

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

List B
S CI 2013 01478

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST & ORS

Defendants

THIRD AFFIDAVIT OF CLINTON CHARLES HINCEN
(KANGARA RIGHTS PROCEEDING)

Date of document: 12 March 2014

Filed on behalf of: The Plaintiff

Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:120338387
(Clint.Hinchen@allens.com.au)

I, **CLINTON CHARLES HINCEN** of Allens, 101 Collins Street, Melbourne, in the State of Victoria,
Lawyer, SAY ON OATH that:

1. I am a solicitor and a partner in the firm Allens. I have the care and conduct of this proceeding (the ***Kangara Rights Proceeding***) on behalf of the plaintiff, The Trust Company (Nominees) Limited (***The Trust Company***). I am authorised to make this affidavit on behalf of The Trust Company.



2. Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
3. This affidavit is made in support of The Trust Company's summons dated 12 March 2014 by which (among other things), in accordance with Rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) (**Rules**), application is made to this Honourable Court for approval of the compromise of the Kangara Rights Proceeding reached between the parties to the proceeding (**Approval Application**).
4. At the first return date of the summons, The Trust Company intends to seek directions concerning:
 - (a) the filing and service of further affidavit material in respect of The Trust Company's application;
 - (b) the filing and service of submissions in respect of The Trust Company's application; and
 - (c) the substantive hearing of The Trust Company's application.

Background to the proceeding

5. Timbercorp Limited (in liquidation) and its subsidiary entities (together, the **Timbercorp Group**) conducted various agribusiness managed investment schemes across a number of properties involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives, table grapes and citrus.
6. The Timbercorp Group went into administration on 23 April 2009 and was placed into liquidation on 29 June 2009. Thereafter, the land on which the schemes were conducted, and related assets, were sold in a series of transactions, each of which was approved by the Supreme Court of Victoria.
7. Subsequently, in accordance with the applicable orders made by the Supreme Court of Victoria, the following two separate proceedings were commenced:

The block contains two handwritten signatures in black ink. The signature on the left is 'Elizabeth' and the signature on the right is 'Chris'.

- (a) this proceeding, concerning the following schemes:
- (i) 2004 Timbercorp Citrus Project ARSN 108 887 538; and
 - (ii) 2005 Timbercorp Citrus Project ARSN 114 091 299,
- (together, the **Citrus Projects**); and
- (b) Supreme Court of Victoria Proceeding No. S CI 2013 1477 (**Bella Vista Rights Proceeding**) which concerned the following schemes:
- (i) 2004 Timbercorp Table Grape Project ARSN 108 648 086; and
 - (ii) 2005 Timbercorp Table Grape Project ARSN 113 512 226;
- (together, the **Table Grape Projects**),

to determine how the net sale proceeds the subject of each sale transaction were to be apportioned between the land owners, the secured creditors, the investors in the Citrus Projects and the Table Grape Projects (**Growers**), and other interested parties claiming an interest in those proceeds.

Status of the Kangara Rights Proceeding and the Bella Vista Rights Proceeding

8. On 25 March 2013, the Bella Vista Rights Proceeding was commenced by The Trust Company. Now produced and shown to me and marked "CCH-1" is a true copy of the Summons and Originating Motion filed in the Bella Vista Rights Proceeding on 25 March 2013, and a copy of the Amended Originating Motion filed on 13 August 2013 pursuant to the orders of Justice Judd made on 19 July 2013.
9. On 19 July 2013, orders were made in both the Kangara Rights Proceeding and the Bella Vista Rights Proceeding, among others, that:
- (a) parties be appointed as representatives of the Growers in the Citrus Projects and Table Grape Projects the subject of each respective proceeding (**Representative Growers**);



- (b) the plaintiff's and the second and third defendants' costs of the proceedings be paid on an indemnity basis out of the net sale proceeds subject to the preparation and certification of a bill of costs by an appropriately qualified costs consultant agreed by the parties; and
- (c) the first defendant be excused from taking any step in the proceeding, including court appearances, but may do so in respect of certain matters identified in the orders.

However, to date no further interlocutory steps have been taken in either of the proceedings. Now produced and shown to me marked "CCH-2" is a true copy of the orders made by Justice Judd on 19 July 2013 in the Kangara Rights Proceeding and Bella Vista Rights Proceeding.

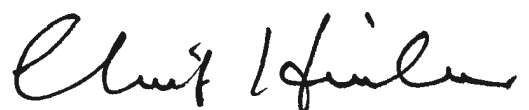
Compromises

10. On 14 January 2014, the parties to the Kangara Rights Proceeding and the Bella Vista Rights Proceeding executed deeds of compromise for each such proceeding. Each deed of compromise is conditional on:

- (a) approval by the holders of debentures issued by Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (Receiver and Manager Appointed) (**Debenture Holders**) of:

- (i) *the compromise set out in clause 2 of the deed of compromise in the Kangara Rights Proceeding by 7 March 2014; and*
- (ii) *the compromise set out in clause 2 of the deed of compromise in the Bella Vista Rights Proceeding by 7 March 2014,*

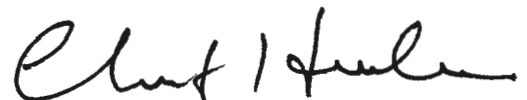
(each a **Compromise** and together, the **Compromises**);



- (b) the Court approving the Compromise in clause 2 of the deed of compromise in the Kangara Rights Proceeding and ordering that it shall be binding on the Growers represented by the Representative Growers by 30 June 2014; and
- (c) the Court similarly approving the Compromise in clause 2 of the deed of compromise in the Bella Vista Rights Proceeding and ordering that it shall be binding on the Growers represented by the Representative Growers by 30 June 2014.

Now produced and shown to me and marked "CCH-3" is a true copy of the deed of compromise executed on 14 January 2014 in respect of the Kangara Rights Proceeding. A copy of the deed of compromise executed in the Bella Vista Rights Proceeding is exhibited to the second affidavit of Clinton Charles Hinchin in support of the summons filed on 12 March 2014 in respect of that proceeding.

11. On 28 February 2014, The Trust Company convened a meeting of Debenture Holders. A quorum of Debenture Holders was present at that meeting and, in satisfaction of the conditions noted in paragraph 10(a) above, the Debenture Holders approved the Compromises by approving the following Special Resolutions:
 - (a) that the Compromise set out in clause 2 of the deed of compromise executed on 14 January 2014 in the Kangara Rights Proceeding is approved; and
 - (b) that the Compromise set out in clause 2 of the deed of compromise executed on 14 January 2014 in the Bella Vista Rights Proceeding is approved.
12. I am informed by Jane Sheridan of Arnold Bloch Leibler (solicitors for Timbercorp Securities Limited (in Liquidation) (*TSL*)) and believe the following.
 - (a) Following approval by the Debenture Holders and in accordance with clause 6.2(b)(ii) of each of the deeds of compromise, on 3 March 2014, Growers were sent, by post and by email to their last known postal and email addresses most recently communicated to TSL and recorded in its books and records, a short letter bringing



to their attention that a notice to Growers (**First Notice to Growers**) and a Frequently Asked Questions document have been loaded onto various websites.

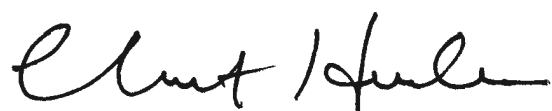
- (b) In accordance with clause 6.1 of each of the deeds of compromise, the First Notice to Growers outlines a number of issues including the terms and effect of the deed of compromise, and the necessity of, and procedure for, obtaining Court approval. In each case, the Growers have also been informed that a hearing for the approval of the Compromises is anticipated to commence in early April 2014.
- (c) In accordance with clause 6.2(b)(iii) of each of the deeds of compromise, an advertisement alerting Growers to the location of the First Notice to Growers was placed in The Australian newspaper on 4 March 2014.

Now produced and shown to me and marked "CCH-4" is a true copy of:

- (d) the letter to Growers;
- (e) the advertisement placed in The Australian newspaper;
- (f) the First Notice to Growers; and
- (g) the Frequently Asked Questions document.

Approval Applications

- 13. As noted above, by summons dated 12 March 2014, The Trust Company brings the Approval Application in respect of the Kangara Rights Proceeding.
- 14. By summons dated 12 March 2014 filed in the Bella Vista Rights Proceeding (in which my firm also acts for The Trust Company), The Trust Company brings the Approval Application in respect of that proceeding.
- 15. In light of the following matters, I believe that it is desirable that the Approval Application in respect of the Kangara Rights Proceeding be managed, heard and determined concurrently with the Approval Application in respect of the Bella Vista Rights Proceeding.



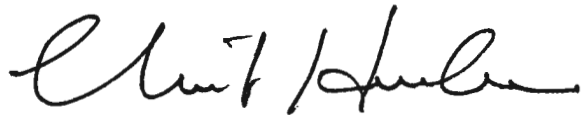
- (a) By paragraph 10 of the order made by the Honourable Justice Judd in this proceeding on 19 July 2013 (exhibit CCH-2), this proceeding is to be managed and heard together with the Bella Vista Rights Proceeding.
- (b) The rights of the parties arising under the constituent documents for the Citrus Projects and the Table Grape Projects the subject of the Kangara Rights Proceeding and the Bella Vista Rights Proceeding respectively, are the same or similar in each case.
- (c) In determining the Approval Application for each of the deeds of compromise, the same threshold question arises in each case, namely, whether the Compromise is for the benefit of the absent persons (i.e. the Growers represented in each proceeding by the Representative Growers) in accordance with rule 16.01(4) of the Rules. Therefore, approval of each Compromise will require consideration of a number of the same or similar questions.
- (d) As stated above, each deed of compromise is conditional on (*inter alia*):
- (i) the Court approving the Compromise and ordering that it shall be binding on the Growers represented by the Representative Growers in the relevant proceeding; and
 - (ii) the Court approving the Compromise in the other proceeding.

16. I respectfully request that this Honourable Court make directions for the conduct and hearing of the Approval Application in respect of the Kangara Rights Proceeding.

SWORN by Clinton Charles Hinchin at

Melbourne in the State of Victoria this

12th day of March, 2014



Before me



ELYSE KATE ADAMS
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

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

List B
S CI 2013 01477

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST & ORS

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 12 March 2014

Filed on behalf of: The Plaintiff

Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref Clint Hinchon (Clint.Hinchon@allens.com.au)

This is the **Exhibit** marked 'CCH-1' now produced and shown to **Clinton Charles Hinchon** at the time of swearing his affidavit on 12 March 2014.

Before me 
ELYSE KATE ADAMS
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

'CCH-1': True copies of the
Summons and Originating Motion
filed in the Kangara Rights
Proceeding on 25 March 2013 and
the Amended Originating Motion
filed on 13 August 2013.

Form 45B

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

LIST

SCI 2013 01478

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST**

Defendant

**SUMMONS ON ORIGINATING MOTION – SPECIAL PROCEDURE
(Kangara Rights Proceeding)**

Date of document: 26 June 2013

Filed on behalf of: The Plaintiff

Prepared by:

Allens

Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:ANSM:120338387
(Clint.Hinchen@allens.com.au)

TO: The Defendant
c/- PricewaterhouseCoopers
Freshwater Place
2 Southbank Boulevard
Southbank VIC 3006

Gregory Westaway
c/- his solicitors
Macpherson + Kelley Lawyers

Level 22
 114 Williams Street
 Melbourne VIC 3000

Robert and Elizabeth Budgen
 c/- their solicitors
 Macpherson + Kelley Lawyers
 Level 22
 114 Williams Street
 Melbourne VIC 3000

TGG Citrus Committee Inc
 C/O Ms Kerree Bezencon
 PO Box 1147
 Healesville Victoria 3777

You are summoned to attend before the Court constituted by a Judge of the Court on the hearing of an application by the Plaintiff for judgment or orders in respect of the relief or remedy sought in the originating motion as follows:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. Pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic):
 - (a) Gregory Westaway be appointed as the representative of the Growers (defined in paragraph 6 of the First Affidavit of Clinton Charles Hinchin sworn 26 June 2013 (***Hinchin Affidavit***)) in the 2004 Timbercorp Citrus Project (ARSN 108 887 538); and
 - (b) Robert Bugden and Elizabeth Bugden be appointed as the representatives of the Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

4. The persons appointed pursuant to paragraph 3 above be joined as the Second and Third Defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic).
5. The Plaintiff is granted leave to file and serve an amended originating motion on the Defendants on a date to be fixed:
 - (a) amending paragraph 3 of the Originating Motion to read "A declaration as to what, if any, right the Plaintiff has to the sale proceeds held on trust by the First Defendant pursuant to paragraph 3 of the orders made by the Honourable Justice Judd on 15 March 2011 in proceeding No. SCI 2011 888 (Net Sale Proceeds)";
 - (b) incorporating an order for a declaration as to what, if any, right the Growers represented by the Second and Third Defendants have to the Net Sale Proceeds; and
 - (c) amending paragraph 4 of the Originating Motion to read "A declaration as to how the Net Sale Proceeds ought to be distributed between the Plaintiff and the Growers represented by the Second and Third Defendants".
6. Unless the Court otherwise orders, the First Defendant pay from the Net Sale Proceeds:
 - (a) to Allens (the solicitors for the Plaintiff), the legal costs and disbursements incurred in this proceeding by the Plaintiff on an indemnity basis pursuant to the fee agreement between Allens and the plaintiff and pursuant to Rule 63.30.1 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) within 14 days of presentation to the First Defendant of:
 - (i) a tax invoice for the legal costs and disbursements incurred by the Plaintiff in relation to this proceeding; and
 - (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties; and
 - (b) to Macpherson +Kelley Lawyers (the solicitors for the Second and Third Defendants), the legal costs and disbursements incurred in this proceeding by the Second and Third Defendants on an indemnity basis pursuant to the fee agreement between Macpherson +Kelley Lawyers and the Second and Third Defendants and pursuant to Rule 63.30.1 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) within 14 days of presentation to the First Defendant of:

- (i) a tax invoice for the legal costs and disbursements incurred by the Second and Third Defendants in relation to this proceeding; and
 - (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties.
- 7. Pursuant to item 19(k) of the Supreme Court Scale of Costs at Appendix A of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic), for the purposes of this proceeding and unless the Court otherwise orders:
 - (a) the hourly and daily fee for the Senior Counsel retained on behalf of the Plaintiff is certified at the amounts stated in paragraph 63 of the Hinchey Affidavit,
 - (b) the hourly and daily fee for Senior Counsel retained on behalf of the Second and Third Defendants is certified at the amounts stated in paragraph 3(a) of exhibit CCH-40 to the Hinchey Affidavit.
- 8. Until further order, the First Defendant is excused from taking any step in the proceeding, including court appearances, but may do so in relation to the following matters:
 - (a) his right to be paid remuneration and expenses from the Net Sale Proceeds (to the extent that remuneration and those expenses have not already been paid);
 - (b) any allegations made about the First Defendant's personal conduct during his appointment and, in particular, with respect to the sale of the assets the proceeds of which represent the Net Sale Proceeds; and
 - (c) to ensure disposal in full of the Net Sale Proceeds currently held on trust by the First Defendant.
- 9. Subject to the payment of the Commercial Court entry fee, the proceeding be returned and heard before the Commercial Court.
- 10. At the same time a party serves any document filed in the proceeding, that party shall also serve a copy of the document on the TGG Citrus Committee Inc.
- 11. Subject to any further order from the Court, this proceeding be managed and heard together with proceeding No. SCI 2013 1477.
- 12. Further directions for the conduct of the proceeding.

13. Such other orders as the Court deems fit.

The application will be heard before Justice _____ of the Supreme Court of Victoria,
at _____, Melbourne on 19 July 2013 at 10:00^{am} or so soon afterwards
as the business of the Court allows. 210 WILLIAM STREET, MELBOURNE

If the application is heard by an Associate Judge, he or she may, as appropriate:

- (a) hear and determine the application or refer it to another Associate Judge or a Judge of the Court for hearing and determination;
- (b) by consent of the defendant, give the judgment;
- (c) place the proceeding in the list of cases for trial and give directions for the filing and service of affidavits or otherwise.

If the application is heard by a Judge of the Court, he or she may make any order he or she considers appropriate.

FILED

27 JUN 2013

Prothonotary

This summons was filed by Allens of 101 Collins Street, Melbourne, Victoria, 3000, solicitors for the Plaintiff.

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

LIST

SCI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST**

Defendant

**ORIGINATING MOTION BETWEEN PARTIES
(Kangara Rights Proceeding)**

Date of document: 25 March 2013

Filed on behalf of: The Plaintiff

Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:ANSM 120338387
(Clint.Hinchen@allens.com.au)

TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been brought against you by the Plaintiff for the relief or remedy set out below.

ALSO TAKE NOTICE that the Plaintiff cannot continue with the proceeding except by order of the Court. You will be given notice by summons of any application for the order and until the summons is served you are not required to take any step in the proceeding.

FILED: 25 MAR 2013


Prothonotary

THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

THE PLAINTIFF SEEKS THE FOLLOWING ORDERS:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedures) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedures) Rules 2005* (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. A declaration as to what, if any, right the Plaintiff has to the sale proceeds held on trust by the Defendant pursuant to paragraph 3 of the orders made by the Honourable Justice Judd on 15 March 2011 in proceeding No. SCI 2011 888 (**Orders**).
4. A declaration as to how the sale proceeds held on trust by the Defendant pursuant to paragraph 3 of the Orders ought to be distributed to the Plaintiff.
6. Any other order the Court deems fit.

DATE: 25 March 2013


.....

Allens
Solicitors for the Plaintiff

1. Place of trial - Melbourne
2. This originating motion was filed for the Plaintiff by Allens, of 101 Collins Street, Melbourne, Victoria, 3000.
3. The address of the Plaintiff is Level 3, 530 Collins Street, Melbourne VIC 3000.
4. The address for service of the Plaintiff is at the offices of Allens, of 101 Collins Street, Melbourne, Victoria, 3000.
5. The address of Defendant is at the offices of PricewaterhouseCoopers, of Freshwater Place, Level 19, 2 Southbank Boulevard, Southbank VIC 3006.

Form 4A

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

List
S CI 2013

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST

Defendant

OVERARCHING OBLIGATIONS CERTIFICATION

Date of document: March 2013

Filed on behalf of: The Plaintiff

Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:ANSM 120338387
(Clint.Hinchen@allens.com.au)

I, STEN SILAVECKY, Head of Structured Finance Services, an organisational branch of the
Plaintiff which is responsible for the care and conduct of this proceeding, am authorised to make
this certification on the Plaintiff's behalf.

In accordance with section 41 of the *Civil Procedure Act 2010* (Vic), I certify to the Court that I have
read and understood the overarching obligations set out in sections 16 to 26 of that Act and the
paramount duty set out in section 16 of the Act.

DATE: 22/3/2013



STEN SILAVECKY on behalf of the
Plaintiff

Form 4B

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

S CI 2013 **List**

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST**

Defendant

PROPER BASIS CERTIFICATION

Date of document: 25 March 2013

Filed on behalf of: The Plaintiff

Prepared by:

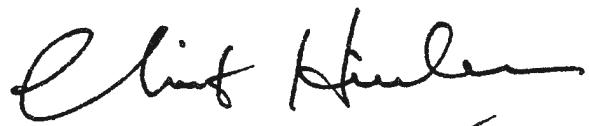
Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:ANSM 120338387
(Clint.Hinchen@allens.com.au)

In accordance with section 42 of the *Civil Procedure Act 2010* (Vic), I, CLINTON CHARLES HINCHEN, certify to the Court that, in relation to the Originating Motion, filed on behalf of the Plaintiff, on the factual and legal material available to me at present:

(a) each allegation of fact in the document has a proper basis.

DATE: 25 March 2013



CLINTON CHARLES HINCHEN

Legal practitioner for the Plaintiff

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

LIST

SCI 2013 01478

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST AND
OTHERS ACCORDING TO THE ATTACHED SCHEDULE

Defendants

AMENDED ORIGINATING MOTION BETWEEN PARTIES
(Kangara Rights Proceeding)

FILED PURSUANT TO THE ORDERS OF JUSTICE JUDD MADE ON 19 JULY 2013

Date of document: 13 August 2013

Filed on behalf of: The Plaintiff

Prepared by:

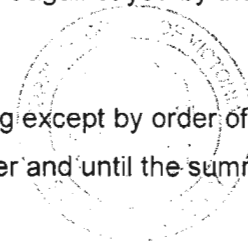
Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:ANSM 120338387
(Clint.Hinchen@allens.com.au)

TO THE DEFENDANT

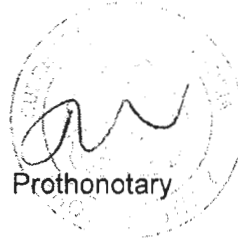
TAKE NOTICE that this proceeding by originating motion has been brought against you by the Plaintiff for the relief or remedy set out below.

ALSO TAKE NOTICE that the Plaintiff cannot continue with the proceeding except by order of the Court. You will be given notice by summons of any application for the order and until the summons is served you are not required to take any step in the proceeding.



FILED:

25/3/13



THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

|

THE PLAINTIFF SEEKS THE FOLLOWING ORDERS:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedures) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedures) Rules 2005* (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. A declaration as to what, if any, right the Plaintiff has to the sale proceeds held on trust by the First Defendant pursuant to paragraph 3 of the orders made by the Honourable Justice Judd on 15 March 2011 in proceeding No. SCI 2011 888 (Net Sale Proceeds).
- 3A. A declaration as to what, if any, right the Growers represented by the Second and Third Defendants have to the Net Sale Proceeds.
4. A declaration as to how the Net Sale Proceeds ought to be distributed between the Plaintiff and the Growers represented by the Second and Third Defendants.
6. Any other order the Court deems fit.

DATE: 13 August 2013



Allens

Solicitors for the Plaintiff

1. Place of trial - Melbourne
2. This originating motion was filed for the Plaintiff by Allens, of 101 Collins Street, Melbourne, Victoria, 3000.
3. The address of the Plaintiff is Level 3, 530 Collins Street, Melbourne VIC 3000.
4. The address for service of the Plaintiff is at the offices of Allens, of 101 Collins Street, Melbourne, Victoria, 3000.
5. The address of First Defendant is at the offices of PricewaterhouseCoopers, of Freshwater Place, Level 19, 2 Southbank Boulevard, Southbank VIC 3006.
6. The address for service of the First Defendant is at the offices of Norton Rose Fulbright Australia, of Level 15, RACV Tower, 485 Bourke Street, Melbourne VIC 3000.
7. The address for the Second Defendant is 1795 Mornington-Flinders Road, Flinders VIC 3929.
8. The address for service of the Second Defendant is at the offices of Macpherson + Kelley, of Level 22, 114 William Street, Melbourne VIC 3000.
9. The address for the Third Defendants is 55 Arthur Circle, Red Hill VIC 3937.
10. The address for service of the Third Defendants is at the offices of Macpherson + Kelley, of Level 22, 114 William Street, Melbourne VIC 3000.

SCHEDULE

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

LIST

SCI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST

First Defendant

and

GREGORY WESTAWAY IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN
THE 2004 TIMBERCORP CIRTUS PROJECT (ARSN 108 887 538)

Second Defendant

and

ROBERT AND ELIZABETH BUDGEN IN THEIR CAPACITY AS REPRESENTATIVES OF THE
GROWERS IN THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)

Third Defendants

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

List B
S CI 2013 01478

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST & ORS

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 12 March 2014

Filed on behalf of: The Plaintiff

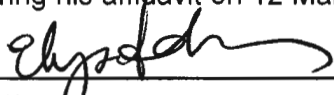
Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref Clint Hinchon (Clint.Hinchon@allens.com.au)

This is the **Exhibit** marked '**CCH-2**' now produced and shown to **Clinton Charles Hinchon** at the time of swearing his affidavit on 12 March 2014.

Before me



ELYSE KATE ADAMS
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

'CCH-2': A true copy of the orders
made by Justice Judd on 19 July
2013 in the Kangara Rights
Proceeding and the Bella Vista
Rights Proceeding.

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

LIST B
No. S CI 2013 1478

BETWEEN:

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441) Plaintiff

- and -

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST Defendant



ORDER



JUDGE OF THE COURT: The Honourable Justice Judd

DATE MADE: 19 July 2013

ORIGINATING PROCESS: Originating motion dated 25 March 2013

HOW OBTAINED: On return of the summons filed on 27 June 2013

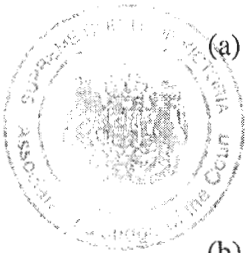
ATTENDANCE: Ms W Harris SC with Mr M Rush of counsel for the Plaintiff
Mr R Craig of counsel for the First Defendant
Mr S Hopper of counsel for Gregory Westaway, Robert Bugden and Elizabeth Bugden
Ms K Bezencon for the TGG Citrus Committee Inc

OTHER MATTERS: The Court retains general supervision over fees and the first defendant will retain an opportunity to approach the Court if any need to invoke the Court's jurisdiction to review fees arises.

THE COURT ORDERS THAT:

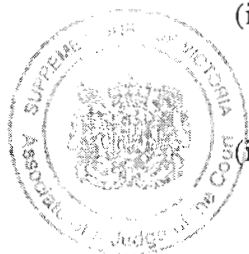
1. Pursuant to rule 45.05 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.

2. Pursuant to rule 45.05 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. Pursuant to rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic):
 - (a) Gregory Westaway is appointed as the representative of the Growers (defined in paragraph 6 of the First Affidavit of Clinton Charles Hinchin sworn 26 June 2013 (Hinchin Affidavit)) in the 2004 Timbercorp Citrus Project (ARSN 108 887 538); and
 - (b) Robert Bugden and Elizabeth Bugden is appointed as the representatives of the Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299).
4. The persons appointed pursuant to paragraph 3 above are joined as the Second and Third Defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic).
5. The Plaintiff is granted leave to file and serve an amended originating motion on the Defendants on a date to be fixed:



- (a) amending paragraph 3 of the Originating Motion to read "A declaration as to what, if any, right the Plaintiff has to the sale proceeds held on trust by the First Defendant pursuant to paragraph 3 of the orders made by the Honourable Justice Judd on 15 March 2011 in proceeding No. SCI 2011 888 (Net Sale Proceeds)";
 - (b) incorporating an order for a declaration as to what, if any, right the Growers represented by the Second and Third Defendants have to the Net Sale Proceeds; and
 - (c) amending paragraph 4 of the Originating Motion to read "A declaration as to how the Net Sale Proceeds ought to be distributed between the Plaintiff and the Growers represented by the Second and Third Defendants".
6. Unless the Court otherwise orders, the First Defendant shall pay from the Net Sale Proceeds:
 - (a) to Allens (the solicitors for the Plaintiff), the legal costs and disbursements incurred in this proceeding by the Plaintiff on an indemnity basis pursuant to the fee agreement between Allens and the plaintiff (in confidential exhibit CCH-37 to the Hinchin Affidavit) and pursuant to Rule 63.30.1 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) within 14 days of presentation to the First Defendant of:

- (i) a tax invoice for the legal costs and disbursements incurred by the Plaintiff in relation to this proceeding; and
 - (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties; and
- (b) to Macpherson + Kelley Lawyers (the solicitors for the Second and Third Defendants), the legal costs and disbursements incurred in this proceeding by the Second and Third Defendants on an indemnity basis pursuant to the fee agreement between Macpherson + Kelley Lawyers and the Second and Third Defendants (in exhibits MJF-1 and MJF-6 to the affidavit of Michael Fernon of 18 July 2013) and pursuant to Rule 63.30.1 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) within 14 days of presentation to the First Defendant of:



- (i) a tax invoice for the legal costs and disbursements incurred by the Second and Third Defendants in relation to this proceeding; and
- (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties.

7. Pursuant to item 19(k) of the Supreme Court Scale of Costs at Appendix A of the Supreme Court (General Civil Procedure) Rules 2005 (Vic), for the purposes of this proceeding and unless the Court otherwise orders:

- (a) the hourly and daily fee for the Senior Counsel retained on behalf of the Plaintiff is certified at the amounts stated in paragraph 63 of the Hinchon Affidavit; and
- (b) the hourly and daily fee for Senior Counsel retained on behalf of the Second and Third Defendants is certified at the amounts stated in paragraph 3(a) of exhibit CCH-40 to the Hinchon Affidavit.

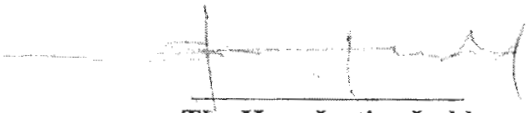
8. Until further order, the First Defendant is excused from taking any step in the proceeding, including court appearances, but may do so in relation to the following matters:

- (a) his right to be paid remuneration and expenses from the Net Sale Proceeds (to the extent that remuneration and those expenses have not already been paid);
- (b) any allegations made about the First Defendant's personal conduct during his appointment and, in particular, with respect to the sale of the assets the proceeds of which represent the Net Sale Proceeds; and
- (c) to ensure disposal in full of the Net Sale Proceeds currently held on trust by the First Defendant.

9. Subject to the payment of the Commercial Court entry fee, the proceeding be returned and heard before the Commercial Court.
10. Ms Kerree Bezencon is given leave to appear on behalf of the TGG Citrus Committee Inc.
11. At the same time a party serves any document filed in the proceeding, that party shall also serve a copy of the document on the TGG Citrus Committee Inc.
12. Subject to any further order from the Court, this proceeding be managed and heard together with proceeding No. SCI 2013 1477.
13. Until further order, Confidential Exhibits CCH-37 to the Hinchin Affidavit filed in this proceeding be kept confidential.
14. The proceeding is listed for further directions at 10.00am on 6 September 2013.
15. Costs are reserved.

DATE AUTHENTICATED: 9 August 2013




The Hon. Justice Judd

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

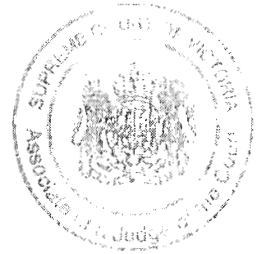
LIST B
No. S CI 2013 1477

BETWEEN:

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441) Plaintiff

- and -

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST Defendant



ORDER



JUDGE OF THE COURT: The Honourable Justice Judd

DATE MADE: 19 July 2013

ORIGINATING PROCESS: Originating motion dated 25 March 2013

HOW OBTAINED: On return of the summons filed on 27 June 2013

ATTENDANCE: Ms W Harris SC with Mr M Rush of counsel for the Plaintiff
Mr R Craig of counsel for the First Defendant
Mr S Hopper of counsel for Anthony Cormick, Jeyarasa Rasiah and Anne Rasiah

OTHER MATTERS: The Court retains general supervision over fees and the first defendant will retain an opportunity to approach the Court if any need to invoke the Court's jurisdiction to review fees arises.

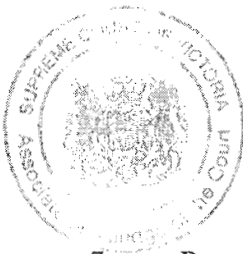
THE COURT ORDERS THAT:

1. Pursuant to rule 45.05 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.

2. Pursuant to rule 45.05 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. Pursuant to rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic):
 - (a) Anthony Cormick be appointed as the representative of the Growers (defined in paragraph 6 of the First Affidavit of Clinton Charles Hinchin sworn 26 June 2013 (Hinchin Affidavit) in the 2004 Timbercorp Table Grape Project (ARSN 108 648 086); and
 - (b) Jeyarasa Rasiah and Anne Rasiah be appointed as the representatives of the Growers in the 2005 Timbercorp Table Grape Project (ARSN 113 512 236).
4. The persons appointed pursuant to paragraph 3 above are joined as the Second and Third Defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)*.
5. The Plaintiff is granted leave to file and serve an amended originating motion on the Defendants on a date to be fixed:
 - (a) amending paragraph 3 of the Originating Motion to read "A declaration as to what, if any, right the Plaintiff has to the sale proceeds held on trust by the First Defendant pursuant to paragraph 3 of the orders made by the Honourable Justice Davies on 7 February 2011 in proceeding No. SCI 2010 7029 (Net Sale Proceeds)";
 - (b) incorporating an order for a declaration as to what, if any, right the Growers represented by the Second and Third Defendants have to the Net Sale Proceeds; and
 - (c) amending paragraph 4 of the Originating Motion to read "A declaration as to how the Net Sale Proceeds ought to be distributed between the Plaintiff and the Growers represented by the Second and Third Defendants".
6. Unless the Court otherwise orders, the First Defendant shall pay from the Net Sale Proceeds:
 - (a) to Allens (the solicitors for the Plaintiff), the legal costs and disbursements incurred in this proceeding by the Plaintiff on an indemnity basis pursuant to the fee agreement between Allens and the plaintiff (in confidential exhibit CCH-37 to the Hinchin Affidavit) and pursuant to Rule 63.30.1 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) within 14 days of presentation to the First Defendant of:



- (i) a tax invoice for the legal costs and disbursements incurred by the Plaintiff in relation to this proceeding; and
 - (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties; and
- (b) to Macpherson + Kelley Lawyers (the solicitors for the Second and Third Defendants), the legal costs and disbursements incurred in this proceeding by the Second and Third Defendants on an indemnity basis pursuant to the fee agreement between Macpherson + Kelley Lawyers and the Second and Third Defendants (in exhibits MJF-1 and MJF-2 to the affidavit of Michael Fernon of 18 July 2013) and Rule 63.30.1 of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* within 14 days of presentation to the First Defendant of:



- (i) a tax invoice for the legal costs and disbursements incurred by the Second and Third Defendants in relation to this proceeding; and
- (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties.

7. Pursuant to item 19(k) of the Supreme Court Scale of Costs at Appendix A of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)*, for the purposes of this proceeding and unless the Court otherwise orders:

- (a) the hourly and daily fee for the Senior Counsel retained on behalf of the Plaintiff is certified at the amounts stated in paragraph 63 of the Hinchey Affidavit; and
- (b) the hourly and daily fee for Senior Counsel retained on behalf of the Second and Third Defendants is certified at the amounts stated in paragraph 3(a) of exhibit CCH-40 to the Hinchey Affidavit.

8. Until further order, the First Defendant is excused from taking any step in the proceeding, including court appearances, but may do so in relation to the following matters:

- (a) his right to be paid remuneration and expenses from the Net Sale Proceeds (to the extent that remuneration and those expenses have not already been paid);
- (b) any allegations made about the First Defendant's personal conduct during his appointment and, in particular, with respect to the sale of the assets the proceeds of which represent the Net Sale Proceeds; and
- (c) to ensure disposal in full of the Net Sale Proceeds currently held on trust by the First Defendant.

9. Subject to the payment of the Commercial Court entry fee, the proceeding be returned and heard before the Commercial Court.
10. Subject to any further order from the Court, this proceeding be managed and heard together with proceeding No. SCI 2013 1478.
11. Until further order, Confidential Exhibit CCH-33 to the Hinchon Affidavit filed in this proceeding be kept confidential.
12. The proceeding is listed for further directions at 10.00am on 6 September 2013.
13. Costs reserved.

DATE AUTHENTICATED: **9 August 2013**




The Hon. Justice Judd

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

List B
S CI 2013 01478

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST & ORS

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 12 March 2014

Filed on behalf of: The Plaintiff

Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref Clint Hinchon (Clint.Hinchon@allens.com.au)

This is the **Exhibit** marked '**CCH-3**' now produced and shown to **Clinton Charles Hinchon** at the time of swearing his affidavit on 12 March 2014.

Before me



ELYSE KATE ADAMS
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

'CCH-3': A true copy of the deed of
compromise executed on 14
January 2014 in respect of the
Kangara Rights Proceeding.

The Trust Company (Nominees) Limited (ACN 000 154 441)

Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231) in its capacity as the responsible entity of the Timbercorp Orchard Trust

Michael Fung (in his capacity as receiver and manager of Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231) in its capacity as the responsible entity of the Timbercorp Orchard Trust)

Gregory Westaway (in his capacity as representative of the Participant Growers in the 2004 Timbercorp Citrus Project (ARSN 108 887 538))

Robert Bugden and Elizabeth Bugden (in their capacity as representatives of the Participant Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299))

Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)

Deed of Compromise for the Kangara Rights Proceeding

Allens
101 Collins Street
Melbourne VIC 3000
Tel +61 3 9614 1011
Fax +61 3 9614 4661
www.allens.com.au

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This Deed is made on

14 January 2014

~~2013~~

Parties

- 1 **The Trust Company (Nominees) Limited** (ACN 000 154 441) c/- Allens, 101 Collins Street, Melbourne, Victoria, 3000 (*The Trust Company*)
- 2 **Align Funds Management Limited** (receiver and manager appointed) (ACN 105 684 231) in its capacity as the responsible entity of the Timbercorp Orchard Trust c/- Maddocks Lawyers, 140 William Street, Melbourne, Victoria, 3000 (*Align*)
- 3 **Michael Fung** (in his capacity as receiver and manager of Align) c/- Norton Rose Fulbright Australia, Level 15, RACV Tower, 485 Bourke St, Melbourne, Victoria, 3000 (*Fung*)
- 4 **Gregory Westaway** (in his capacity as representative of the Participant Growers in the 2004 Timbercorp Citrus Project (ARSN 108 887 538)) c/- M+K Lawyers, Level 22, 114 William Street, Melbourne, Victoria, 3000
- 5 **Robert Bugden and Elizabeth Bugden** (in their capacity as representatives of the Participant Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299)) c/- M+K Lawyers, Level 22, 114 William Street, Melbourne, Victoria, 3000
- 6 **Timbercorp Securities Limited (In Liquidation)** (ACN 092 311 469) c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 (*TSL*)

Recitals

- A Timbercorp Limited (In Liquidation) and its subsidiary entities (together, the *Timbercorp Group*) conducted various agribusiness projects involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus, including the Citrus Projects.
- B Each entity in the Timbercorp Group is currently in liquidation.
- C Align is currently in receivership.
- D The Trust Company is the trustee for the Debenture Holders pursuant to the Trust Deed.
- E The Participant Growers are investors in the Citrus Projects which were conducted on the Kangara Land. The 2005 Timbercorp Citrus Project was also conducted (in part) on the Solara Property which was the subject of the Solara Rights Proceeding.
- F The Kangara Land included both citrus orchards and wine grape vineyards (*the Vineyard*). The Citrus Projects were conducted on those parts of the Kangara Land planted with citrus orchards. The Vineyard was not a part of the Citrus Projects or any other managed investment scheme.
- G TSL is the responsible entity for the Citrus Projects.
- H In accordance with the Trust Deed:
 - i) Align issued debentures to the Debenture Holders (and the funds raised by the issue were used to purchase, among other things, the Kangara Land and the Kangara Water Rights); and
 - ii) The Trust Company obtained the Kangara Security over the assets of Align used in the Citrus Projects, including the Kangara Land and the Kangara Water Rights.

- I In the course of the receivership of Align, and with Court approval, the Kangara Land and the Kangara Water Rights were sold separately and the Fund constituted.
- J The amount of The Trust Company's secured debt exceeds the total of the Fund. By executing this Deed, Align acknowledges that there will be no surplus available for payment to it.
- K A dispute exists between The Trust Company and the Participant Growers regarding the allocation amongst them of the Fund.
- L The Receiver is the stakeholder of the Fund and awaits the orders of the Court regarding disbursement of the Fund.
- M TFL claims that a number of the Participant Growers are TFL Debtors.
- N TSL claims that a number of the Participant Growers are Timbercorp Debtors.
- O On 25 March 2013, The Trust Company commenced Supreme Court of Victoria Proceeding No. S CI 2013 1478, seeking, among other things, declarations as to its, and other relevant parties', rights, if any, to the Fund (*Kangara Rights Proceeding*).
- P By orders made on 19 July 2013 in the Kangara Rights Proceeding, pursuant to rule 16.01(2) of the Rules:
- i) Gregory Westaway was appointed as representative of the Participant Growers in the 2004 Timbercorp Citrus Project; and
 - ii) Robert Bugden and Elizabeth Bugden were appointed as representatives of the Participant Growers in the 2005 Timbercorp Citrus Project,
- (collectively, the *Representative Growers*).
- Q The Parties have agreed to compromise the Kangara Rights Proceeding on the terms set out in this Deed.
- R The Representative Growers consider that it is for the benefit of the class of persons whom they respectively represent that the Kangara Rights Proceeding be compromised on the terms set out in this Deed.
- S The Trust Company supports the Kangara Rights Proceeding being compromised on the terms set out in this Deed and, together with the Representative Growers, will seek the Court's approval of the Compromise.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) *Approval Application* means the application or applications to the Court for the orders referred to in clause 3.2(a);
- (b) *Bella Vista Deed of Compromise* means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Bella Vista Rights Proceeding;
- (c) *Bella Vista Rights Proceeding* means Supreme Court of Victoria Proceeding No. S CI

2013 1477;

- (d) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Victoria;
- (e) **Citrus Projects** means the 2004 Timbercorp Citrus Project (ARSN 108 887 538) and the 2005 Timbercorp Citrus Project (ARSN 114 091 299);
- (f) **Claim** includes any claim or liability of any kind (including one which is prospective or contingent and the amount of which is not ascertained) and costs (whether or not the subject of a court order);
- (g) **Compromise** means the compromise set out in clause 2;
- (h) **Court** means the Supreme Court of Victoria;
- (i) **Costs** includes legal fees and disbursements;
- (j) **Debenture Holders** means the holders of the debentures issued by Align pursuant to the Trust Deed;
- (k) **Deed** means this document, including any schedule or annexure to it;
- (l) **Draft Orders** means the draft orders set out in schedule 2 to this Deed;
- (m) **First Notice to Participant Growers** has the meaning set out at clause 6.1(b);
- (n) **Fund** means the net sale proceeds of the sale of the Kangara Land and the Kangara Water Rights (including, for the avoidance of doubt, inclusive of all interest) held on trust by the Receiver, from time to time, in the Kangara Accounts pursuant to orders of Justice Judd made on 15 March 2011 and taking into account any other amount which may properly be deducted pursuant to any subsequent order of the Court or otherwise including, for the avoidance of doubt, the Receiver's Unpaid Costs;
- (o) **Kangara Accounts** means the interest bearing accounts styled as:
 - (i) Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (R&M Appointed) Kangara Land (BSB 083-004; Account number 11713-6868); and
 - (ii) Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (R&M Appointed) Kangara Water (BSB 083-004, Account Number 11733-4602);
- (p) **Kangara Extinguishment Date** means 2 June 2011, being the date on which the liquidators of TSL extinguished the last of the rights of the Participant Growers in connection with the Citrus Projects;
- (q) **Kangara Land** means the land the subject of the Kangara Rights Proceeding which was owned by Align and being part of the land on which the Citrus Projects were conducted;
- (r) **Kangara Secured Debt** means the total amount owed to The Trust Company under the Trust Deed (held on trust for the benefit of the Debenture Holders) and secured by the Kangara Security as at the date the payment referred to in clause 4(d) is made to The Trust Company, including interest accrued to that date;
- (s) **Kangara Security** means the security set out in schedule 1 to this Deed;
- (t) **Kangara Settlement Amount** means \$1,043,321.00;
- (u) **Kangara Settlement Entitlement** means, in respect of a Participant Grower, its entitlement, from time to time, to the Kangara Settlement Amount (together with any applicable interest on that amount from the date on which the payment provided by clause 4(b) is made by the Receiver to TSL) on the basis of a rateable distribution of that

amount between the Participant Growers in the Citrus Projects in accordance with the number of Lots they held in those projects as at the Kangara Extinguishment Date;

- (v) **Kangara Water Rights** means the water rights the subject of the Kangara Rights Proceeding and owned by Align under Water Licence No. 827;
- (w) **Lot** means a Citruslot as that term is defined in the constituent documents of the Citrus Projects;
- (x) **Participant Growers** means each "Participant Grower" as that term is defined in the constituent documents of the Citrus Projects including, for the avoidance of doubt, where applicable, the Participant Grower's legal personal representatives;
- (y) **Party** means a party to this Deed;
- (z) **Receiver** means Fung;
- (aa) **Receiver's Account** means the following bank account:
 Account name: PricewaterhouseCoopers
 Bank: National Australia Bank
 BSB: 083-004
 Account number: 19495-9569
- (bb) **Receiver's Unpaid Costs** means, up to and including the date on which the payments provided by clause 4 are made, the amount of unpaid remuneration and expenses incurred by the Receiver in connection with and arising from:
 - (i) his, and his predecessors', appointment as receiver and manager of Align;
 - (ii) his, and his predecessors', management, maintenance and, in accordance with this deed, disbursement of the Fund; and
 - (iii) his costs of and incidental to the Approval Application and the Kangara Rights Proceeding,
 excluding any such costs to which paragraph 3 of the order of Justice Judd made on 15 March 2011 applies, as agreed between the Receiver and The Trust Company, failing which, such amount to be approved by the Court;
- (cc) **Rules** means the Supreme Court (General Civil Procedure) Rules 2005 (Vic);
- (dd) **Second Notice to Participant Growers** has the meaning set out at clause 6.3(b);
- (ee) **Solara Property** means the land the subject of the Solara Rights Proceeding;
- (ff) **Solara Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2011 6606;
- (gg) **TFL** means Timbercorp Finance Pty Ltd (in Liquidation) (ACN 054 581 190);
- (hh) **TFL Debtor** means a Participant Grower who entered into a loan agreement with TFL:
 - (i) pursuant to which TFL agreed to lend a specified amount or amounts to that Participant Grower to be used by that Participant Grower to pay liability owed to TSL relating to that Participant Grower's investment in the Citrus Projects; and
 - (ii) under which TFL claims that indebtedness to TFL remains outstanding;
- (ii) **TFL Indebtedness** means, in respect of a TFL Debtor, its indebtedness to TFL from time to time according to the books and records of TFL;
- (jj) **Timbercorp Debtor** means a Participant Grower who TSL claims is indebted to TSL;
- (kk) **Timbercorp Indebtedness** means, in respect of a Timbercorp Debtor, its indebtedness,

from time to time, to TSL according to the books and records of TSL; and

- (II) **Trust Deed** means the Timbercorp Orchard Trust Debenture Trust Deed dated 17 October 2003.

1.2 Interpretation

- (a) Reference to:
- (i) the singular includes the plural and the plural includes the singular;
 - (ii) a Party includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives); and
 - (iii) a thing includes the whole and each part of it separately.
- (b) 'Including' and similar expressions are not words of limitation.
- (c) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (d) A provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

1.3 Parties

- (a) If a Party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation in favour of more than 1 person is for the benefit of them separately and jointly.
- (c) A Party that is a trustee is bound both personally and in that Party's capacity as a trustee.
- (d) A Party holds the benefit of any release provided for in this Deed for themselves and, where applicable, for that Party's present and former, directors, officers, employees, contractors, agents and partners and, in the case of the Receiver, for any former appointee to that position.

2 Compromise

Subject to the conditions precedent set out in clause 3 being satisfied, the Parties agree to compromise the Kangara Rights Proceeding by:

- (a) the making of the payments in accordance with clause 4; and
- (b) the giving of releases in accordance with clause 5.

3 Conditions Precedent

3.1 Debenture Holder approval

It is a condition precedent to the Compromise that, on or before 7 March 2014:

- (a) the Debenture Holders approve the Compromise in accordance with the procedure prescribed in the Trust Deed; and
- (b) the Debenture Holders approve the compromise at clause 2 of the Bella Vista Deed of Compromise.

3.2 Court Orders

It is a condition precedent to the Compromise that, as soon as practicable after the condition

precedent in clause 3.1 is satisfied, and on or before 30 June 2014:

- (a) the Court in the Kangara Rights Proceeding:
 - (i) pursuant to rule 16.01(4) of the Rules, approves the Compromise and orders that the Compromise shall be binding on the absent persons who are represented respectively by the Representative Growers, in the form of, or substantially to the effect of, paragraph 1 of the Draft Orders; and
 - (ii) makes orders in the form of, or substantially to the effect of, paragraphs 2 and 3 of the Draft Orders; and
- (b) the Court makes orders in the Bella Vista Rights Proceeding in accordance with clause 3.2(a) of the Bella Vista Deed of Compromise.

3.3 Procuring Debenture Holder approval and Court orders

- (a) The Trust Company will:
 - (i) do all things reasonably necessary to procure the approval of the Debenture Holders in accordance with clause 3.1; and
 - (ii) notify the other Parties in writing immediately following the approvals referred to in clause 3.1 being obtained.
- (b) The parties will do all things reasonably necessary to procure the Court to make orders in the terms referred to in clause 3.2.

4 Payments

- (a) As soon as practicable after the conditions precedent set out in clauses 3.1 and 3.2 are satisfied and either agreement reached with The Trust Company or any application to the Court for approval of the quantum of the Receiver's Unpaid Costs has been made and determined, the Receiver will pay from the Kangara Accounts the Receiver's Unpaid Costs by direct deposit into the Receiver's Account.
- (b) On the same date as the payment under clause 4(a) is made to the Receiver's Account, the Receiver will pay to TSL from the Kangara Accounts the Kangara Settlement Amount by direct deposit into the following interest bearing bank account:

Account name: Mark Korda & Leanne Chesser as Liquidators of Timbercorp Securities
PL (In Liq) – Kangara

Bank: National Australia Bank Limited

BSB: 083-004

Account number: 39-597-3367

- (c) TSL will hold the Kangara Settlement Amount on trust for the Participant Growers in the Citrus Projects for distribution to, or on behalf of, those Participant Growers in accordance with their respective Kangara Settlement Entitlements on the following basis.
 - (i) In respect of each Participant Grower who is not a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause, TSL will pay its Kangara Settlement Entitlement as soon as practicable to or at the direction of that Participant Grower (in each case, into a bank account nominated by each such Participant Grower).
 - (ii) In respect of each Participant Grower who:
 - (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and

- (B) directs and authorises TSL by notice in writing to pay its TFL Indebtedness to the extent possible out of its Kangara Settlement Entitlement,

TSL will, as soon as practicable, pay to TFL that Participant Grower's TFL Indebtedness (to the extent possible) out of the Participant Grower's Kangara Settlement Entitlement and remit the balance of that Participant Grower's Kangara Settlement Entitlement (if any) to the Participant Grower.

- (iii) In respect of each Participant Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
- (B) has a Kangara Settlement Entitlement for a sum greater than its TFL Indebtedness and directs and authorises TSL by notice in writing to pay only part of its TFL Indebtedness out of its Kangara Settlement Entitlement,

TSL will, as soon as practicable, pay to TFL that part of that Participant Grower's TFL Indebtedness out of the Participant Grower's Kangara Settlement Entitlement and retain the balance of that Participant Grower's Kangara Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.

- (iv) In respect of each Participant Grower who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
- (B) does not give a direction or authorisation to TSL in relation to payment of its TFL Indebtedness,

TSL will continue to hold that Participant Grower's Kangara Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.

- (d) On the same date as the payments under clauses 4(a) and 4(b) are made to the Receiver's Account and TSL respectively, the Receiver will pay to The Trust Company any amounts remaining in the Kangara Accounts after the payments referred to in clauses 4(a) and 4(b) have been made, into the following bank account:

Account name: The Trust Company (Australia) Limited
Bank: National Australia Bank Limited
BSB: 082057
Account number: 145726240
Reference: TOTDEB

- (e) For the purposes of clause 4(c)(i):

- (i) if a Participant Grower:

- (A) is a Timbercorp Debtor and not a TFL Debtor; and
- (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(c)(i),

TSL will:

- (C) deduct from the payment due to that Participant Grower under clause 4(c)(i) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(c)(i) out of the Participant Grower's Kangara Settlement Entitlement to the Participant Grower's nominated bank account; and
 - (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(e), TSL will have discharged its obligations to that Participant Grower under clause 4(c)(i) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.
- (f) For the purposes of clause 4(c)(ii):
- (i) if a Participant Grower:
 - (A) is a Timbercorp Debtor and a TFL Debtor; and
 - (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(c)(ii),
- TSL will:
- (C) deduct from the payment due to that Participant Grower under clause 4(c)(ii) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(c)(ii) out of the Participant Grower's Kangara Settlement Entitlement to the Participant Grower's nominated bank account; and
- (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(f), TSL will have discharged its obligations to that Participant Grower under clause 4(c)(ii) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.
- (g) For the purposes of clauses 4(c)(iii) and 4(c)(iv), if a Participant Grower is a Timbercorp Debtor and a TFL Debtor, the Participant Grower will not give any direction or authorisation to TSL to pay any part of that Participant Grower's Timbercorp Indebtedness out of its Kangara Settlement Entitlement pending agreement in writing between TFL and the relevant Participant Grower, or relevant court order, as to the manner in which that entitlement is to be disbursed.
- (h) The giving of any authorisation or direction by a Participant Grower to TSL under clause 4(c):
- (i) does not constitute an admission of liability by the Participant Grower to TFL in respect of the Participant Grower's TFL Indebtedness; and
 - (ii) is without prejudice to the Participant Grower's rights (if any) against TFL in relation to the Participant Grower's TFL Indebtedness.

- (i) Nothing in the receipt by TFL of any payment from TSL in accordance with clause 4(c) constitutes a waiver of any rights which TFL may have against a Participant Grower in respect of that Participant Grower's remaining TFL Indebtedness. The benefit of this clause is held by TSL on trust for TFL.

5 Releases

5.1 Representative Growers, The Trust Company, Align, and the Receiver

Upon satisfaction of the conditions precedent in clauses 3.1 and 3.2, and the making of the payments in clauses 4(a), 4(b) and 4(d), the Representative Growers on behalf of the Participant Growers, The Trust Company, the Receiver and Align release and discharge each other from all Claims in relation to:

- (a) their respective entitlements to the Fund; and
- (b) the allocation and disbursement of the Fund under the Compromise,

and this Deed may be pleaded by any Party as a full and complete defence to any such Claim.

5.2 TSL

Upon:

- (a) the releases in clause 5.1 taking effect; and
- (b) the making of a payment or, as applicable, all payments to, or at the direction of, or on the authorisation of, a Participant Grower under clauses 4(c), 4(e) or 4(f) by which that Participant Grower's Kangara Settlement Entitlement is disbursed in full,

the Representative Growers for that Participant Grower release TSL on behalf of that Participant Grower from all Claims in relation to:

- (c) that Participant Grower's entitlement to the Fund;
- (d) the allocation and disbursement of the Fund under the Compromise in respect of that Participant Grower; and
- (e) TSL's obligations to that Participant Grower under clauses 4(c), 4(e) or 4(f) (as the case may be),

and this Deed may be pleaded by TSL as a full and complete defence to any such Claim.

6 Notices to Participant Growers

6.1 First Notice to Participant Growers

- (a) As soon as practicable after this Deed is executed, the Representative Growers will seek the other Parties' comments on the terms of a first notice to Participant Growers, and to this end:
 - (i) the Representative Growers will prepare and circulate among the Parties a draft of the first notice; and
 - (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the first notice.
- (b) The Parties will thereafter confer in good faith in relation to any necessary further comments on the draft first notice and the Representative Growers will finalise the form of the first notice (the finalised form being the **First Notice to Participant Growers**).
- (c) The First Notice to Participant Growers will, among other things:

- (i) provide information about the Kangara Rights Proceeding;
- (ii) explain that the interests of the Participant Growers are represented in the Kangara Rights Proceeding by the Representative Growers;
- (iii) refer to the Compromise reached between the Parties and explain the key features of this Deed including the various payments contemplated under the Deed;
- (iv) explain that the Compromise is considered by the Representative Growers as being in the best interests of the Participant Growers;
- (v) alert the Participant Growers to consider any potential tax consequences of the Compromise;
- (vi) explain that if the Court approves the Compromise the Participant Growers will be bound by the Compromise in respect of their individual entitlements (if any) out of the Fund;
- (vii) explain the various roles being undertaken by TSL at the request of, and on the instruction of, the Representative Growers in connection with the Approval Application and under this Deed;
- (viii) explain when the Participant Growers may expect to receive a payment under the Compromise from TSL;
- (ix) explain the mechanism by which each Participant Grower is to provide their individual bank account details to TSL for the purposes of receipt of a payment under the Compromise;
- (x) explain that some Participant Growers are TFL Debtors and Timbercorp Debtors and how the Compromise will apply to the individual circumstances of the Participant Growers (having regard, amongst other things, to any offers of settlement made by TFL to TFL Debtors (amongst others));
- (xi) explain how each Participant Grower can access private information in relation to their individual circumstances in respect of the Compromise including the number of Lots they held in the Citrus Projects as at the Kangara Extinguishment Date and, where applicable, their TFL Indebtedness and Timbercorp Indebtedness (as the case may be);
- (xii) explain, in respect of any payment due to the Participant Growers under the Compromise:
 - (A) the right of each Participant Grower to make a direction and authorisation to TSL in accordance with clauses 4(c), 4(e) and 4(f); and
 - (B) the consequences, where applicable, of making or not making such a direction or authorisation;
- (xiii) explain the consequences if the Court does not approve the Compromise;
- (xiv) explain to the Participant Growers what their options are in connection with the Approval Application;
- (xv) inform the Participant Growers that, without prejudice to any other course they may be advised to take, they may:
 - (A) address any comments or questions in relation to the Compromise, the Approval Application, or their individual circumstances;

(B) raise any objection to the Compromise,

to the Representative Growers through TSL using either a specified telephone hotline facility or by a specified email address, and that a reply will be provided to their comments or questions and, as appropriate, their comments and objections will be noted for the purposes of the hearing of the Approval Application;

(xvi) refer the Participant Growers to a set of 'frequently asked questions' and related answers which they should review before considering whether it is necessary to ask any questions of the Representative Growers through TSL relating to the Compromise or in connection with the Approval Application; and

(xvii) inform the Participant Growers that a further notice will be provided to them as soon as practicable after it becomes known whether or not the conditions precedent to the Compromise have been satisfied.

6.2 Provision of the First Notice to Participant Growers

As soon as practicable after the condition precedent in clause 3.1 has been satisfied and the First Notice to Participant Growers has been finalised in accordance with clause 6.1(b), the Representative Growers will provide the First Notice to Participant Growers to TSL and, subject to any order of the Court, as soon as practicable thereafter:

(a) the Representative Growers will cause the First Notice to Participant Growers to be uploaded to the M+K Lawyers website <http://www.mk.com.au>; and

(b) TSL will (on instruction from, and on behalf of, the Representative Growers):

(i) cause the First Notice to Participant Growers to be uploaded to:

(A) a new section within the Timbercorp section of the KordaMentha website <http://www.kordamentha.com/creditor-information/australia/51/15> which will address the Compromise;

(B) the pre-existing "Timbercorp Citrus Schemes" section of the KordaMentha website <http://www.kordamentha.com/creditor-information/australia/51/06>; and

(C) a new section within the Timbercorp section of the Arnold Bloch Leibler website <http://www.abl.com.au/timbercorp/timbercorp.htm> which will address the Compromise;

(ii) send to the Participant Growers, by post and by email to their last known postal and email addresses most recently communicated to TSL and recorded in its books and records, a short letter bringing to their attention that the First Notice to Participant Growers has been uploaded to the websites referred to in clauses 6.2(a) and 6.2(b) and specifying the relevant links to those websites; and

(iii) cause to be published an advertisement on a business day in 'The Australian' newspaper containing information similar to that to be set out in the letter referred to in clause 6.2(b)(ii).

6.3 Second Notice to Participant Growers

(a) As soon as practicable after it becomes known whether the conditions precedent in clause 3.2 has been satisfied, the Representative Growers will seek the other Parties' comments on the terms of a second notice, and to this end:

(i) the Representative Growers will prepare and circulate among the other Parties a draft of the second notice; and

- (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the second notice.
- (b) The Parties will confer in good faith in relation to any necessary further comments on the draft of the second notice and the Representative Growers will finalise the form of the second notice (the finalised form being the **Second Notice to Participant Growers**).
- (c) The Second Notice to Participant Growers will, among other things:
 - (i) explain whether the condition precedent to the Compromise set out in clause 3.2 has been satisfied; and
 - (ii) if the condition precedent to the Compromise set out in clause 3.2:
 - (A) has been satisfied, confirm when the Participant Growers may expect to receive a payment under the Compromise; and
 - (B) has not been satisfied, confirm the consequences.

6.4 Provision of the Second Notice to Participant Growers

As soon as practicable after it has been finalised in accordance with clause 6.3(b), the Representative Growers will provide to TSL the Second Notice to Participant Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(a); and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers) cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(b).

7 Application for Court approval

- (a) Each of the Parties will use their best endeavours to do all things necessary, including steps contemplated by this Deed, to make the Approval Application and to enable the Court to hear the Approval Application at the earliest opportunity convenient to the Court after distribution of the First Notice to Participant Growers in accordance with clause 6.2, including, for the avoidance of doubt, seeking the orders set out in the Draft Orders (or orders substantially to the same effect).
- (b) On the hearing of the Approval Application, subject to the Court making the order in paragraph 1 of the Draft Orders (or orders substantially to the same effect), the Parties will consent to the Court making each of the other orders set out in paragraphs 2 and 3 of the Draft Orders (or orders substantially to the same effect).
- (c) Nothing in clause 7(b) will preclude the Representative Growers from informing the Court of any matter which they, or either of them, consider appropriate to disclose to the Court in connection with the Approval Application in their role as representative parties.

8 Failure to satisfy conditions precedent

If the condition precedent in clause 3.1 is not satisfied by 7 March 2014 or the condition precedent in clause 3.2 is not satisfied by 30 June 2014 then this Deed ceases to have any effect. In that event:

- (a) no Party will have any right or entitlement as a result of or by reason of the Parties having entered into this Deed or having conditionally agreed to the Compromise; and

- (b) this Deed, any documents prepared or circulated pursuant to this Deed, and any other documents prepared or circulated in anticipation of, or for the purpose of, the Approval Application may not be referred to or tendered in evidence in the Kangara Rights Proceeding, the Bella Vista Rights Proceeding or any other proceeding relating to the subject matter of this Deed.

9 Role of TSL

At the request of the Representative Growers, TSL will perform the following administrative roles in connection with the Compromise and the Approval Application:

- (a) to distribute the First Notice to Participant Growers in accordance with clause 6;
- (b) to establish and operate effectively an appropriate telephone hotline facility and email facility to:
 - (i) receive and, in accordance with instructions from the Representative Growers, address comments and questions from the Participant Growers in connection with the Compromise and the Approval Application; and
 - (ii) receive any objections to the Compromise made by the Participant Growers;
- (c) in respect of the Participant Growers who have raised comments, questions or made objections, to record with appropriate detail:
 - (i) the identity of those Participant Growers;
 - (ii) the comments and questions raised by those Participant Growers and the responses provided to those Participant Growers; and
 - (iii) any objections made by those Participant Growers and any response provided in relation to those objections;
- (d) to act in accordance with a protocol agreed with the Representative Growers regarding:
 - (i) the comments and questions which:
 - (A) may be answered by TSL without further reference to the Representative Growers;
 - (B) will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (ii) the objections:
 - (A) to which TSL may respond without further reference to the Representative Growers;
 - (B) which will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (iii) the confidentiality of communications between TSL, the Participant Growers and the Representative Growers in relation to comments, questions and any objections raised by any Participant Growers;
- (e) to provide to the Representative Growers, on a timely basis, a record, with appropriate detail, of:
 - (i) all comments, questions and answers given by TSL in accordance with the protocol which do not require preparation of a response by the Representative Growers;
 - (ii) all comments and questions requiring preparation of a response from the

Representative Growers;

- (iii) any objections by the Participant Growers to which TSL has provided a response in accordance with the agreed protocol; and
- (iv) any objections requiring the preparation of a response by the Representative Growers;
- (f) to provide on a timely basis to relevant Participant Growers any responses to comments, questions or objections settled by the Representative Growers;
- (g) to record, with appropriate detail, in an affidavit to be filed on behalf of the Representative Growers in connection with the Approval Application:
 - (i) the tasks which TSL has undertaken at the request and on the instruction of the Representative Growers;
 - (ii) the substance of all comments and questions raised to TSL by the Participant Growers and the responses provided by TSL to those Participant Growers; and
 - (iii) the nature of any objections made to TSL by Participant Growers and the responses provided by TSL to those Participant Growers;
- (h) to provide the Second Notice to Participant Growers in accordance with clause 6;
- (i) to make the payments referred to in clause 4(c);
- (j) to act in accordance with any direction or authorisation given by Participant Growers in accordance with clause 4(c), 4(e) or 4(f);
- (k) to perform such other administrative roles as agreed with the Representative Growers or the other parties in connection with the Compromise and the Approval Application; and
- (l) to provide appropriately qualified personnel to undertake the foregoing.

10 No Waiver

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

11 Execution of counterparts

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument.

12 Electronic delivery of document

If a party delivers an executed counterpart of this document or any other document executed in connection with it ("**Relevant Document**") by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

13 Entire Agreement

This Deed contains the entire agreement between the Parties with respect to its subject matter.

14 Further Assurances

At the reasonable request of another Party, each Party will do anything reasonably necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

15 Stamp Duty

All stamp duty (including fines, penalties and interest) payable on or in connection with the declarations of trust provided in clause 4(c) is payable by TSL.

16 Goods and Services Tax

All payments to be made under this Deed are inclusive of GST, if any.

17 Execution by Attorney or Agent

Any Party may execute this Deed by its attorney or agent. Each attorney or agent executing this Deed that, as at the date of executing this Deed, it has no notice of the revocation or suspension of its power of attorney or agency.

18 Governing law and exclusive jurisdiction

This Deed is governed by the law in force in Victoria. The Parties submit to the exclusive jurisdiction of the courts of Victoria or any competent Federal court exercising jurisdiction in Victoria and waive any right to claim that those courts are an inconvenient forum.

Schedule 1 - Kangara Security

- 1 First ranking fixed and floating charge over the assets of the Timbercorp Orchard Trust granted to The Trust Company and registered with the Australian Securities and Investments Commission on 30 April 2004 as charge number 994221.
- 2 Real property mortgage over the Kangara Land registered on 23 March 2004.

Schedule 2 - Draft Orders

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

S CI 2013 01478

BETWEEN:

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)	Plaintiff
- and -	
MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST AND OTHERS ACCORDING TO THE ATTACHED SCHEDULE	Defendants

DRAFT MINUTE OF ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

THE COURT ORDERS THAT:

1. Pursuant to rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005*, the compromise set out in clause 2 of the Deed of Compromise dated 23 December 2013 between the plaintiff and the first to third defendants is approved and shall be binding on the absent persons who are represented by the second and third defendants.

THE COURT ORDERS FURTHER BY CONSENT THAT:

2. The proceeding is dismissed.
3. The plaintiff's and the second and third defendants' costs of this proceeding, including their costs of and incidental to negotiating and giving effect to the Deed of Compromise, be paid in accordance with paragraph 6 of the orders of the Honourable Justice Judd made on 19 July 2013.
4. There be otherwise no order as to costs.

DATE: 2013

SCHEDULE

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

LIST

SCI 2013 01478

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST**

First Defendant

and

**GREGORY WESTAWAY IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN THE 2004
TIMBERCORP CITRUS PROJECT (ARSN 108 887 538)**

Second Defendant

and

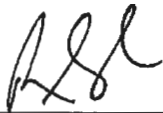
**ROBERT AND ELIZABETH BUGDEN IN THEIR CAPACITY AS REPRESENTATIVES OF THE
GROWERS IN THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)**

Third Defendants

Executed and delivered as a Deed

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

Signed Sealed and Delivered for The Trust Company (Nominees) Limited (ACN 000 154 441), by its attorneys pursuant to a Power of Attorney dated 4 August 2010:



Attorney Signature

RUPERT SMOKER

Print Name



Attorney Signature

ALEXANDER PAMPEL

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231)** in its capacity as the responsible entity of the Timbercorp Orchard Trust:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Executed and delivered as a Deed

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

Signed Sealed and Delivered for The Trust Company (Nominees) Limited (ACN 000 154 441), by its attorneys pursuant to a Power of Attorney dated 4 August 2010:

Attorney Signature

Print Name

Attorney Signature

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231)** in its capacity as the responsible entity of the Timbercorp Orchard Trust:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Signed by **Michael Fung** in his capacity as receiver and manager of Align Funds Management Limited (receiver and manager appointed) (ACN 105 684 231) in its capacity as the responsible entity of the Timbercorp Orchard Trust, in the presence of:

J Stewart

Witness Signature

Jane Stewart

Print Name

5/78 Woomack Road

Carnegie VIC 3163

Address of witness

Signature

Signed Sealed and Delivered by **Gregory Westaway** in his capacity as representative of the Participant Growers in the 2004 Timbercorp Citrus Project (ARSN 108 887 538) in the presence of:

Witness Signature

Print Name

Signature

Signed Sealed and Delivered by **Robert Bugden** in his capacity as representative of the Participant Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299) in the presence of:

Witness Signature

Print Name

Signature

Signed Sealed and Delivered by **Elizabeth Bugden** in her capacity as representative of the Participant Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299) in the presence of:

Witness Signature

Print Name

Signature

Signed Sealed and Delivered by Gregory Westaway in his capacity as representative of the Participant Growers in the 2004 Timbercorp Citrus Project (ARSN 108 887 538) in the presence of:

Witness Signature

Signature

Print Name

Signed Sealed and Delivered by Robert Bugden in his capacity as representative of the Participant Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299) in the presence of:

Witness Signature

Signature

Print Name

Signed Sealed and Delivered by Elizabeth Bugden in her capacity as representative of the Participant Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299) in the presence of:

Witness Signature

Signature

Print Name

Executed by Timbercorp Securities Limited (in liquidation) (ACN 092 3111 469) by being signed sealed and delivered in its name by **Mark Anthony Korda** in his capacity as liquidator in the presence of:



Witness Signature

Xiu Jing Chang

Print Name



Signature

Mark Korda

Print Name

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

List B
S CI 2013 01478

B E T W E E N

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANGER APPOINTED) (ACN 105 684 231) IN ITS
CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST & ORS

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 12 March 2014

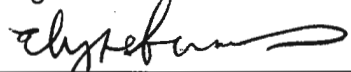
Filed on behalf of: The Plaintiff

Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref Clint Hinchon (Clint.Hinchon@allens.com.au)

This is the **Exhibit** marked '**CCH-4**' now produced and shown to **Clinton Charles Hinchon** at the time of swearing his affidavit on 12 March 2014.

Before me 

ELYSE KATE ADAMS
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

'CCH-4': A true copy of the letter to Growers, the advertisement placed in The Australian newspaper, the First Notice to Growers and the Frequently Asked Questions document.

Our Ref: MJF:YCH:229790

4 March 2014

Dear Grower

**2004 Timbercorp Citrus Project ARSN 108 887 538,
2005 Timbercorp Citrus Project ARSN 114 091 299,**

(collectively, the **Citrus Projects**)

You are receiving this letter in your capacity as a grower investor in one or more of the Citrus Projects (**Grower**).

The Citrus Projects are the subject of a dispute between Growers and other parties to Proceeding No. SCI 2013 01478 in the Supreme Court of Victoria (**Kangara Rights Proceeding**) in relation to their respective entitlements to the net sale proceeds of the assets used in the Citrus Projects. In that proceeding, the interests of all Growers are represented by representative Growers appointed by the Supreme Court of Victoria (**Representative Growers**). M+K Lawyers acts on behalf of the Representative Growers.

The parties to the Kangara Rights Proceeding have now reached a compromise resolving the dispute between them (**Compromise**). Each Representative Grower, acting on our and our barristers' advice, considers that the Compromise is in the best interests of the Growers they represent. If the Compromise is approved by the Supreme Court of Victoria and the compromise in respect of the 2004 and 2005 Timbercorp Table Grape Projects is also approved, the Compromise will bind all Growers and you will lose any right to seek a different outcome of the dispute.

We have prepared a notice to Growers explaining the Kangara Rights Proceeding, the Compromise (including its effect on Growers' rights and entitlements) and the application to be made to the Supreme Court of Victoria for approval of the Compromise (**First Notice to Growers**). The First Notice to Growers also provides details on how you can comment on or object to the Compromise or obtain further information.

It is important that you read the First Notice to Growers carefully as, if approved by the Supreme Court of Victoria, the Compromise will affect your rights and entitlements as a Grower.

You can view the First Notice to Growers on the following websites:

- www.mk.com.au
- <http://www.kordamentha.com/creditor-information/australia/51/15>
- <http://www.kordamentha.com/creditor-information/australia/51/06>
- <http://www.abl.com.au/timbercorp/timbercorp.htm>

Macpherson + Kelley Lawyers Pty Ltd
ACN 129 740 000

Melbourne
Level 22
104 William St
Melbourne VIC 3000

GPO Box 1000
Melbourne VIC 3000
DO 173 Melbourne

Tel + 61 3 8615 9900
Fax + 61 3 8615 9998

Dandenong
Tel + 61 3 9794 2600

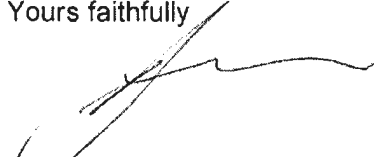
info@mk.com.au

mk.com.au

4 March 2014

If you would like the First Notice to Growers to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

Yours faithfully



M+K LAWYERS
MICHAEL FERNON
Principal

TEL: +61 3 8615 9936 | FAX: +61 3 9794 2540
EMAIL: michael.fernon@mk.com.au

Encl.

Timbercorp Citrus Projects

NOTICE is given to grower investors in one or more of the following Citrus Projects:

2004 Timbercorp Citrus Project ARSN 108 887 538
2005 Timbercorp Citrus Project ARSN 114 091 299

of a **COMPROMISE** of the dispute between grower investors and other parties to Proceeding No SCI 2013 01478 in the Supreme Court of Victoria in relation to their respective entitlements to the net sale proceeds of the assets used in the Citrus Projects.

If the compromise is approved by the Supreme Court of Victoria and the compromise in respect of the 2004 and 2005 Timbercorp Table Grape Projects is also approved, all grower investors in the Citrus Projects will be bound by the terms of the compromise and you will lose any right to seek a different outcome to the dispute.

A notice to grower investors explaining the dispute, the compromise and its effect on the rights and entitlements of grower investors is available on the following websites:

- www.mk.com.au
- <http://www.kordamentha.com/creditor-information/australia/51/15>
- <http://www.kordamentha.com/creditor-information/australia/51/06>
- <http://www.abl.com.au/timbercorp/timbercorp.htm> or by calling (03) 8615 1200 or by emailing investorqueries@timbercorp.com.au

It is important that you read the notice carefully as, if approved by the Supreme Court of Victoria, the compromise will affect your rights and entitlements as a grower investor.

For the reasons set out in section 5 of this notice, each representative grower, on the advice of their legal advisers, considers that the compromise is in the best interests of the growers they represent.

Next steps

The Supreme Court will be asked to approve the compromise at a hearing currently anticipated to commence in April 2014 at the Supreme Court of Victoria, Melbourne. The confirmed date of this hearing will be notified to growers online at each of:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

as soon as it is known.

If the Supreme Court approves the compromise, you will be bound by the compromise and you will lose any right to argue for an alternative outcome of the dispute. It is therefore important to read this notice carefully.

Answers to some Frequently Asked Questions (FAQ) are available online and a telephone hotline facility and an email facility have been set up to assist growers who:

- wish to comment on the compromise;
- have any questions or wish to obtain further information on the compromise; or
- wish to object to the compromise.

Details of where you can access the FAQ, the telephone hotline facility and the email facility are set out in section 13 of this notice.

If you wish to object to the compromise, you should call the telephone hotline facility or email **as soon as possible before 17 March 2014**. Your objections will be passed on to the lawyers acting for the representative growers.

You are not required to attend or appear at the Court hearing in the Supreme Court at which approval of the compromise will be sought. However, you may wish to attend or appear at that hearing, and/or seek independent legal advice and/or obtain representation at that hearing (outside the existing representative grower arrangement established by the Supreme Court). If you do so, any legal or other costs of doing so will be at your own expense unless the Court orders otherwise.

The representative growers will keep you informed of future developments regarding the compromise and Court approval of that compromise (see section 7 of this notice).

Important Information for Growers

1 Background to the dispute and Resolved Timbercorp Apportionment Proceedings

Timbercorp Limited (in liquidation) (**Timbercorp**) and its subsidiary entities (together, the **Timbercorp Group**) conducted various agribusiness managed investment schemes across a number of properties involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives, grapes and citrus. A member of the Timbercorp Group, Timbercorp Securities Limited (in liquidation) (**TSL**) was the responsible entity of the registered Timbercorp managed investment schemes.

The Timbercorp Group went into administration on 23 April 2009 and was placed into liquidation on 29 June 2009. Thereafter, the land on which the Timbercorp managed investment schemes were conducted, and related assets, were sold in a series of transactions each of which was approved by the Supreme Court.

In approving each of the sale transactions, the Supreme Court, in each case, ordered (among other things) that:

- (a) the net sale proceeds be placed into trust pending a proceeding to determine the rights of the land owners, the secured creditors, the investors in the Timbercorp managed investment schemes (**Growers**) and other interested parties to all, or any part, of those proceeds; and
- (b) neither the release of the secured creditors' securities upon completion of the sale contracts, nor the extinguishment of the Growers' rights, would prejudice those parties' respective rights to the assets sold insofar as they had such rights for the purpose of making a claim to all or any part of the net proceeds.

As a result, five separate proceedings were commenced to determine how the net sale proceeds the subject of each sale transaction were to be apportioned between the land owners, the secured creditors, Growers and other interested parties claiming an interest in those proceeds. These proceedings, collectively referred to as the **Resolved Timbercorp Apportionment Proceedings**, were as follows:

- Supreme Court of Victoria Proceeding No. S CI 2009 10699 (**Almond Land Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2011 6604 (**Liparoo and Yungera Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2011 6606 (**Solara Rights Proceeding**);

- Supreme Court of Victoria Proceeding No. S CI 2010 1354 (**BB Olives Rights Proceeding**); and
- Supreme Court of Victoria Proceeding No. S CI 2011 6777 (**Fenceport Rights Proceeding**).

In each of the Resolved Timbercorp Apportionment Proceedings, one or more parties were appointed by the Supreme Court pursuant to Rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) (**Rule 16**) as the representative of the Growers in the Timbercorp managed investment schemes the subject of that proceeding.

As each of the Resolved Timbercorp Apportionment Proceedings involved similar issues, it was considered appropriate for one such proceeding to be heard and determined first, with the intention that the result in that proceeding would then form the basis for determination of the other proceedings. This led to the hearing and determination of the Almond Land Rights Proceeding in early 2011. By her judgment in that proceeding, Justice Davies of the Supreme Court found that the Growers in the almond projects the subject of that proceeding were not entitled to any part of the net sale proceeds and that the full amount of the net sale proceeds should be paid to the secured creditors of the land owner (**Judgment**).

The Judgment was appealed by the Representative Growers in Supreme Court of Victoria Court of Appeal Proceeding No. APCI 2011 0103 (**Almond Land Rights Appeal**). However, the appeal was not ultimately heard because the parties to that proceeding agreed to a compromise, in substantially the same form as the deed of compromise executed in respect of the Kangara Rights Proceeding, which was approved by the Supreme Court on 12 December 2012 as being in the best interest of growers the subject of that proceeding. The parties also agreed to compromise the other Resolved Timbercorp Apportionment Proceedings in substantially the same terms as the Almond Land Rights Appeal compromise. These compromises were also approved by the Supreme Court as being in the best interest of growers the subject of those proceedings. In the Resolved Timbercorp Apportionment Proceedings, the compromises included a payment of approximately 5% of the gross sale proceeds of the assets the subject of each proceeding for distribution to growers in accordance with their relevant entitlements.

In March 2013, two further proceedings were commenced to determine how the net sale proceeds of the remaining properties on which Timbercorp agribusiness managed investment schemes were conducted should be apportioned. These proceedings are:

- Supreme Court of Victoria Proceeding No. S CI 2013 01477 (**Bella Vista Rights Proceeding**); and

- Supreme Court of Victoria Proceeding No. S CI 2013 01478 (**Kangara Rights Proceeding**).

2 **Kangara Rights Proceeding**

On 25 March 2013, The Trust Company (Nominees) Ltd (**The Trust Company**) commenced the Kangara Rights Proceeding. The Trust Company is a secured lender with respect to the Citrus Projects, and holds its security interests for the benefit of holders of debentures (**Debenture Holders**) issued by Align Funds Management Limited (formerly Orchard Investments Management Limited) in its capacity as the responsible entity for the Timbercorp Orchard Trust (Receiver and Manager Appointed) (**Align**) pursuant to the Timbercorp Orchard Trust Debenture Trust Deed (**Trust Deed**).

The Kangara Rights Proceeding is the proceeding which specifically relates to the Citrus Projects. In this proceeding, The Trust Company seeks, among other things, declarations from the Supreme Court as to:

- its rights;
- the rights of the Growers in the Citrus Projects; and
- the rights of other relevant parties,

if any, to the net sale proceeds from the sale of the land on which the Citrus Projects were conducted (that land being situated in New South Wales) and associated water rights and other assets (**Citrus Assets**). The gross sale proceeds from the sale of the Citrus Assets were approximately \$20 million. In accordance with orders of the Supreme Court, certain costs have been deducted from these proceeds, and interest has accrued, with the balance of the proceeds from time to time being referred to in this document as the **Fund**.

On 19 July 2013, the Supreme Court made orders in the Kangara Proceeding pursuant to Rule 16 that the Growers in each of the Citrus Projects have their interests represented in that proceeding by particular Growers. The relevant Growers are:

- (a) Gregory Westaway as representative of the Growers in the 2004 Timbercorp Citrus Project; and
- (b) Robert and Elizabeth Bugden as representatives of the Growers in the 2005 Timbercorp Citrus Project.

(collectively, the **Representative Growers** and each a **Representative Grower**).

The other party to the Kangara Rights Proceeding is Michael Fung in his capacity as Receiver and Manager of Align (**Receiver**). The Receiver holds the Fund on trust pending resolution of this dispute.

While the Kangara Rights Proceeding has been issued and the Representative Growers have been appointed, there have been no other formal steps taken in the proceeding while the parties have conferred about a possible compromise of the proceeding.

The Trust Company and the Representative Growers have now reached a proposed resolution of the dispute between them as to their respective entitlements to the Fund and have, therefore, agreed to compromise the Kangara Rights Proceeding. The compromise is subject to Court approval. The Representative Growers each believe (for the reasons set out in section 5 of this notice) that the compromise is in the best interests of the Growers in the Citrus Projects they represent. However, under Rule 16, the Supreme Court must also approve the compromise before it is binding on all Growers.

3 Details of the Compromise

On 14 January 2014 the parties to the Kangara Rights Proceeding, TSL and Align entered into a deed of compromise for the Kangara Rights Proceeding (**Compromise**). A copy of the deed of compromise may be viewed at any of:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

The Compromise is conditional on:

- (a) approval by the Debenture Holders of:
 - (i) the Compromise; and
 - (ii) the compromise reached in relation to the Bella Vista Rights Proceeding (the **Bella Vista Compromise**),
 by **7 March 2014**; and
- (b) approval by the Supreme Court of:
 - (i) the Compromise and the granting of orders that the Compromise shall be binding on Growers; and
 - (ii) the Bella Vista Compromise and the granting of orders that the Bella Vista Compromise shall be binding on the absent growers who are represented by the appointed representative growers in that proceeding

by **30 June 2014**.

On 6 February 2014, and in accordance with the Trust Deed, The Trust Company issued a notice of meeting and other related documents in connection with the meeting to the Debenture Holders informing them that a meeting to vote on a resolution to approve the Compromise and the Bella Vista Compromise was to be held on 28 February 2014. At that meeting, in satisfaction of the conditions noted in paragraph (a) above, the Debenture Holders approved both the Compromise and the Bella Vista Compromise.

If the Supreme Court also approves the Compromise and the Bella Vista Compromise, all Growers will be bound by the Compromise in respect of their claims against the Fund. You will lose any right to argue for an alternative outcome of the dispute and any payment made to you will be in full and final settlement of your claim against the Fund.

Under the terms of the Compromise:

- (a) The following payments will be made from the Fund:
 - i. **to the Receiver:** for his unpaid remuneration and expenses in connection with or arising from his appointment as receiver and manager of Align, his management, maintenance and (in accordance with the deeds of compromise) disbursement of the Funds, and his costs of and incidental to the Court approval applications for the Compromise, the Bella Vista Compromise and the two proceedings generally (the quantum of which will either be agreed by The Trust Company or approved by the Court);
 - ii. **to TSL:** \$1,043,321.00 (approximately 5% of the relevant gross sale proceeds of the Citrus Assets) (**Kangara Settlement Amount**) to be held on trust for Growers for distribution to, or on behalf of, Growers in accordance with their entitlements, as set out in section 8 of this notice; and
 - iii. **to The Trust Company:** the balance of the Funds for distribution to the Debenture Holders.
- (b) The amount set aside for Growers will be divided between Growers on a pro-rated basis according to the number of lots held by each such Grower on 2 June 2011 (being the date on which Growers' rights in the Citrus Projects were extinguished). The amount payable per lot will be **\$271.98**. This amount will be in full and final settlement of the Growers' claim to any part of the Fund.

- (c) Each party to the Compromise will release all other parties from any further claim in relation to their entitlement to the Fund or the allocation and disbursement of the Fund. The Representative Growers provide and receive these releases on behalf of the Growers.
- (d) The proceeding will be dismissed with the legal costs and disbursements of The Trust Company and the Representative Growers being paid by the Receiver on an indemnity basis from the net sale proceeds of the Fund, subject to a bill of costs calculated on an indemnity basis as prepared and certified by an appropriately qualified costs consultant agreed by the parties.

If the Supreme Court does not approve the Compromise and the Bella Vista Compromise by 30 June 2014:

- the Compromise ceases to have any effect;
- none of the parties to the deed of compromise will have any right or entitlement as a result of, or by reason of, the parties having entered into the deed of compromise or having conditionally agreed to the Compromise;
- any documents prepared or circulated pursuant to the Compromise and/or for the purposes of the application to the Supreme Court for approval of the Compromise may not be referred to or tendered in evidence in the Kangara Rights Proceeding or Bella Vista Rights Proceeding (as applicable); and
- the Kangara Rights Proceeding will continue and the Growers' entitlement (if any) to the Fund will be determined by the Supreme Court.

No timetable has yet been set down by the Supreme Court for the hearing of the Kangara Rights Proceeding or the Bella Vista Rights Proceeding. Should either compromise not be approved, it is unlikely that a trial of these matters would be heard and determined before late 2014 or early 2015.

4 Court approval

If the Supreme Court approves the Compromise and also approves the Bella Vista Compromise, the Compromise will be binding on all Growers in each of the Citrus Projects, even though only the Representative Growers (but not all Growers) are parties to the Kangara Rights Proceeding. The Supreme Court may approve the Compromise if it is satisfied that the Compromise is for the benefit of the Growers.

5 Benefit of the Compromise to the Growers

The Representative Growers have appointed Macpherson + Kelley Lawyers, and counsel retained on their behalf by Macpherson + Kelley Lawyers, to act for them in

the Kangara Rights Proceeding. The Representative Growers have obtained legal advice from Garry Bigmore QC and Sam Hopper of counsel and from their instructing solicitors, Macpherson + Kelley Lawyers, with respect to the Compromise. In coming to their advice counsel have taken into account (among other things) the decision of her Honour Justice Davies in the Almond Land Rights Proceeding. Having regard to this advice, the certainty of the payments to be made under the Compromise once approved by the Supreme Court and the cost and delay before the Kangara Rights Proceeding would be finally heard and determined by the Supreme Court, the Representative Growers consider that the Compromise is for the benefit of the Growers in the Citrus Projects.

6 Application to the Court for approval of the Compromise (Approval Application)

The parties to the Kangara Rights Proceeding will apply to the Supreme Court for approval of the Compromise (**Approval Application**). The parties anticipate that the Supreme Court will make orders in or shortly after the week beginning 11 March 2014 (among other things) confirming the date on which the Approval Application will be heard. Copies of these orders will be posted at each of:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

shortly after the conclusion of the directions hearing.

It is proposed that the hearing of the application for approval of the Bella Vista Compromise will be held concurrently with the hearing of the Approval Application. The current expectation is that the concurrent hearings will not be before 7 April 2014 but will be at the earliest opportunity thereafter convenient to the Court.

7 Rights of Growers in connection with the Approval Application

Although the Representative Growers believe that the Compromise is for the benefit of Growers in the Citrus Projects (as outlined in section 5 of this notice), some Growers may wish to comment on, raise questions in relation to, or object to the Compromise. Without prejudice to any other course Growers may be advised by their own advisers to take, Growers may:

- (a) address any comments on the Compromise, the Approval Application or their individual circumstances;
- (b) ask any questions or obtain further information on the Compromise or the Approval Application; or

(c) raise any objection to the Compromise,

to the Representative Growers by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au. The telephone hotline facility will be staffed by representatives of TSL (see section 12).

Before calling the telephone hotline facility or emailing, we suggest that you read and carefully consider this notice and the FAQ available at any of:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

for answers to your queries. If you do not find a suitable response and you call the hotline facility or email, you will receive a reply and your comments or objections will be noted and passed on to the Representative Growers for the purposes of the hearing of the Approval Application.

If you wish to object to the Compromise, you should notify the Representative Growers by calling the telephone hotline on (03) 8615 1200 or by emailing investorqueries@timbercorp.com.au **as soon as possible before 17 March 2014**.

At the hearing of the Approval Application, the Representative Growers will disclose to the Supreme Court all material facts relating to the Compromise, including all comments or objections they have received from Growers prior to the hearing of the Approval Application in relation to the Compromise or the Approval Application. Any such comments or objections will be considered by the Court in the context of determining whether the Compromise is for the benefit of Growers.

You are not required, but are able, to attend or appear at the Supreme Court for the hearing of the Approval Application. Any Grower who objects to the Compromise may raise their objection at the Approval Application. Growers may choose to appear in person, or have their own lawyers represent them. If you wish to appear or have your own lawyers appear on your behalf, you should seek legal advice in relation to the steps that you will be required to take in order for this to happen.

Shortly after the Supreme Court delivers its decision in respect of the Approval Application the Representative Growers will publish a further notice setting out the consequences of the decision (**Second Notice**) and will notify you of the publication of the Second Notice by post or email.

8 Distribution of the Kangara Settlement Amount to Growers

If the Approval Application is successful, and the necessary Supreme Court approval is obtained in relation to the Bella Vista Compromise, the terms of the Compromise require the Kangara Settlement Amount to be paid to TSL on trust for the Growers for distribution to, or on behalf of, the Growers in accordance with their entitlements. As noted above, each Grower's entitlement will be calculated on a pro-rated basis based on the number of lots in the Citrus Projects held by that Grower on 2 June 2011 (for each Grower, its **Kangara Settlement Entitlement**).

Growers who are recorded in the books and records of:

- (a) Timbercorp Finance Pty Limited (in liquidation) (**TFL**) as owing amounts under an outstanding loan from TFL in connection with their investment in the Citrus Projects (**TFL Indebtedness**); or
- (b) TSL as owing amounts to TSL (**Timbercorp Indebtedness**),

will be able (should they choose) to direct that their Kangara Settlement Entitlements are paid, in whole or in part, to TFL or TSL to pay, to the extent possible, their TFL Indebtedness or Timbercorp Indebtedness (as applicable). The amount of your TFL Indebtedness may be affected if you accept any offer of settlement made by TFL to you.

A direction to pay form is available at any of:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

If you are recorded as having any TFL Indebtedness or Timbercorp Indebtedness you can (if you choose) give your directions to TSL by completing and returning a direction to pay form. To arrange for a direction to pay form to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Kangara Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a court order, about the manner in which the entitlement is to be disbursed.

If you wish to confirm whether you have any, or the extent of your, TFL Indebtedness or Timbercorp Indebtedness, the number of lots you held in the Citrus Projects on 2

June 2011 or any other private information which TSL holds in relation to your individual circumstances in respect of the Compromise, you should call the Timbercorp telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

To receive your Kangara Settlement Entitlement (if payable to you having regard to your TFL Indebtedness and Timbercorp Indebtedness, if any), you must notify TSL of the bank account you nominate to receive payment. You can notify TSL of your bank account details by completing and returning the bank account nomination form available at any of:

www.mk.com.au
www.kordamentha.com/creditor-information/Australia/51/06
www.kordamentha.com/creditor-information/Australia/51/15
www.abl.com.au/timbercorp/timbercorp.htm

To arrange for a bank account nomination form to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

9 Timing of payments to Growers

If the Approval Application is successful and the necessary Supreme Court approval is obtained in relation to the Bella Vista Compromise, the Second Notice will notify you of (among other things) the anticipated timing of payments to Growers. The timing of a Grower's payment of their Kangara Settlement Entitlement will depend, in part, on their individual circumstances.

If a Grower does not have any TFL Indebtedness, TSL will pay the Grower's Kangara Settlement Entitlement to its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness) as soon as practicable following the necessary approvals being obtained from the Supreme Court.

If a Grower has any TFL Indebtedness and:

- (a) has directed TSL to pay its TFL Indebtedness, to the extent possible, out of its Kangara Settlement Entitlement, TSL will, as soon as practicable, use the Grower's Kangara Settlement Entitlement to pay, to the extent possible, the TFL Indebtedness as soon as practicable and remit the balance of the Grower's Kangara Settlement Entitlement (if any) to the Grower into its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness).
- (b) has directed TSL to use its Kangara Settlement Entitlement to pay only part of the Grower's TFL Indebtedness, TSL will, as soon as practicable, pay to TFL that part of the Grower's TFL Indebtedness and retain the balance of the

Grower's Kangara Settlement Entitlement (if any) on trust pending an agreement between TFL and the Grower or court order as to whom it should be paid.

- (c) has not directed TSL to pay any part of its Kangara Settlement Entitlement to TFL, TSL will hold that Grower's Kangara Settlement Entitlement on trust pending agreement between TFL and the Grower or court order as to whom it should be paid.

Accordingly, there is an important difference between the treatment of a Grower's TFL Indebtedness and the treatment of a Grower's Timbercorp Indebtedness. This is because, in relation to those Growers with a TFL Indebtedness, TFL asserts that it has a proprietary and/or secured claim over those Growers' Kangara Settlement Entitlements, whereas the claim of TSL is merely contractual and unsecured. For this reason, if a Grower who has TFL Indebtedness chooses not to direct TSL to use its Kangara Settlement Entitlement to pay its TFL Indebtedness, that Grower's Kangara Settlement Entitlement will be held on trust pending agreement or Court order.

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Kangara Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a Court order, about the manner in which the entitlement is to be disbursed.

Importantly, if a Grower gives a direction to TSL to use its Kangara Settlement Entitlement to pay TFL all or part of its TFL Indebtedness, that direction does not constitute an admission of liability by the Grower to TFL in respect of its TFL Indebtedness and is without prejudice to the Grower's rights (if any) in relation to its TFL Indebtedness. Similarly, nothing in the receipt by TFL of any such payment will constitute a waiver of any rights that TFL has in respect of a Grower's remaining TFL Indebtedness.

10 Tax consequences of the Compromise

The Compromise and payment of the Kangara Settlement Entitlement may have tax consequences for each Grower. The consequences for each Grower will depend on the Grower's individual circumstances. You may wish to seek advice from your personal financial or taxation adviser about the potential tax consequences of receiving your Kangara Settlement Entitlement and any choice you may make to give directions to pay your Kangara Settlement Entitlement to TFL or TSL or both.

11 Role of TSL

At the request of the Representative Growers, TSL has agreed to perform various administrative roles in connection with the Compromise and the Approval Application. In addition to distributing this notice on behalf of the Representative Growers, TSL has established a telephone hotline facility and email facility so that Growers may address any comments or questions, or raise any objections, with the Representative Growers. TSL will provide the Representative Growers with details of the comments, questions and objections that are received through the telephone hotline or email facilities.

The Representative Growers have agreed a protocol with TSL as to the comments, questions or objections which TSL may answer or respond to without further reference to Representative Growers and those which will be referred to the Representative Growers for the preparation of an appropriate response.

TSL will record in appropriate detail, in an affidavit to be filed with the Supreme Court on behalf of the Representative Growers in connection with the Approval Application, the tasks it has undertaken at the request and on the instruction of the Representative Growers, the substance of all comments and questions raised to it by the Growers and their responses to those Growers, and the nature of any objections made to it by Growers and the responses provided by it to those Growers.

TSL will also make the payments to or on behalf of Growers as required under the Compromise and hold amounts in trust pending their distribution to the relevant party. Under the terms of the Compromise, TSL will only be released by each Grower upon distribution in full of that Grower's Kangara Settlement Entitlement to the Grower or at the direction of, or on the authorisation of, the Grower.

12 Further information

The Representative Growers have prepared answers to what they believe will be frequently asked questions. These questions and answers are available online at any of:

www.mk.com.au
www.kordamentha.com/creditor-information/Australia/51/06
www.kordamentha.com/creditor-information/Australia/51/15
www.abl.com.au/timbercorp/timbercorp.htm

or can be obtained by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au.

13 Key contacts

Telephone Hotline
Facility

(03) 8615 1200

Email address

investorqueries@timbercorp.com.au

Frequently Asked
Questions and Notices
to Growers

Available online at any of:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

Kangara Rights Proceeding

Frequently Asked Questions

for Growers in the 2004 Timbercorp Citrus Project ARSN 108 887 538 and 2005 Timbercorp Citrus Project ARSN 114 091 299 (together, the Citrus Projects and each, a Citrus Project)

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SECTION A: CONTACT DETAILS AND GENERAL INFORMATION

1 Where can I download copies of relevant forms and documents mentioned in these FAQs and receive further updates from time to time?

Please visit any of the following websites:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

2 What is the telephone number of the Timbercorp investor hotline and email address for general enquiries?

- The Timbercorp investor hotline number is on **(03) 8615 1200**.
- The Timbercorp investor email for general enquiries is investorqueries@timbercorp.com.au.

SECTION B: YOUR ENTITLEMENT UNDER THE COMPROMISE AND HOW TO RECEIVE OR APPLY YOUR ENTITLEMENT

3 What's my entitlement under the Compromise?

Under the Compromise (detailed in section D at question 20), the Growers are entitled to **\$271.98 per lot** held by them as at 2 June 2011 (being the date on which Growers' rights in the Citrus Projects were extinguished).

If you do not know which Project(s) you are in or the number of lots you hold in each Project, please call the Timbercorp investor hotline or send an email to the address provided in question 2.

4 When am I going to receive my entitlement under the Compromise?

The Compromise (and the Bella Vista Compromise which relates to the Timbercorp Table Grape Projects) must be approved by the Supreme Court of Victoria before any payments are made. You will be notified if Court Approval is received and, if so, of the expected date of payment. The date of any Court Approval and payment is expected to be after May 2014.

5 Will I be entitled to receive payment under the Compromise?

This will depend on whether you have any moneys owing to Timbercorp Finance Pty Ltd (in liquidation) (**Timbercorp Finance**) and/or Timbercorp Securities Limited (in liquidation) (**TSL**) in respect of the Timbercorp Citrus Projects.

- If you do **not** have any moneys owing to Timbercorp Finance or TSL in relation to the Citrus Projects, your entitlement will be paid as soon as possible after Court approval is received.
- If you do **not** have any moneys owing to Timbercorp Finance but you have moneys owing to TSL in relation to the Citrus Projects, you may:
 - direct that your entitlement is paid to TSL to reduce your debt balance; or
 - have your entitlement paid directly to you as soon as possible after Court approval is received.
- If you **have** moneys owing to Timbercorp Finance in relation to the Citrus Projects, you may:
 - direct that your entitlement is paid to Timbercorp Finance to reduce your debt balance, and if your entitlement exceeds the amount you owe to Timbercorp Finance, you can direct that the excess:
 - be used to pay any amounts you owe to TSL or to pay other loans you have with Timbercorp Finance; or
 - be paid to you directly; or
 - do nothing, in which case your entitlement will be held in trust in an interest-bearing account pending a legal determination in relation to the competing claims of Growers and Timbercorp Finance to that entitlement.

If you do not know whether you owe money to TSL or Timbercorp Finance (and if so, how much), please call the Timbercorp investor hotline or send an email to the address provided in question 2.

6 If I DO NOT OWE money to Timbercorp Finance or TSL in connection with the Timbercorp Citrus Projects, what do I do?

Payments to Growers who do not have any loans owing to Timbercorp Finance or any amounts owing to TSL in relation to the Citrus Projects will be made by direct deposit into the bank account nominated by the Grower. Payments will only be made by direct deposit and will not be made by cheque.

If you have not previously provided TSL with a completed direct credit authorisation, you will need to nominate a bank account to receive your payment. You will need to complete a Bank Account Nomination Form.

If you have previously provided TSL with a completed direct credit authorisation nominating a bank account, any payment to you will be made by direct deposit to that bank account, unless you nominate a different bank account now.

You can obtain the Bank Account Nomination Form from any of the websites in question 1 or call the Timbercorp investor hotline or send an email to the address provided in question 2.

7 If I DO OWE money to TSL but NOT Timbercorp Finance in connection with the Timbercorp Citrus Projects, what do I do?

If you elect to direct that your entitlement is paid to TSL to reduce your debt balance, you will need to complete a Citrus Direction to Pay Form specifically relating to the Compromise to do this, even if you have previously provided Timbercorp Finance or TSL with a direction to pay in relation to other distributions.

If you elect to have your entitlement paid to you directly, you will need to either:

- complete a Bank Account Nomination Form, if you have not previously provided TSL with a completed direct credit authorisation or wish to nominate a different bank account; or
- do nothing further, if you have previously provided TSL with a completed direct credit authorisation and wish to receive your entitlement in the same bank account.

If you do not use your entitlement to pay TSL using a Citrus Direction to Pay Form, you will remain liable to pay the amounts owing (plus applicable interest) to TSL.

You can obtain the Citrus Direction to Pay Form and Bank Account Nomination Form from any of the websites in question 1 or call the Timbercorp investor hotline or send an email to the address provided in question 2.

8 If I DO OWE money to Timbercorp Finance in connection with the Timbercorp Citrus Projects, what do I do?

If you elect to direct that your entitlement is paid to Timbercorp Finance to reduce your debt balance, you will need to complete a Citrus Direction to Pay Form specifically relating to the Compromise to do this, even if you have previously provided Timbercorp Finance or TSL with a direction to pay in relation to other

distributions.

If you have executed a Citrus Direction to Pay Form and your entitlement exceeds the amount you owe to Timbercorp Finance in relation to the Citrus Projects, unless you have directed that the excess be used to pay amounts owing by you to TSL or to pay other loans you have with Timbercorp Finance, the excess will be paid by direct deposit into the bank account nominated by you using the Bank Account Nomination Form.

If you do not execute a Citrus Direction to Pay Form directing that your entitlement be paid to Timbercorp Finance to reduce the debt balance owing for loans you have owing to Timbercorp Finance in relation to the Citrus Projects, your entitlement will be held in trust, in an interest-bearing account, pending a legal determination in relation to the competing claims of Growers and Timbercorp Finance to the entitlement. Further, if you do not use your entitlement to pay Timbercorp Finance or TSL, you will remain liable to pay the amounts owing (plus applicable interest) to them.

You can obtain the Citrus Direction to Pay Form and Bank Account Nomination Form from any of the websites in question 1 or call the Timbercorp investor hotline or send an email to the address provided in question 2.

9 Do I need to sign any other documents in relation to the Compromise?

If the Compromise and the Bella Vesta Compromise are approved by the Supreme Court, they will be binding on each Grower, even though the Grower did not sign the deed of compromise. As such, you will only need to sign the forms specified in these Frequently Asked Questions.

SECTION C: THE EFFECT OF PAYMENTS UNDER THE COMPROMISE ON AMOUNTS YOU OWE TO TSL AND/OR TIMBERCORP FINANCE

10 What happens if my entitlement does not pay Timbercorp Finance / TSL in full?

If you direct that your entitlement be used to pay Timbercorp Finance or TSL but your entitlement is not sufficient to pay the full amount you owe to Timbercorp Finance or TSL, you will remain liable to pay the balance owing (plus applicable interest) to them.

11 If I sign a Citrus Direction to Pay form, can I still dispute that Timbercorp Finance / TSL were entitled to be paid?

Yes, signing the Citrus Direction to Pay Form and the use of your entitlement to pay Timbercorp Finance or TSL does not affect your right to dispute that Timbercorp Finance or TSL were entitled to be paid.

12 I have previously completed a direct credit authorisation. Do I need to nominate another bank account?

If you have previously provided TSL with a completed direct credit authorisation nominating a bank account, any payment to you will be made by direct deposit to that bank account, unless you nominate a different bank account now using the Bank Account Nomination Form, which you can obtain from any of the websites in question 1 or by calling the Timbercorp investor hotline or send an email to the address provided in question 2.

13 Once I have nominated a bank account, will it be used for other payments to me (if any) in the future?

Yes, once you nominate a bank account, any future payment to be made to you by TSL will be made by direct deposit to that nominated bank account, unless you nominate a different bank account to TSL.

14 If I am a Grower in more than one Timbercorp Project and I want to use my entitlements from all of my Projects to pay Timbercorp Finance / TSL, do I need to sign a direction to pay form for each Project?

There is a separate direction to pay form for Timbercorp Citrus and Table Grape Projects.

If you are a Grower in **only** Citrus Projects, you only need to sign one Citrus Direction to Pay Form, even if you are a Grower in both the 2004 and 2005 Citrus Projects.

If you are a Grower in **only** Table Grape Projects, you only need to sign one Table Grape Direction to Pay Form, even if you are a Grower in both the 2004 and 2005 Table Grape Projects.

If you are a Grower in **both** Citrus Projects and Table Grape Projects, you will have to sign a Citrus Direction to Pay Form for the Citrus Projects and a separate Table Grape Direction to Pay Form for the Table Grape Projects.

You can obtain these forms from any of the websites in question 1 or by calling the Timbercorp investor hotline or send an email to the address provided in question 2.

SECTION D: THE KANGARA RIGHTS PROCEEDING, THE DEED OF COMPROMISE AND QUESTIONS ABOUT THE LEGAL PROCESS

15 What is the Kangara Rights Proceeding and how does it relate to me?

The Kangara Rights Proceeding is a legal proceeding which is currently in the Supreme Court of Victoria. The purpose of the proceeding is to determine who is entitled to the net proceeds of sale of the land and other assets which were used in the 2004 and 2005 Timbercorp Citrus Projects. The parties who are claiming an entitlement to the proceeds are:

- The Trust Company (Nominees) Ltd (**The Trust Company**), being the secured lender with respect to the Timbercorp Citrus Projects and holding its security interests for the benefit of holders of debentures issued by Align Funds Management Limited (formerly Orchard Investments Management Limited) in its capacity as the responsible entity for the Timbercorp Orchard Trust (Receiver and Manager Appointed) pursuant to the Timbercorp Orchard Trust Debenture Trust Deed; and
- the Growers in the 2004 and 2005 Timbercorp Citrus Projects.

If the Compromise is approved by the Supreme Court and the Bella Vista Compromise is also approved, the Kangara Rights Proceeding will not continue and the net sale proceeds will be shared in accordance with the Compromise. Growers will lose the right to argue for a different share of the net sale proceeds.

16 Who are the Representative Growers and what is their role?

The Representative Growers are representing all Growers in the Kangara Rights Proceeding. There is a Representative Grower for each of the relevant Timbercorp Citrus Projects. If the Compromise is not approved and the Kangara Rights Proceeding continues, the Representative Growers and their lawyers will appear in Court and try to prove that the Growers are entitled to a share of the net sale proceeds. It is unlikely that the proceeding would be heard and determined by the Court before early 2015. The names of the Representative Growers are set out in the First Notice to Growers.

17 How were the Representative Growers chosen?

In relation to the 2004 Timbercorp Citrus Project, the Timbercorp Growers Group was asked to nominate a Grower willing to act as the Representative Grower in the Kangara Rights Proceeding in respect of that project.

In relation to the 2005 Timbercorp Citrus Project, The Trust Company and the Timbercorp Growers Group considered that it would be desirable to nominate Representative Growers who were previously appointed as representative growers in respect of the Solara Rights Proceeding, an earlier proceeding similar to the Kangara Rights Proceeding as they would have familiarity with these relevant issues, create consistency between the proceedings and create likely cost and time efficiencies.

Another Grower also sought to be appointed in respect of both Timbercorp Citrus Projects, and the Supreme Court of Victoria ultimately decided which of the Growers would be appointed as the Representative Growers.

A detailed summary of the previously resolved Timbercorp Rights Proceedings and the names of the appointed Representative Growers are set out in the First Notice to Growers.

18 Which lawyers are acting for Growers?

Macpherson + Kelley Lawyers and barristers appointed by them. The legal costs and disbursements of the Representative Growers will be paid on an indemnity basis by the Receiver from the net sale proceeds of the Fund, subject to a bill of costs on an indemnity basis to be prepared and certified by an appropriately qualified costs consultant agreed by the parties. These fees and costs will not be deducted from the sale proceeds of amounts payable to Growers.

19 Why have the Representative Growers agreed to the Compromise?

The Representative Growers have obtained legal advice in relation to the Compromise and have considered it and other matters such as the delays and uncertainty if it is necessary to proceed with a contested trial in the Supreme Court to decide who is entitled to the net sale proceeds. The lawyers and barristers who gave the legal advice took into account (among other things) the decision in the Almond Land apportionment proceeding and the appeal of that decision (see question 36 for further details about the proceeding and the appeal). On the basis of the legal advice, the certainty of the payments to be made under the Compromise once approved by the Supreme Court and the cost and delay before the Kangara Rights Proceeding would be finally heard and determined by the Supreme Court, the Representative Growers consider that the Compromise is for the benefit of the Growers in the Citrus Projects.

20 Can I have a copy of the advice given to the Representative Growers?

A copy of the advice will be provided free of charge to any Grower who writes to Macpherson + Kelley Lawyers requesting a copy of the advice, or any lawyer for a Grower who writes to Macpherson + Kelley Lawyers requesting the advice on behalf of any identified Grower, provided that the Grower or lawyer requesting the copy of the advice provides Macpherson + Kelley Lawyers with a signed document acknowledging the common interest privilege and undertaking to treat the advice as strictly confidential. Written requests should be addressed to Macpherson + Kelley Lawyers and emailed to investorqueries@timbercorp.com.au.

21 What is the Compromise reached by the parties to the Kangara Rights Proceeding?

Under the terms of the Compromise:

- (a) \$1,043,321.00 (approximately 5% of the gross sale proceeds of the Kangara Assets) will be paid by the Receiver to TSL (**Kangara Settlement Amount**) to be held in trust for Growers for distribution to, or on behalf of, Growers in accordance with their entitlements.
- (b) The amount set aside for Growers will be divided between Growers on a pro-rated basis according to the number of lots held by each such Grower on 2 June 2011 (being the date on which Growers' rights in the Citrus Projects were extinguished). The amount payable per lot will be \$271.98. This amount will be in full and final settlement of the Growers' claim to any part of the Fund.

- (c) Each party to the Compromise will release all other parties from any further claim in relation to their entitlement to the Fund or the allocation and disbursement of the Fund. The Representative Growers provide and receive these releases on behalf of the Growers.
- (d) The proceeding will be dismissed with the legal costs and disbursements of the Trust Company and the Representative Growers being paid on an indemnity basis by the Receiver from the net sale proceeds of the Fund, subject to a bill of costs on an indemnity basis to be prepared and certified by an appropriately qualified costs consultant agreed by the parties.

22 How was the figure of \$1,043,321.00 reached?

The amount was reached by agreement between The Trust Company and the Representative Growers.

23 Can I have a copy of the Compromise Deed?

The Compromise Deed is available online at any of the websites and contact details set out at questions 1 and 2.

24 What conditions have to be satisfied in order for the Compromise to proceed?

The Supreme Court must approve the Compromise and the Bella Vista Compromise reached in relation to the Timbercorp Table Grape Projects by 30 June 2014 or such later date as is agreed. The Supreme Court may approve the Compromise if it is satisfied that the Compromise is for the benefit of Growers.

25 What are the other compromises that require approval?

A similar compromise has been reached in relation to the Timbercorp Table Grape Projects, which was also a proceeding commenced to determine who is entitled to the net proceeds from the sales of assets used in the Timbercorp Table Grape Projects. The Bella Vista Compromise is also subject to Court approval and the proceeding is Supreme Court of Victoria Proceeding No. S CI 2013 01477.

26 When will the Supreme Court of Victoria decide whether to approve the Compromise?

A date for the hearing has not yet been set, although the parties expect it will occur sometime during April 2014. Once the date of the hearing has been determined, it will be posted on all of the websites set out at question 1.

It is expected that if the approval application is heard in April 2014, that the Court will decide whether to approve the Compromise and the similar compromise in relation to the Timbercorp Table Grape Projects before 30 June 2014.

27 What happens if the Supreme Court of Victoria does not approve the Compromise?

If the Supreme Court does not approve the Compromise (or the Bella Vista Compromise), the Kangara Rights Proceeding will continue. The Supreme Court will determine who is entitled to the net sale proceeds. The proceeds will remain in trust in an interest-bearing account until the Supreme Court decides. It is unlikely that the Kangara Rights Proceeding would be heard and determined before late 2014 or early

2015.

28 Are there tax consequences for me as a result of the Compromise?

There may be tax consequences for you, depending on your individual circumstances. You should ask your own financial or tax adviser.

29 Can I object to the Compromise?

Yes. You can object by email to investorqueries@timbercorp.com.au or by calling the hotline on (03) 8615 1200. If you object to the Compromise, you may also raise your objection at the Supreme Court hearing of the application for approval of the Compromise. Growers may choose to appear in person or have their own lawyers represent them. You should seek your own legal advice if you wish to appear or have your lawyers appear on your behalf.

30 What happens if a Grower objects to the Compromise?

All objections received from Growers before 17 March 2014 will be disclosed to the Supreme Court at the hearing of the application for approval of the Compromise. If your objection is received after that time but before the hearing of the application, the Representative Growers will use their best efforts to ensure that it is also disclosed to the Supreme Court. The Supreme Court will consider the objections received from Growers and disclosed to it when determining whether the Compromise is for the benefit of Growers.

31 Am I bound by the Compromise?

If the Compromise is approved by the Supreme Court and the Bella Vista Compromise is also approved, all Growers will be bound by the Compromise. Growers will lose the right to argue for a different share of the net sale proceeds.

32 Who can I talk to about the Compromise if I have a comment, question or objection?

You can call the hotline on (03) 8615 1200. If the hotline staff cannot answer your question, they will refer it to Macpherson + Kelley Lawyers, who are acting for the Representative Growers. Someone from Macpherson + Kelley Lawyers will then respond to you.

33 How much are the Growers in the Timbercorp Table Grape Projects getting?

It is expected that Growers in the Timbercorp Table Grape Projects will receive a payment of \$93.93 per lot.

34 Why are some Growers getting more than others?

Approximately 5% of the gross proceeds of each sale transaction (in relation to the Timbercorp Citrus Projects and the Timbercorp Table Grape Projects) are being set aside for Growers. The sale proceeds differed between the sale transactions depending on how much the relevant buyers were prepared to pay. This varied depending on the location and value of the land, the age of the crop and other factors.

The amount set aside for Growers from each sale transaction is then divided by the number of lots in the relevant Projects.

35 Where can I get a copy of the governing documents for my Project?

The governing documents for the Citrus Projects, such as the constitution, licence agreement, head lease and sub-lease are available online at www.abl.com.au/timbercorp/timbercorp.htm.

36 What happened in the Almond Land apportionment proceeding and its appeal?

The Almond Land apportionment proceeding was heard by Justice Davies of the Supreme Court of Victoria in 2011. Her Honour determined that the Growers were not entitled to any of the net sale proceeds. Instead, the secured creditors were entitled to all of the net sale proceeds.

The Judgment was appealed by the Representative Growers in Supreme Court of Victoria Court of Appeal Proceeding No. APCI 2011 0103. However, the appeal was not ultimately heard because the parties to that proceeding agreed to a compromise, in substantially the same form as the deed of compromise executed in respect of the Kangara Rights Proceeding, which was approved by the Supreme Court on 12 December 2012 as being in the best interest of growers the subject of that proceeding.

The full background to the Almond Land apportionment proceeding (including its appeal) and the related Timbercorp apportionment proceedings and the compromises reached in those proceedings are detailed in section 1 of the First Notice to Growers.

For updates, forms, and other documents relating to the Kangara Rights Proceeding and the Compromise, please visit any of the following websites:

www.mk.com.au

www.kordamentha.com/creditor-information/Australia/51/06

www.kordamentha.com/creditor-information/Australia/51/15

www.abl.com.au/timbercorp/timbercorp.htm

For general enquiries, please contact either:

- the Timbercorp investor hotline number on **(03) 8615 1200**; or
- the email for general enquiries **investorqueries@timbercorp.com.au**.