

**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 '**PWK5**' 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 'PWK5'**

**Copy of sublease between  
Timbercorp and TSL for the 2005  
Citrus Project dated 5 May 2005**

## MEMORANDUM OF UNDERLEASE

RevenueSA - Stamp Duty - ABN 19 040 349 865 ©

LEASE BEING UNDERLEASED:

9852713

RevNetID/PRA Bundle No.: 107402297

Orig Copy 1 of with 2 copies

Consideration/Value/Security: \$ —

SA Proportion (if applicable): \$ —

SD: \$ — LTO Fees: \$ 98-00

Int: \$ — Pen/Add Tax: \$ —

Signature: [Signature] Date: 06/06/05

CERTIFICATE(S) OF TITLE AFFECTED BY UNDERLEASE Portion of land in CT Volume 5171 Folio 743 marked "A" in GP 12005 GRG 10 of 2006

Allotment 13A in DP 68878 being portion of the land in CT volume 5171 folio 743

State whether WHOLE or PART of land in lease

WHOLE / PART

ENCUMBRANCE(S) AGAINST LEASE

759034

9759035

UNDERLESSOR (Full Name and Address)

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

UNDERLESSEE (Full Name, Address and Mode of Holding)

Timbercorp Securities Limited ACN 092 311 469 of Level 8, 461 Bourke Street Melbourne Vic 3000

TERM OF UNDERLEASE

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

EXPIRING ON THE 29th day of June 2027

# RENT AND MANNER OF PAYMENT

The rent and manner of payment will be as is set out in Clause 6 of this Underlease

## CONSENTS

(If applicable)

Orchard Investments Management Limited ACN 105 684 231 of Level 2, 613 St Kilda Road Melbourne Vic 3000 as Lessor pursuant to Lease 9852713 hereby consents to the within Underlease

EXECUTED by Orchard Investments Pty Ltd

by the authority of the directors

 Director/Sole Director and Sole Secretary

Michael Emery Print full name

 \*Director/Secretary

Sol Rabinowicz Print full name

(\*please delete the inapplicable title)

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

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

The Underlessor UNDERLEASES TO THE UNDERLESSEE the LEASE above described as regards the land above described and the Underlessee accepts this Underlease of the said lease for the term and at the rent stipulated and subject to the covenants and conditions expressed <sup>(a)</sup> herein / in Memorandum No. \_\_\_\_\_ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

IT IS COVENANTED BY AND BETWEEN THE UNDERLESSOR AND THE UNDERLESSEE as follows:

(Covenants, where not deposited, to be set forth on the insert sheet(s) and securely attached)

**Sub-lease**  
**[Kangara Estate]**

Timbercorp Limited

Timbercorp Securities Limited

Orchard Investments Management  
Limited

**Kangara Estate – 2005 Timbercorp Citrus Project**  
**Sub-Lease**

**NM TAYLOR**  
LAWYERS

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

---

# Table of Contents

DETAILS OF THIS SUB-LEASE .....	1
1. DEFINITIONS AND INTERPRETATION .....	2
1.1 DEFINITIONS .....	2
1.2 INTERPRETATION .....	5
1.2 HEADINGS .....	6
2. CAPACITY OF THE SUB-LESSEE .....	6
2.1 CAPACITY .....	6
2.2 SUB-LEASE IS NOT SCHEME PROPERTY .....	6
3. GRANT AND TERM OF LEASE .....	6
3.1 GRANT AND TERM OF LEASE .....	6
3.2 REPRESENTATIONS .....	6
4. ESTABLISHMENT AND MAINTENANCE OF CITRUS ORCHARD .....	7
4.1 AGREEMENT BY SUB-LESSOR AS TO THE NEW CITRUSLOTS .....	7
4.2 ACKNOWLEDGMENTS BY THE SUB-LESSEE .....	7
4.3 ACKNOWLEDGMENTS BY THE SUB-LESSOR .....	8
4.4 CULTIVATION AND MAINTENANCE OBLIGATIONS IN RELATION TO THE CITRUS ORCHARD .....	8
4.5 SUB-LESSEE'S OBLIGATIONS UPON TERMINATION .....	8
5. WATER LICENCES .....	9
5.1 REQUIRED WATER LICENCES .....	9
5.2 USE OF REQUIRED WATER LICENCES .....	9
5.3 ACKNOWLEDGMENTS .....	10
6. RENT PAYMENTS .....	10
6.1 RENT .....	10
7. SUB-LESSOR'S OBLIGATIONS AND RIGHTS .....	10
7.1 OBLIGATIONS .....	10
7.2 RIGHTS .....	11
8. RATES, TAXES AND CHARGES .....	11
9. INSURANCE .....	11
9.1 SUB-LESSEE MUST MAINTAIN INSURANCE .....	11
9.2 CLAIMS UNDER INSURANCE POLICIES .....	12
9.3 INSURANCE PROCEEDS .....	12
9.4 PARTIES NOT TO AFFECT RIGHTS UNDER INSURANCE .....	12
9.5 DAMAGE TO, OR DESTRUCTION OF, OF THE NEW CITRUSLOTS OR CAPITAL WORKS .....	12
10. USE OF NEW CITRUS DEVELOPMENT .....	13
10.1 PERMITTED USE .....	13
10.2 SUB-LESSEE'S DUTIES .....	13
10.3 INDEMNITY .....	14
10.4 STRUCTURAL WORK .....	14
11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES .....	14
11.1 ASSIGNMENT BY SUB-LESSEE .....	14
11.2 SUB-LESSOR CONSENTS TO SUB-LESSEE SUB-LETTING .....	15
11.3 SUB-LESSEE MUST NOT MORTGAGE ITS INTEREST .....	15
11.4 ASSIGNMENT OR MORTGAGE BY SUB-LESSOR .....	15
11.5 DELEGATION .....	15
12. DEFAULT AND RE-ENTRY .....	16

12.1	DEFAULT BY SUB-LESSEE .....	16
12.2	RE-ENTRY BY SUB-LESSOR.....	16
12.3	RE-ENTRY DOES NOT PREJUDICE SUB-LESSOR'S RIGHTS.....	16
12.4	SUB-LESSOR DISCHARGED FROM OBLIGATIONS.....	17
12.5	SUB-LESSOR'S RIGHTS SUBJECT TO GROWERS' RIGHTS .....	17
13.	TERMINATION .....	17
13.1	TERMINATION OF SUB-LEASE BY THE SUB-LESSOR.....	17
13.2	TERMINATION OF SUB-LEASE BY THE SUB-LESSEE .....	17
13.3	DAMAGE TO NEW CITRUS DEVELOPMENT .....	18
13.4	EFFECT OF TERMINATION .....	18
13.5	ATTORNEYS .....	18
13.6	LIMITED RIGHT OF TERMINATION .....	18
14.	LEGAL COSTS.....	18
15.	NOTICES .....	19
15.1	FORM OF NOTICE .....	19
15.2	RECEIPT OF NOTICE.....	19
16.	PROPER LAW.....	19
17.	SEVERANCE .....	19
18.	ENTIRE AGREEMENT .....	19
19.	GST .....	20
20.	STATUTORY PROVISIONS.....	20
21.	FURTHER ASSURANCES.....	21
22.	DISPUTES .....	21
23.	THE LAND OWNER .....	21
23.1	CAPACITY OF LAND OWNER .....	21
23.2	BENEFIT TO LAND OWNER .....	21
23.3	LIMITATION OF LIABILITY .....	21
23.4	RIGHTS OF ACCESS .....	21
24.	PAYMENTS .....	22
24.1	INTEREST.....	22
24.2	SET-OFF .....	22
	SCHEDULE 1.....	I

---

## Details of this Sub-lease

### Date of this Sub-lease:

This Deed is made on *5 May* 2005

### Parties to this Sub-lease:

1. **Timbercorp Limited**  
ACN 055 185 067  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
(Sub-lessor)
2. **Timbercorp Securities Limited**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000  
(Sub-lessee)
3. **Orchard Investments Management Limited**  
ACN 105 684 231  
Level 6, 505 St Kilda Road  
Melbourne, Victoria, 3004  
  
in its capacity as responsible entity  
of the Timbercorp Orchard Trust  
(Land Owner)

---

## Background

- A. The Sub-lessor is the lessee of the Chiquita Land, from the Land Owner.
- B. The Sub-lessor has agreed to sub-lease part of the Chiquita Land, namely the New Citrus Development to the Sub-lessee in accordance with this Sub-lease and grant a licence to use and exploit the Required Water Licence for use in the 2005 Timbercorp Citrus Project. The New Citrus Development and the Solara Estate (the subject of a separate sub-lease) will together constitute the land to be used in the 2005 Timbercorp Citrus Project.
- C. Under the Lease, the Land Owner consents to the Sub-lessor entering into this Sub-lease and the Sub-lessee entering into the Licence Agreements with the Growers in the Project.
- D. The Sub-lessee has agreed to pay the Rent for the sub-lease of the New Citrus Development in accordance with this Sub-lease.

---

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>Administrator:</b>	has the same meaning as in the Corporations Act;
<b>Authority:</b>	includes any Federal, State, municipal or other government, statutory or government approved authority or body, that has authority or jurisdiction over the Capital Works, the Required Water Licences and the New Citrus Development or any part of them or anything about them;
<b>Best Horticultural Practice:</b>	sound horticultural and environmental practices and industry practices in Australia in relation to similar citrus orchards;
<b>Business Day:</b>	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Adelaide, South Australia;
<b>Capital Works:</b>	<ul style="list-style-type: none"><li>(a) the infrastructure and capital works, including any Irrigation Infrastructure, that have been carried out on the New Citrus Development, as the case requires, before it was purchased by the Land Owner;</li><li>(b) the infrastructure and capital works that the Land Owner has carried out or agreed to carry out, and any other works that Timbercorp, Timbercorp Securities or the Land Owner may be required to carry out, including any new Irrigation Infrastructure, at their cost respectively, on the New Citrus Development, as the case requires; and</li><li>(c) any Sub-lessor's Works that the Sub-lessor may in its in absolute discretion carry out;</li></ul>
<b>Chiquita:</b>	Chiquita Brands South Pacific Limited (ACN 002 687 961);
<b>Chiquita Land:</b>	means the land leased by the Land Owner to the Sub-lessor, under the Lease;
<b>Citrus Crop:</b>	the products, rights, benefits or credits derived from the Citrus Trees on the New Citrus Development;
<b>Citruslot Management Agreement</b>	the agreement of that name between Timbercorp Securities, in its personal capacity, and each Grower as amended from time to time;
<b>Citrus Orchard:</b>	the citrus orchard established or to be established on the New Citrus Development;
<b>Citrus Trees:</b>	the citrus trees growing or to be grown on the New Citrus Development;



<b>Commencement Date:</b>	the date of this Sub-Lease or such other date as agreed between the Sub-lessor and the Sub-lessee;
<b>Constitution:</b>	the constitution of the Project;
<b>Controller:</b>	has the same meaning as in the Corporations Act;
<b>Corporations Act:</b>	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
<b>Encumbrance:</b>	in relation to any property means anything which: <ul style="list-style-type: none"> <li>(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or</li> <li>(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,</li> </ul> and includes a Security Interest;
<b>Financial Year:</b>	the 12 month period ending on the last day of June with the exception of: <ul style="list-style-type: none"> <li>(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</li> <li>(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;</li> </ul>
<b>Force Majeure:</b>	<ul style="list-style-type: none"> <li>(a) an event or circumstance (or a combination of events or circumstances) that is beyond the control of the Sub-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</li> <li>(b) not including a lack of funds on the part of the Sub-lessor or the inability of the Sub-lessor to use available funds resulting from an event or circumstance described in paragraph (a);</li> </ul>
<b>Government Body:</b>	<ul style="list-style-type: none"> <li>(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;</li> <li>(b) any public authority constituted by or under a law of any country or political sub-division of any country; and</li> <li>(c) any person deriving a right directly or indirectly from any other Government Body;</li> </ul>
<b>Grower:</b>	a "Participant Grower" as defined in the Constitution;
<b>GST:</b>	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;

<b>Irrigation Infrastructure:</b>	water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on the New Citrus Development;
<b>Land Owner:</b>	the responsible entity for the time being under the Orchard Trust constitution, which is Orchard Investments Management Limited (ACN 105 684 231) as at the date of this Deed;
<b>Lease or Parent Lease:</b>	the lease (parent lease) of the Chiquita Land granted by the Land Owner to the Sub-lessor;
<b>Licence Agreements:</b>	the agreements under which licences are to be granted by the Sub-lessee over the New Citrus Development to Growers in the 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 Sub-lessee under this Sub-lease;
<b>New Citrus Development:</b>	the whole of the land described in Schedule 1 of this Sub-lease on which the 200 Hectare Orchard will be developed, and the Capital Works, the Required Water Licences and other improvements attributable to such citrus land for the purposes of this Sub-lease;
<b>New Citrus Orchard:</b>	the citrus orchard to be established on the New Citrus Development;
<b>New Citruslots:</b>	each separate identifiable area of the New Citrus Development comprising approximately 0.10 hectares of Citrus Trees to be established on the New Citrus Development on or before 31 December 2005 for the 2005 Timbercorp Citrus Project;
<b>Orchard Trust:</b>	the Timbercorp Orchard Trust (ARSN 106 557 297);
<b>Orchard Trust Constitution:</b>	the constitution of the Orchard Trust (as amended);
<b>Project:</b>	the 2005 Timbercorp Citrus Project;
<b>Quarter:</b>	<p>the three month period ending on the last day of March, June, September or December with the exception of:</p> <p>(a) the first Quarter, which commences on the Commencement Date and ends on the day before the first day of the next Quarter; and</p> <p>(b) the last Quarter, which commences on the day after the last day of the last preceding Quarter and ends on the day of termination of this Sub-lease;</p>
<b>Rent:</b>	the amount specified in paragraph 6.1(a);
<b>Required Water Licences:</b>	the water licences that are, or will be, owned or acquired by the Land Owner in respect of the New Citrus Development and that are attributed to the New Citrus Development as required from time to time, that provide for a maximum licence entitlement specified in clause 5.1, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;
<b>Responsible Entity:</b>	the responsible entity for the time being under the Orchard Trust Constitution, which is Orchard Investments Management Limited

	(ACN 105 684 231) as at the date of this Deed;
<b>Security Interest:</b>	<p>an interest or right:</p> <p>(a) reserved over property; or</p> <p>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</p> <p>by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;</p>
<b>Solara Estate:</b>	<p>that land described in:</p> <p>(a) Sections 633, 634 and 636 on CT 5278/12;</p> <p>(b) Section 726 on CT 5471/ 726</p> <p>(c) Allotment 2/ DP 41712 on CT 5278/ 11</p> <p>(d) Allotment 1/ DP 41712 on CT 5519/ 293;</p>
<b>Sub-lease:</b>	the sub-lease granted under this Deed;
<b>Sub-lessor's Works:</b>	<p>(a) the Citrus Trees planted in place of existing Citrus Trees;</p> <p>(b) the replacement of any infrastructure, including Irrigation Infrastructure; and</p> <p>(c) any other improvements of a structural nature,</p> <p>at the Sub-lessor's cost and expense in accordance with clause 24 of the Parent Lease;</p>
<b>Term:</b>	the term of this Sub-lease, as described in clause 3; and
<b>Timbercorp:</b>	Timbercorp Ltd (ACN 055 185 067);
<b>Timbercorp Securities:</b>	Timbercorp Securities Limited (ACN 092 311 469);
<b>200 Hectare Orchard:</b>	the 200 hectare orchard that will be established on the New Citrus Development land by approximately 31 December 2005;
<b>2005 Timbercorp Citrus Project:</b>	the citrus managed investment scheme to be operated by the Sub-lessee on the New Citrus Development and the Solara Estate, interests in which will be first offered in the financial year ending 30 June 2005.

## 1.2 Interpretation

In this Sub-lease, 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 Sub-lease;
  - (i) if a party comprises two or more persons, this Sub-lease 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 Sub-lease.

---

## **2. CAPACITY OF THE SUB-LESSEE**

### **2.1 Capacity**

The Sub-lessee enters into this Deed in its personal capacity.

### **2.2 Sub-lease is not Scheme Property**

Neither this Sub-lease nor the Rent forms part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

---

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

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

Subject to the terms of this Sub-lease, the Sub-lessor grants to the Sub-lessee a sub-lease of the New Citrus Development for a period commencing on the date of this Sub-lease and, subject to clause 13, expiring on 29 June 2027.

### **3.2 Representations**

The Sub-lessor represents and warrants that:

- (a) the Sub-lessor is entitled to grant the sub-lease under this Sub-lease; and
- (b) any consents which may be required to the granting of the sub-lease under this Sub-lease have been obtained.

---

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

### **4.1 Agreement by Sub-lessor as to the New Citruslots**

- (a) The Sub-lessor agrees with the Sub-lessee that the Sub-lessor must:
- (i) establish the New Citruslots on the New Citrus Development at its own cost; or
  - (ii) procure the Land Owner or the registered proprietor of the land comprising the New Citrus Development from time to time, at that person's own cost, to establish, or procure the establishment of the New Citruslots on the New Citrus Development,
- for the purpose of the Project in accordance with Best Horticultural Practice, construct the necessary infrastructure and carry out the necessary capital works. Without limiting the works that the Sub-lessor must carry out, it is intended that the establishment works will include the following:
- (iii) preparation of that part of New Citrus Development on which each New Citruslot is located to ensure that the Citrus Trees can grow satisfactorily, subject to any Force Majeure;
  - (iv) installation of appropriate irrigation equipment and the necessary irrigation works to ensure proper reticulation of water to the Citrus Trees on each New Citruslot;
  - (v) drainage work and other works to help prevent soil erosion on all the New Citrus Development on which New Citruslots are to be located;
  - (vi) eradication as far as reasonably possible of any pests and competitive weeds that may affect the growth or yield of the Citrus Trees on the New Citruslots;
  - (vii) planting of Citrus Trees on each New Citruslot and erection of stakes in accordance with Best Horticultural Practices so that the Citrus Trees can be harvested commercially; and
  - (viii) such other capital works, services or things that, in the reasonable opinion of the Sub-lessor are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.1(a)(iii) to (vii) above.
- (b) The Sub-lessor must use its best endeavours to ensure that the Capital Works in respect of the New Citruslots for the Citrus Project are completed in full by 31 December 2005 or such later date as may be agreed between the parties. The Sub-lessor will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Sub-lessee arising from any delay in so doing caused for any reason other than the negligence of the Sub-lessor, its officers, employees or agents.

### **4.2 Acknowledgments by the Sub-lessee**

- (a) The Sub-lessee acknowledges that the Capital Works and Citrus Trees on, and the Required Water Licences attaching to, the New Citruslots are, and will at all times remain, the property of the Land Owner, subject to any rules or regulations made by any Authority and any Sub-Lessor's Works that are the property of the Sub-Lessor.

- 
- (b) The Sub-lessee agrees and acknowledges that the Sub-lessor and the Land Owner will not be liable for any loss or damage incurred by the Sub-lessee, including where such loss or damage arises out of, or is in connection with, any act or omission of the Sub-lessor or its officers, directors, employees, agents or agents under this Sub-lease, whether or not constituting negligence, except that this paragraph 4.2(b) will not apply in the case of wilful default, dishonesty or fraud or breach of this Sub-lease.

#### 4.3 Acknowledgments by the Sub-lessor

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

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

The Sub-lessee, at its cost and expense, must cultivate, maintain and manage the Citrus Trees, the New Citruslots, the Citrus Orchard and the New Citrus Development, 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, that might damage or inhibit the growth of the Citrus Trees;
- (e) **Spray diaries:** prepare and provide the Sub-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 Sub-lessor of deterioration or impurity:** promptly advise the Sub-lessor of any deterioration of or impurity in the Citrus Crop or the Citrus Trees, that is apparent to the Sub-lessee.
- (g) **Other horticultural activities:** otherwise use and maintain the Citrus Trees, the New Citruslots, the Citrus Orchard and the New Citrus Development in accordance with the Constitution, the Citruslot Management Agreement and the Licence Agreements.

#### 4.5 Sub-lessee's Obligations upon Termination

- (a) At the end, or on termination, of this Sub-lease, subject to the Growers' rights to continue to occupy the New Citrus Development in accordance with

paragraph 11.2(a) and clause 12.5, the Sub-lessee must return the New Citrus Development and any Capital Works and the relevant Citruslots to the Sub-lessor in good condition in accordance with the obligations of the Sub-lessee under clause 4.4. But the Sub-lessee is not required to remove the Citrus Trees or restore the Capital Works and the relevant Citruslots 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 that belong to the Sub-lessee or the Grower must be removed from the relevant Citruslots within 30 days after the end, or on termination, of this Sub-lease, subject to the Growers' rights to continue to occupy the New Citrus Development in accordance with paragraph 11.2(a) and clause 12.5. If the Sub-lessee does not comply or procure the Grower to comply with this requirement, then all structures and plant and equipment remaining on the relevant Citruslots at the time will become the absolute property of the Sub-lessor.
- (c) The Sub-lessor has no obligation to pay the Sub-lessee or the Grower any compensation at the end, or on termination, of this Sub-lease, including for any structures and plant and equipment remaining on the relevant Citruslots that become the absolute property of the Sub-lessor in accordance with paragraph 4.5(b).
- (d) The Sub-lessee must ensure that the Required Water Licences in existence throughout the Term are preserved in full force and effect and on termination are returned to the Sub-lessor.

## 5. WATER LICENCES

### 5.1 Required Water Licences

The required water per hectare are:

Year	Required Water Licences, being a maximum licence entitlement of:
<b><u>200 Hectare Orchard</u></b>	
15 August 2006	4 ML/ha (800 ML for the 200 Hectare Orchard)
15 August 2007	6 ML/ha (1,200 ML for the 200 Hectare Orchard)
15 August 2008 and thereafter	9 ML/ha (1, 800 ML for the 200 Hectare Orchard)

### 5.2 Use of Required Water Licences

The Sub-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 Sub-lessee to maximise the use and enjoyment of them by the Sub-lessee and the Growers;
- (b) take all reasonable steps to avoid interfering with the supply of water to the relevant Citruslots and to avoid any actions that would prejudice the Sub-lessee's rights under this Sub-lease and the Growers' rights under the Licence Agreements; and

- 
- (c) except where any Force Majeure or any action or requirement of any Authority prevents or inhibits the Sub-lessor from so doing, purchase the Required Water Licences necessary for the New Citrus Development to the extent that the Sub-lessor undertakes the development of the New Citrus Orchard at its own cost, and maintain all of the Required Water Licences during the Term of this Sub-lease.

### **5.3 Acknowledgments**

The Sub-lessee acknowledges that:

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

## **6. RENT PAYMENTS**

### **6.1 Rent**

- (a) The Sub-lessee must pay to the Sub-lessor an amount of rent which is equal to the licence fees (on a GST exclusive basis) the Sub-lessee receives from Growers under the Licence Agreements.
  - (b) The Sub-lessee must pay to the Sub-lessor, the Rent when it receives the licence fees from the Growers, and by no later than 60 days after receiving the licence fees from Growers under the Licence Agreements.
- 

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

### **7.1 Obligations**

The Sub-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 Sub-lessor of all the New Citruslots;
- (b) subject to the terms of this Sub-lease, allow the Sub-lessee to peaceably and quietly hold and enjoy the New Citrus Development without any interruption by the Sub-lessor or any person claiming through or under the Sub-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 New Citruslots;
- (d) not create any Encumbrances over the New Citrus Development or the New Citruslots or any part of the New Citrus Development or the New Citruslots ranking in priority to the interests of the Sub-lessee or the Growers who may sub-lease, licence or otherwise occupy the New Citrus Development or the New Citruslots from the Sub-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 Sub-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 Sub-lessor.

## **7.2 Rights**

The Sub-lessor:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Sub-lease with or without vehicles to the New Citrus Development along any road or track or any neighbouring land owned or occupied by the Sub-lessor, the Land Owner, the Sub-lessee or Growers which give access to the New Citrus Development;
- (b) is entitled to full and free access with or without vehicles to the New Citrus Development for the purpose of accessing neighbouring land owned or occupied by the Sub-lessor, the Land Owner, the Sub-lessee or Growers; and
- (c) may at its own expense erect and maintain a sign on the New Citrus Development detailing such matters as the Sub-lessor reasonably considers appropriate.

---

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

- (a) The Sub-lessee must pay when due all taxes, charges and assessments levied upon the New Citrus Development 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 Sub-lessor must promptly deliver to the Sub-lessee all rates and notices received by the Sub-lessor in respect of the New Citrus Development.

---

## **9. INSURANCE**

### **9.1 Sub-lessee must maintain insurance**

The Sub-lessee must:

- (a) in connection with the New Citrus Development maintain with insurers and on terms approved by the Sub-lessor (which may not unreasonably withhold its approval) in the names of the Sub-lessee, the Sub-lessor and any other person named by the Sub-lessor and the Sub-lessee:
  - (i) public liability insurance for at least \$10 million (as varied by notice from the Sub-lessor to the Sub-lessee);

- (ii) the replacement value of the Capital Works, including the Citrus Trees and the Irrigation Infrastructure; and
  - (iii) other insurances required by law or that, in the Sub-lessor's reasonable opinion, a prudent Sub-lessee would take out having regard to the cost of such insurance;
- (b) give the Sub-lessor evidence when asked to do so that the Sub-lessee has complied with paragraph 9.1(a); and
- (c) notify the Sub-lessor immediately if an insurance policy required by this clause 9.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the New Citrus Development.

## **9.2 Claims under insurance policies**

- (a) The Sub-lessor must not enforce, conduct, settle or compromise claims under any insurance policy required by this Sub-lease if the Sub-lessee gives the Sub-lessor a notice that the Sub-lessee wishes to do these things, despite that policy covering other property.
- (b) The Sub-lessee must provide the Sub-lessor with 21 days' prior written notice if the Sub-lessee intends to enforce, conduct, settle or compromise claims under any insurance policy required by this Sub-lease.

## **9.3 Insurance proceeds**

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

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

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

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

- (a) Upon damage to, or destruction of, part or all of the New Citruslots or Capital Works, the Sub-lessor and the Sub-lessee must:
  - (i) negotiate in good faith to determine how to best replace and reinstate the relevant Citruslots or Capital Works;
  - (ii) the Sub-lessor and the Sub-lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Citruslots or Capital Works, as agreed under paragraph 9.5(a)(i).
- (b) In the event that the Sub-lessor and the Sub-lessee are unable to agree under paragraph 9.5(a) within 30 days, the matter is to be determined under clause

---

22.

- (c) The Sub-lessee may in its absolute discretion use its own funds to replace and reinstate Citruslots or Capital Works that have been damaged or destroyed, and in such event the Sub-lessor:
- (i) must use any insurance proceeds the Sub-lessor receives in respect of such damage or destruction in accordance with clause 9.3 to assist the Sub-lessee in replacing and reinstating the relevant Citruslots or Capital Works;
  - (ii) agrees and acknowledges that the Sub-lessee may undertake the reinstatement and replacement of the relevant Citruslots or Capital Works provided such works are done in accordance with Best Horticultural Practice.
- 

## **10. USE OF NEW CITRUS DEVELOPMENT**

### **10.1 Permitted use**

- (a) The Sub-lessee must only use the New Citrus Development in accordance with this Sub-lease and Best Horticultural Practice, including:
- (i) harvesting and processing the Citrus Crop;
  - (ii) removing and selling or otherwise dealing in the Citrus Crop and retaining all income from such sale or dealing.
- (b) Subject to paragraph 10.1(c), the Sub-lessor agrees and acknowledges that:
- (i) the Sub-lessee may enter into Licence Agreements in its absolute discretion; and
  - (ii) the Sub-lessee may grant sub-leases, licences or other occupancy rights to any other person over the New Citrus Development in its absolute discretion;
- provided that any such agreements do not grant any greater rights than those which are granted to the Sub-lessee under this Sub-lease.
- (c) The Sub-lessee may only use the New Citrus Development in any other manner with the prior and express written consent of the Sub-lessor, which consent may be given or refused at the absolute discretion of the Sub-lessor.

### **10.2 Sub-lessee's duties**

The Sub-lessee must, at its cost and expense, ensure that it and the Growers:

- (a) comply with Best Horticultural Practice and this Sub-lease;
- (b) comply with all laws and regulations relating to the use and occupancy of the relevant Citruslots and the New Citrus Development;
- (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 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 Sub-lessor and its employees, agents and contractors to enter upon the relevant Citruslots, and the New Citrus Development, from time to time with or without equipment for the purposes of observing the state of repair of the relevant Citruslots; and
  - (g) permit the Sub-lessor and its employees, agents and contractors to enter upon the relevant Citruslots, and the New Citrus Development, from time to time with or without equipment for the purpose of performing its obligations under this Sub-lease.

### **10.3 Indemnity**

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

- (a) an occurrence at the New Citrus Development, other than that attributable to an act or omission of the Sub-lessor and its officers, directors, employees or agents; or
- (b) the use by the Sub-lessee or the Sub-lessee's invitees, employees and agents of the New Citrus Development,

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 Sub-lessor or the Sub-lessor's invitees.

### **10.4 Structural work**

- (a) The Sub-lessee need not carry out structural work to the New Citrus Development unless the work is required because of the negligence or default of:
  - (i) the Sub-lessee;
  - (ii) the Sub-lessee's officers, employees, agents, contractors or invitees; or
  - (iii) the Growers and their agents, contractors or invitees.
- (b) Any work undertaken under paragraph 10.4(a) must be undertaken in accordance with Best Horticultural Practice.
- (c) Subject to paragraph 10.4(b), the Sub-lessee may in its reasonable discretion, and at its cost and expense, carry out structural work to the New Citrus Development, provided that the Sub-lessee obtains the prior written consent of the Sub-lessor which consent is not to be unreasonably withheld or delayed.

---

## **11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES**

### **11.1 Assignment by Sub-lessee**

The Sub-lessee must not assign its interest under this Sub-lease or transfer, sublet or part with possession of the New Citrus Development or any part of the New Citrus Development other than as authorised by this Sub-lease, without the prior written consent of the Sub-lessor, which consent is not to be unreasonably withheld.

---

## **11.2 Sub-lessor consents to Sub-lessee sub-letting**

- (a) The Sub-lessor consents to:
  - (i) the Sub-lessee entering into the Licence Agreements in its absolute discretion; and
  - (ii) the Sub-lessee granting sub-leases, licences or other occupancy rights to any other person over the New Citrus Development in its absolute discretion;

provided that any such agreements do not grant any greater rights than those which are granted to the Sub-lessee under this Sub-lease.
- (b) The Land Owner covenants that if the Parent Lease terminates before it would otherwise have expired by the effluxion of time, then this Sub-Lease will continue with all necessary modifications as if the Land Owner were named as the Sub-lessor from the date of termination of the Sub-Lease.
- (c) If the Land Owner becomes the sub-lessor as a result of the circumstances described in paragraph 11.2(b), the Sub-lessee agrees to pay to the Land Owner an amount equal to the difference between the amount payable by the Sub-lessee under clause 6 of this Sub-Lease and the rent which the Land Owner would have otherwise received from the Sub-lessor under the Parent Lease on each occasion the Sub-lessee makes a payment of Rent to the Land Owner in accordance with the terms of this Sub-Lease.
- (d) The Sub-lessee and Timbercorp agree and acknowledge that the Land Owner will not be liable for any loss or damage incurred by them arising out of, or in connection with, this Deed, other than any loss or damage incurred by them arising out of, or in connection with, any act or omission of the Land Owner after it becomes the sub-lessor under this Deed in accordance with clause 11.2(b).

## **11.3 Sub-lessee must not mortgage its interest**

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

## **11.4 Assignment or mortgage by Sub-lessor**

The Sub-lessor must not dispose of or Encumber any interest in the Sub-lessor's rights under this Sub-lease except where:

- (a) the Sub-lessor gives the Sub-lessee 14 day's notice before the Sub-lessor disposes of or Encumbers any interest in its rights under this Sub-lease or enters into any agreement to do so; and
- (b) the third party has agreed to, and acknowledged, the paramountcy of the Sub-lessee's and the Grower's rights, as described in this Sub-lease.

## **11.5 Delegation**

The Sub-lessor and the Sub-lessee are each entitled to:

- (a) delegate any of their obligations under this Sub-lease to; and

- 
- (b) exercise any of their rights under this Sub-lease through, its employees, agents and contractors, but any delegation by the Sub-lessor or the Sub-lessee does not release the Sub-lessor or the Sub-lessee from liability under this Sub-lease.
- 

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

### **12.1 Default by Sub-lessee**

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

### **12.2 Re-entry by Sub-lessor**

The Sub-lessor will have the right to re-enter and take possession of the New Citrus Development if an act of default in clause 12.1 has not been rectified by the Sub-lessee to the Sub-lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

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

Should the Sub-lessor exercise its rights under clause 12.2, it will do so without prejudice to any action or other remedy, which the Sub-lessor has for arrears of rent or breach of covenant or for damages as a result of any breach of the terms of this Sub-lease by the Sub-lessee.

---

## **12.4 Sub-lessor discharged from obligations**

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

## **12.5 Sub-lessor's rights subject to Growers' rights**

The Sub-lessor's rights under this clause 12 are subject to the rights granted by:

- (c) the Sub-lessee or the Growers under the Licence Agreements in accordance with this Sub-lease; and
  - (d) the Sub-lessor to the Growers under paragraph 11.2(a).
- 

# **13. TERMINATION**

## **13.1 Termination of Sub-lease by the Sub-lessor**

Without prejudice to the Sub-lessor's rights under clause 12, the Sub-lessor may terminate this Sub-lease in respect of all of the New Citrus Development with immediate effect if an act of default in clause 12.1 has not been rectified by the Sub-lessee to the Sub-lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

## **13.2 Termination of Sub-lease by the Sub-lessee**

- (a) The Sub-lessee may terminate this Sub-lease by notice in writing to the Sub-lessor immediately, if:
  - (i) the Sub-lessor 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 Sub-lessor or any part of its undertaking;
  - (ii) the Sub-lessor ceases to carry on business;
  - (iii) the Sub-lessor fails or neglects to make a payment within the time required under this Sub-lease and such amount is not paid within 60 days after the Sub-lessee has served a written notice on the Sub-lessor requiring the Sub-lessor to pay the amount; or
  - (iv) the Sub-lessor fails or neglects to pay any moneys due to the Sub-lessee, or is in default of any material obligation under this Sub-lease and such default continues for a period of 60 days after receipt by the Sub-lessor of written notice from the Sub-lessee specifying the default and requesting that the default be remedied, except where the Sub-lessor:
    - (A) has within the period of 60 days after receipt of the written notice from the Sub-lessee:
      - (i) advised the Sub-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 Sub-lessor implements the whole plan of remedial action as soon as reasonably practicable.

- 
- (b) Damage to, or destruction of, part or all of the New Citruslots, by fire or any other cause whatsoever, will not entitle the Sub-lessee to terminate this Sub-lease except as set out in clause 13.3.
  - (c) Upon damage to, or destruction of, part or all of the New Citruslots, the Sub-lessor and the Sub-lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Citruslots, as agreed under paragraph 9.5(a)(i).

### **13.3 Damage to New Citrus Development**

If, in respect of the whole of New Citrus Development:

- (a) the whole of the New Citrus Development is damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Sub-lessor and the Sub-lessee reasonably determines that the whole of the New Citrus Development is no longer commercially viable,

the Sub-lessee may terminate this Sub-lease in respect of the whole of the damaged or destroyed New Citrus Development by giving not less than 4 months' prior written notice of such termination to the Sub-lessor. Termination under this clause 13.3 will take effect on and from expiry of the 4 months' notice.

### **13.4 Effect of Termination**

- (a) Termination of the whole of this Sub-lease under clauses 13.1, 13.2 or 13.3, is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) The termination of this Sub-lease will terminate the rights and obligations of the parties under this Sub-lease except to the extent that those rights and obligations are expressed to survive termination.

### **13.5 Attorneys**

Upon termination of the whole or part of this Sub-lease under clauses 13.1, 13.2 or 13.3, by the Sub-lessor or the Sub-lessee, as the case may be, the party terminating this Sub-lease is hereby appointed by the other as its attorney to do all things and sign all documents necessary to give effect to the termination under this clause 13 of the whole or part of this Sub-lease, 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 Sub-lease and the Sub-lessor will not be entitled to re-enter the New Citrus Development or forfeit this Sub-lease at any time prior to the expiration of the Term.

---

## **14. LEGAL COSTS**

The Sub-lessee must pay the reasonable costs of the Sub-lessor's solicitors of and incidental to the preparation, execution, stamping and registration of this Sub-lease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

---



---

## **15. NOTICES**

### **15.1 Form of Notice**

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

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

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

### **15.2 Receipt of Notice**

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

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

---

## **16. PROPER LAW**

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

---

## **17. SEVERANCE**

This Sub-lease, 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 Sub-lease.

---

## **18. ENTIRE AGREEMENT**

Each party acknowledges that this Sub-lease 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 Sub-lease.

---

---

## 19. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Sub-lease 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 Sub-lease, 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 Sub-lease.
- (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 Sub-lease, 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 Sub-lease, 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 Sub-lease 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 Sub-lease 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 Sub-lease and the sub-lease granted under this Sub-lease, including all provisions implied in licences by the Real Property Act 1886 (SA).

---

---

## **21. 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 Sub-lease.

---

## **22. DISPUTES**

- (a) If a any dispute, question or difference of opinion arises out of or in connection with this Sub-lease 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 22(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 Society of South Australia at a place in Adelaide 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.
- 

## **23. THE LAND OWNER**

### **23.1 Capacity of Land Owner**

The parties acknowledge that:

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

### **23.2 Benefit to Land Owner**

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

### **23.3 Limitation of Liability**

The parties agree that the Land Owner will in no circumstances be required to satisfy any liability owed to the Sub-lessor or Sub-lessee or to any party claiming through the Sub-lessor or Sub-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 Land Owner's control and in its possession and available to be properly resorted to by the Land Owner, except that the limitation contained in this clause 23.3 does not apply in the case of any fraud or breach of trust on the part of the Land Owner.

### **23.4 Rights of access**

The Land Owner:

- (a) is entitled to full and free access for the purposes of carrying out its obligations

and exercising its rights under the Lease with or without vehicles to the New Citrus Development along any road or track or any neighbouring land owned or occupied by the Land Owner, the Sub-lessor, the Sub-lessee or Growers which give access to the New Citrus Development;

- (b) is entitled to full and free access with or without vehicles to the New Citrus Development for the purpose of accessing neighbouring land owned or occupied by the Land Owner, the Sub-lessor, the Sub-lessee or Growers; and
- (c) may at its own expense erect and maintain a sign on the New Citrus Development detailing such matters as the Land Owner reasonably considers appropriate.

## 24. PAYMENTS

### 24.1 Interest

If the Sub-lessee fails to make a payment of any amount under this Deed:

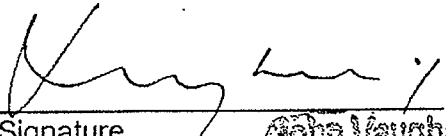
- (a) the Sub-lessee must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be the Bank Bill Swap Reference Rate (being the 90 day rate from time to time published in the Australian Financial Review) plus 3.0%;
- (c) the interest is to be calculated on and from the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

### 24.2 Set-off


All payments by the Sub-lessee under this Deed must be made to the Sub-lessor without set-off or counterclaim.

## Executed as a Deed:

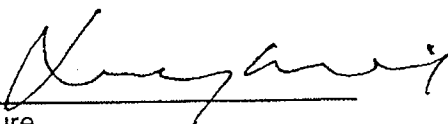
EXECUTED by TIMBERCORP  
LIMITED in accordance with  
section 127 of the Corporations  
Act: )  
)  
)  
)

  
Signature John Vaughan  
John Vaughan

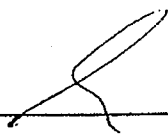
Full Name  
Director

  
Signature Mark H Pryn  
Mark H Pryn  
Full Name  
Director Secretary

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

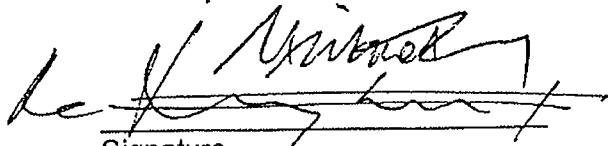
  
\_\_\_\_\_  
Signature  
**John Vaughan**

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


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

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

EXECUTED by ORCHARD )  
INVESTMENTS MANAGEMENT )  
LIMITED as responsible entity of )  
the Timbercorp Orchard Trust in )  
accordance with section 127 of )  
the Corporations Act: )

  
\_\_\_\_\_  
Signature

**MICHAEL EMERY**  
\_\_\_\_\_  
Full Name  
Director/ ~~Secretary~~

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

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

## SCHEDULE 1

### DESCRIPTION OF THE NEW CITRUS DEVELOPMENT (Clause 1.1)

The New Citrus Development comprises the following pieces of land:

1.

Property Name	Particulars	Total Area (Ha)
<b>New Citrus Development</b>		
That part of the land on which the 200 Hectare Orchard is to be established as set out in the plan attached to this Schedule.	Part of Allotment 9/ FP 106444 on CT 5171/743	200 (out of a total of 598 hectares)



SECTION 32 DEVELOPMENT ACT CERTIFICATION

This Underlease does not contravene Section 32 Development Act 1993


DATED 205 May 2005

EXECUTION

Underlessor

EXECUTED by Timbercorp Limited

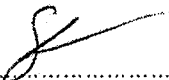
by the authority of the directors



~~Director/Sole Director and Sole Secretary~~

Robert Hance

Print full name



~~\*Director/Secretary~~

Sol Rabinowicz


Print full name

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

Underlessee

EXECUTED by Timbercorp Securities Limited

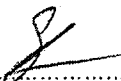
by the authority of the directors



~~Director/Sole Director and Sole Secretary~~

Robert Hance

Print full name



~~\*Director/Secretary~~

Sol Rabinowicz

Print full name

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



548

Lessees Copy

10240850

16:20 8-Jun-2005

Fees: \$0.00

LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

MEMORANDUM OF UNDERLEASE

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

Series No.	Prefix
3	UL

**BELOW THIS LINE FOR OFFICE USE ONLY**

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

Lodged by:

TOWNSENDS

AGENT CODE

TOWN

Correction to: TOWNSENDS 91 HALIFAX STREET ADELAIDE

TOWN

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


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

Assessor

PLEASE ISSUE NEW CERTIFICATES OF TITLE AS FOLLOWS

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

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

REGISTERED	21 FEB 2005
 REGISTRAR GENERAL	

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

ITEM(S)	AGENT CODE