ltd (Costa) all dated 16 July 2010.

Definitions used in the relevant Agreements have the same meaning in this letter, unless the context requires otherwise.

This letter does not affect any of Costa's or AgriExchange's rights under any of the Agreements if the Contract for the Sale and Purchase of Land entered or to be entered into between Align, the Receivers and Managers, Agriproperty Pty Ltd (Agriproperty) and Kingston Vineyards Pty Ltd in relation to the Land (Contract of Sale) is not completed for any reason.

We confirm as follows:

1. Audits

- 1.1 Pursuant to clause 5.2 of the Agreements, Align, the Liquidators, the Receivers and Managers and Costa are conducting audits of records held by Costa to verify the quantum of payments and adjustments required to be made under the terms of each of the Agreements in connection with any Outstanding Costa Actual Costs arising under each Agreement (Audit Process).
- 1.2 Each of the parties to the Agreements (the Parties) will use all reasonable endeavours to ensure that the Audit Process will conclude prior to completion of the Contract of Sale.
- 1.3 Payments and adjustments required under the Agreements will be made in accordance with the terms of the Agreements, including without limitation, clauses 8.5, 8.6 and 8.7 of the Agreements, but will not exceed the monetary limits set out below.
- 1.4 For the avoidance of doubt, in the event that the Parties cannot agree the amount of the Costa Actual Costs or the Outstanding Costa Actual Costs, the Parties will refer the dispute to determination by an Expert in accordance with clause 6.3 of the Agreements.
- 1.5 In the event that the Audit Process is not completed by completion of the Contract of Sale, or the Parties cannot agree the amount of any adjustments payable at that time, then, in accordance with clause 8.7 of the relevant Agreement, an estimate of the Outstanding Costa Actual Costs will be payable to Costa at completion of the Contract of Sale.

2. 2005 Project Agreement (FY 2010)

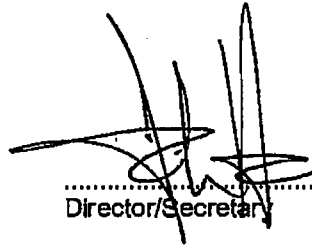
- 2.1 The Outstanding Costa Actual Costs incurred under the 2005 Project Agreement (FY 2010) (defined as the Costa Shortfall Amount under the 2005 Project Agreement (FY 2011)) are recoverable by Costa from the Net Proceeds relating to the Align Portion during the period of the 2005 Project Agreement (FY 2011).
- 2.2 Based on forecasts to 31 March 2011, it is unlikely that any Align Portion will arise against which the Costa Shortfall Amount can be recovered.
- 2.3 In the event that an Align Portion does not arise under the 2005 Project Agreement (FY 2011), the Unpaid Costa Shortfall Amount under that agreement will be equal to the amount of the Outstanding Costa Actual Costs incurred under the 2005 Project Agreement (FY 2010).

- 2.4 Subject to paragraph 2.5 below and in accordance with clause 8.6(e) of the 2005 Project Agreement (FY 2011), Align must direct Agriproperty, as the Buyer, to pay to Costa the Unpaid Costa Shortfall Amount out of the purchase price payable by Agriproperty at completion of the Contract of Sale.
- 2.5 The Unpaid Costa Shortfall Amount payable to Costa under the 2005 Project Agreement (FY 2011) will be subject to the Audit Process described at paragraph 1 above, and will not exceed \$277,000 (exclusive of GST).
- 3. 2004 Project Agreement (FY 2010)**
- 3.1 Under the 2004 Project Agreement (FY 2010), it appears that the Net Proceeds exceeded the Costa Actual Costs for the period from 1 December 2009 to 30 June 2010.
- 3.2 Any amount payable by Costa to Align at the completion of the Contract of Sale under the terms of the 2004 Project Agreement (FY 2010) will be subject to the Audit Process, but will not exceed \$31,000.
- 4. 2004 Project Agreement (FY 2011) and 2005 Project Agreement (FY 2011)**
- 4.1 The amount of the Outstanding Costa Actual Costs under both the 2004 Project Agreement (FY 2011) and the 2005 Project Agreement (FY 2011) will be subject to the Audit Process.
- 4.2 If completion of the Contract of Sale occurs on 31 March 2011, the maximum aggregate amount payable to Costa as the Outstanding Costa Actual Costs under both the:
- 4.2.1 2004 Project Agreement (FY 2011); and
- 4.2.2 2005 Project Agreement (FY 2011),
- will not exceed \$806,000 (exclusive of GST).
- 5. GST**
- 5.1 All payments and adjustments required under the Agreements to be made at the completion of the Contract of Sale are exclusive of GST.
- 5.2 Prior to completion of the Contract of Sale, and before any of the payments and adjustments required under the Agreements are paid, Costa must issue an appropriate tax invoice in accordance with clause 16.3 of the Agreements that:
- 5.2.1 is addressed to Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed);
- 5.2.2 sets out the management services provided by Costa in respect of the relevant Agreement to which that tax invoice relates; and
- 5.2.3 states that the amounts contained in the relevant budget for those management services are exclusive of GST.
- 6. Confirmation**
- Please confirm your agreement to the matters set out in this letter by signing and sending to us a copy of this letter.

Yours faithfully
by CostaExchange Limited



.....
Director



.....
Director/Secretary

Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
in its capacity as responsible entity for the 2004 Timbercorp Citrus Project ARSN 108 887 538
agrees to the matters set out in this letter.
by:

.....
Signature of Liquidator
Name:

.....
Witness
Name:

Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
in its capacity as responsible entity for the 2005 Timbercorp Citrus Project ARSN 114 091 299
agrees to the matters set out in this letter.
by:

.....
Signature of Liquidator
Name:

.....
Witness
Name:

Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
agrees to the matters set out in this letter.
by:

.....
Signature of Liquidator
Name:


.....
Witness
Name:


Yours faithfully
by CostaExchange Limited

.....
Director

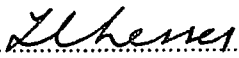
.....
Director/Secretary

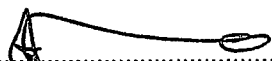
Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
in its capacity as responsible entity for the 2004 Timbercorp Citrus Project ARSN 108 887 538
agrees to the matters set out in this letter.
by:


.....
Signature of Liquidator
Name:



.....
Witness
Name: Anthony Munro

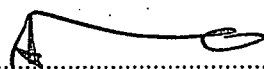
Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
in its capacity as responsible entity for the 2005 Timbercorp Citrus Project ARSN 114 091 299
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by:


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Signature of Liquidator
Name:



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Witness
Name: Anthony Munro


Timbercorp Securities Limited (In Liquidation) ACN 092 311 469
agrees to the matters set out in this letter.
by:


.....
Signature of Liquidator
Name:


.....
Witness
Name: Anthony Munro

Timbercorp Limited (In Liquidation) ACN 055 185 067
agrees to the matters set out in this letter.
by:


.....
Signature of Liquidator
Name:

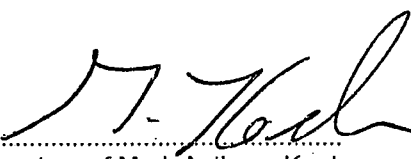

.....
Witness
Name: Anthony Munro

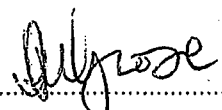
Align Funds Management Limited ACN 105 684 231
in its capacity as responsible entity of the Timbercorp Orchard Trust
ARSN 106 557 297 (Receivers and Managers Appointed)
agrees to the matters set out in this letter.
by:

.....
Signature of Receiver
Name:

.....
Witness
Name:

Mark Anthony Korda and Leanne Kylie Chesser
(in their capacities as Liquidators of each of TSL and Timbercorp Limited)
agree to the matters set out in this letter.
by:

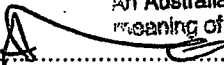

.....
Signature of Mark Anthony Korda
Name:


.....
Witness
Name:

WICAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004


.....
Signature of Leanne Kylie Chesser
Name:

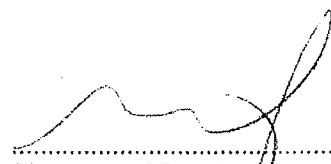

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Witness
Name: Anthony Munro

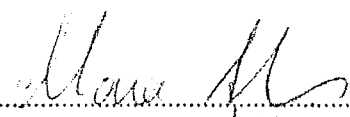
Timbercorp Limited (In Liquidation) ACN 055 185 067
agrees to the matters set out in this letter.
by:

.....
Signature of Liquidator
Name:

.....
Witness
Name:

Align Funds Management Limited ACN 105 684 231
in its capacity as responsible entity of the Timbercorp Orchard Trust
ARSN 106 557 297 (Receivers and Managers Appointed)
agrees to the matters set out in this letter.
by:


.....
Signature of Receiver
Name: *Receivers*


.....
Witness
Name: *Wasee Akbar*

Mark Anthony Korda and Leanne Kylie Chesser
(in their capacities as Liquidators of each of TSL and Timbercorp Limited)
agree to the matters set out in this letter.
by:

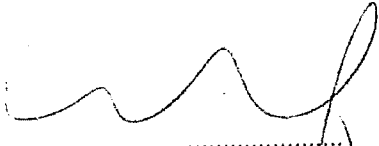
.....
Signature of Mark Anthony Korda
Name:

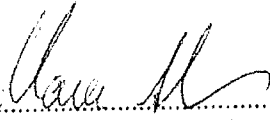
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Witness
Name:

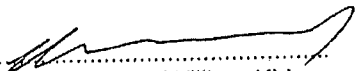
.....
Signature of Leanne Kylie Chesser
Name:

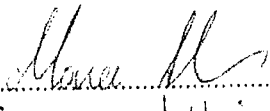
.....
Witness
Name:

Michael Fung and Paul William Kirk
in their capacity as joint and several receivers and managers of the
relevant assets charged by Align
agree to the matters set out in this letter.
by:


.....
Signature of Michael Fung
Name: *Michael Fung*


.....
Witness
Name: *Maree Atkin*


.....
Signature of Paul William Kirk
Name: *Paul William Kirk*


.....
Witness
Name: *Maree Atkin*

AgriExchange Murtho Pty Ltd
agrees to the matters set out in this letter.
by:

.....
Director

.....
Director/Secretary

Michael Fung and Paul William Kirk
in their capacity as joint and several receivers and managers of the
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agree to the matters set out in this letter.
by:


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Signature of Michael Fung
Name:


.....
Witness
Name:

.....
Signature of Paul William Kirk
Name:

.....
Witness
Name:

AgriExchange Murtho Pty Ltd
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by:


.....
Director


.....
Director/Secretary