

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

AFFIDAVIT OF ALAN DAVID FISHER

Date sworn: 20 September 2012
Filed on behalf of: The First and Second Defendants
Prepared by:
Maddocks
Lawyers
140 William Street
Melbourne VIC 3000

Solicitor's Code: 230
DX 259 Melbourne
Tel: (03) 9288 0555
Fax: (03) 9288 0666
Ref: 5885053.001
Attention: Philip Jones
Email: philip.jones@maddocks.com.au

I, Alan David Fisher of 4 Parkview Road, Brighton East, Victoria, company director, make oath and
say as follows:

1. I am a director of both the First Defendant, OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) (**OIM#2**) as trustee for Timbercorp Orchard Trust #3 (**TOT#3**) and the Second Defendant, OIM#5 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) (**OIM#5**) as trustee for Timbercorp Orchard Trust #5 (**TOT#5**). The composition of the board of directors of OIM#2 is identical to that of OIM#5. I am authorised to make this affidavit on behalf of OIM#2 and OIM#5.
2. I make this affidavit from my own knowledge except where otherwise indicated. Where I depose to matters on the basis of information and belief, I believe those matters to be true.



3. I have read the affidavits of Clinton Charles Hinchin sworn on 5 December 2011 (**First Hinchin Affidavit**) and on 19 September 2012 in this proceeding (**Second Hinchin Affidavit**). At paragraphs 34 to 37 of the First Hinchin Affidavit and paragraph 47 of the Second Hinchin Affidavit, Mr Hinchin deposes correctly that the directors of OIM#2 and OIM#5, are representing the interests of those companies for the purpose of the present proceeding, with the consent of the Third and Fourth Defendants.
4. Except where I state otherwise, defined terms used in this affidavit have the meaning ascribed to them in the Second Hinchin Affidavit.
5. On 25 July 2012, the parties to this proceeding, including the First and Second Defendants executed a deed of compromise to effect a compromise of the proceeding subject to certain conditions, including approval of the compromise by the Court in accordance with rule 16.01(4) of the Rules. A copy of the deed of compromise is exhibit **CCH-2** to the Second Hinchin Affidavit.

Purpose of this affidavit

6. This affidavit is made in support of the Plaintiff's summons dated 27 August 2012 by which, among other things:
 - (a) in accordance with Rule 16.01(4) of the *Supreme Court Rules*, application is made to the Court for approval of the compromise of the Liparoo and Yungera Rights Proceeding reached between the parties to this proceeding; and
 - (b) in accordance with rule 54.02 of the Rules, application is made to the Court for approval of the first and second defendants' agreement to the compromise of the Liparoo and Yungera Rights Proceeding reached between the parties to this proceeding.



OIM#2 and OIM#5

7. By deed poll dated 9 September 2005, being the TOT#3 constitution, OIM#2 undertook to hold all the assets of TOT#3 on trust for the benefit of unitholders in TOT#3, subject to the powers and provisions set out in the TOT#3 constitution. Now produced and shown to me, marked **ADF-1** is a true copy of the TOT#3 Constitution.
8. By deed poll dated 23 February 2006, being the TOT#5 Constitution, OIM#5 undertook to hold all the assets of TOT#5 on trust for the benefit of unitholders in TOT#5, subject to the powers and provisions set out in the TOT#5 Constitution. Now produced and shown to me marked **ADF-2** is a true copy of the TOT#5 Constitution.

Timbercorp Primary Infrastructure Fund

9. I have read the affidavit of David Laurence McEvoy sworn 27 November 2009 in Supreme Court of Victoria proceeding number 10382 of 2009 (**McEvoy Affidavit**). As at the date of the McEvoy Affidavit and at all times to the date of this affidavit, both TOT#3 and TOT#5 were wholly owned sub-trusts of the Timbercorp Primary Infrastructure Fund (ARSN 116 024 830) (formerly Timbercorp Agribusiness Trust) (**TPIF**). Now produced and shown to me marked **ADF-3** are true copies of the unit registers of TOT#3 and TOT#5.
10. TPIF is a property trust, which at the date of the swearing of the McEvoy Affidavit was a property trust listed on the Australian Stock Exchange (**ASX**). Units in TPIF were suspended from listing with the ASX in April 2009. The responsible entity of TPIF is and at all times has been Align Funds Management Limited (formerly known as Orchard Investments Management Limited), of which I am also chairman and director.
11. TPIF conducted a series of 3 capital raisings by issuing bonds on either 30 September 2005 or 26 May 2006 (**TPIF Bonds**). The TPIF Bonds on issue have a total face-value of \$31,850,000 and have generally accrued interest since the date of issue at a fixed interest rate of 8.65%, 9.00% and 9.50% respectively.



12. The TPIF Bonds are secured by, amongst other things, a fixed and floating charge (**Bondholders' Charge**) over the assets of TPIF granted to Trust Company Limited (formerly Permanent Trustee Company Limited) (**Trust Company**) under clauses 4.1 and 4.2 of a Bond Trust Deed dated 30 September 2005 (**Bond Trust Deed**), and held for the benefit of bondholders pursuant to the Bond Trust Deed, and held for the benefit of bondholders pursuant to the Bond Trust Deed. Now produced and shown to me marked **ADF-4** is a true copy of the Bond Trust Deed.
13. On 17 September 2009, Trust Company gave notice under clause 4.7 of the Bond Trust Deed to Align Funds Management Limited, in its capacity as responsible entity for TPIF, that the Bondholders' Charge had crystallised for reasons including the appointment of receivers described in paragraphs 23 to 25 of the Second Hinchin Affidavit. Now produced and shown to me marked **ADF-5** is a true copy of the notice of crystallisation provided by Trust Company to Align Funds Management Limited.

Landowners of the Liparoo and Yungera Properties

14. As set out in paragraphs 12 to 22 of the Second Hinchin Affidavit, the Almond Projects were carried out on the Liparoo property and Yungera property pursuant to a suite of project documents, lease or sub-lease agreements and licence and joint venture agreements.
15. As noted by Mr Hinchin in paragraph 15 of the Second Hinchin Affidavit:
- (a) OIM#2 was the registered owner of the Liparoo property in its capacity as trustee of TOT#3 together with certain water rights described in paragraph 11 of the McEvoy Affidavit. The Liparoo property is as described in paragraph 10 of the McEvoy Affidavit.

- (b) OIM#5 was the beneficial owner of the Yungera property in its capacity as trustee of TOT#5 together with the water rights described at paragraph 17 of the McEvoy Affidavit. The Yungera property is as described in paragraph 16 of the McEvoy Affidavit.

Proceeds of sale of the Properties

16. The background to the sale of the Properties is more fully set out by Mr Hinchin in paragraphs 23 to 41 of the Second Hinchin Affidavit. As noted by Mr Hinchin in paragraphs 33 to 41 of the Second Hinchin Affidavit, the proceeds of sale of the Properties are being held on trust by the Third and Fourth Defendants in interest bearing accounts pursuant to the 11 December 2009 Orders (**Proceeds Accounts**).

Secured Debt

17. Given the matters set out in paragraphs 23 to 32 of the Second Hinchin Affidavit, I believe that the Plaintiff claims a secured debt against the Liparoo property and the Yungera property (**Secured Debt**).
18. I have also read the affidavit of Clinton Charles Hinchin sworn on 19 September 2012 in the Solara Rights Proceeding (**Second Hinchin Solara Affidavit**). Given the matters set out in paragraphs 24 to 28 of the Second Hinchin Solara Affidavit I believe that the Plaintiff claims a secured debt against the Solara property which, based on the matters set out in paragraph 29 of the Second Hinchin Affidavit, is cross-collateralised by a guarantee given by the First Defendant in this proceeding (**Cross-Collateralised Debt**).

Landowners' interest in the Net Sale Proceeds

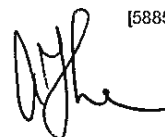
19. As Mr Hinchin deposes at paragraphs 28 to 30 of the Second Hinchin Affidavit, the accrual of interest (including default interest) and (as applicable) fees charged by the Plaintiff on the Secured Debt and the Cross-Collateralised Debt, continues to erode the potential entitlement of any unsecured creditors, should there be a surplus of net sale



proceeds after payment of the Secured Debt and the Cross-Collateralised Debt. When taken together with other arrangements concerning the interest earned on the Net Sales Proceeds, there is a net reduction in the balance of the Net Sales Proceeds available for distribution, including to the First and Second Defendants as landowner. I am informed by Mr Andrew Ashbolt, the internal accountant/company secretary of TPIF, and believe that the amount of the Net Sales Proceeds available for distribution after repayment of the Secured Debt is currently declining by the amount of approximately \$590,000 per month.

Execution of deed of compromise by OIM#2 and OIM#5

20. OIM#2 and OIM#5 participated in the negotiations set out in paragraph 96 of the Second Hinchin Affidavit and executed the Deed of Compromise in the Liparoo and Yungera Rights Proceedings having considered:
 - (a) the issues raised in paragraphs 54 to 95 of the Second Hinchin Affidavit and the continuing erosion of potential surplus from the Net Sale Proceeds after repayment of the Secured Debt (as noted at paragraph 19 above);
 - (b) advice from the companies' solicitors;
 - (c) all other relevant issues; and
 - (d) that the execution of the Deed of Compromise in the Liparoo and Yungera Rights Proceedings was within the powers of OIM#2, acting in its capacity as trustee of TOT#3, as set out in clause 16.1 of the TOT#3 Constitution including and within the powers of OIM#5, acting in its capacity as trustee of TOT#5, as set out in clause 16.1 of the TOT#5 Constitution.
21. The directors of OIM#2 and OIM#5 ultimately considered that it was in the best interests of all TPIF stakeholders that OIM#2 in its capacity as trustee of TOT#3 and OIM#5 in its

capacity as trustee of TOT#5 execute the Deed of Compromise in the Liparoo and Yungera Rights Proceeding.

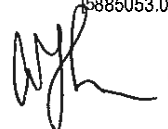
Distribution of any funds received by OIM#2 and OIM#5

22. Assuming that the Receivers and Managers of each of TOT#3 and TOT#5 are removed following repayment of the Secured Debt, any funds received by OIM#2 in its capacity as trustee of TOT#3 or OIM#5 in its capacity as trustee of TOT#5 will be used to pay creditors of TOT#3 and TOT#5 respectively.
23. In the event that there are any assets remaining in either or both TOT#3 and TOT#5 after payments to creditors, these assets will be distributed to TPIF. Given the arrangements set out in paragraphs 9 to 13 above, holders of TPIF Bonds have a secured interest in the assets of TPIF.
24. The financial report of TPIF for the year ended 30 June 2011 (**2011 Financial Report**) records the following statement under the heading 'Likely developments':

Due to continuing borrowing costs being incurred by the [TPIF] Group, and irrespective of the outcome of the legal entitlement of Timbercorp Growers to the net proceeds from the sale of the [TPIF] Group's properties, there will be insufficient funds to pay the liabilities due to the secured TPIF bond holders. Accordingly, unit holders in [TPIF] will not receive any further distributions or any return of capital.

From a review of the financial records of the TPIF, I believe that the position outlined in the 2011 Financial Report in respect of any payment to holders of TPIF Bonds remains correct. Consequently, irrespective of the outcome of the Approval Applications, I do not believe that unitholders in TPIF will receive any of the Net Sale Proceeds.

Now produced and shown to me marked **ADF-6** is a true copy of the 2011 Financial Report.



SCHEDULE

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

S CI 2011 6604

List D

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

**OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3**

First Defendant

and

**OIM#5 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 118 204 701) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5**

Second Defendant

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD
(RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 AND RECEIVER AND MANAGER OF
OIM#5 IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5**

Third Defendant

and

**PAUL WILLIAM KIRK IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD
(RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 AND RECEIVER AND MANAGER OF
OIM#5 IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5**

Fourth Defendant

and

**GRAHAM DACE (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2001 TIMBERCORP
ALMOND PROJECT (ARSN 095 649 746))**

Fifth Defendant

and

**GRAHAM GOLDENBERG (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2002
TIMBERCORP ALMOND PROJECT (ARSN 099 611 935))**

Sixth Defendant

and

**GORAN RUNJE (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2003 TIMBERCORP
ALMOND PROJECT (ARSN 103 197 299))**

Seventh Defendant

and

**GRAEME PHILIP COLE (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2004
TIMBERCORP ALMOND PROJECT (ARSN 108 336 670))**

Eighth Defendant

and

**CHRISTOPHER MARK LITTLE (AS THE REPRESENTATIVE OF THE GROWERS IN THE
2005 TIMBERCORP ALMOND PROJECT (ARSN 112 935 092))**

Ninth Defendant

and

**DAVID BUTTERFIELD (AS THE REPRESENTATIVE OF THE GROWERS IN THE
UNREGISTERED MANAGED INVESTMENT SCHEME KNOWN AS THE 2002 TIMBERCORP
ALMOND PROJECT (PRIVATE OFFER NO. 1))**

Tenth Defendant

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012
Filed on behalf of: The First and Second Defendants
Prepared by:
Maddocks
Lawyers
140 William Street
Melbourne VIC 3000

Solicitor's Code: 230
DX 259 Melbourne
Tel: (03) 9288 0555
Fax: (03) 9288 0666
Ref: 5885053.001
Attention: Philip Jones
Email: philip.jones@maddocks.com.au

This is the exhibit marked "**ADF-1**" now produced and shown to **Alan David Fisher** at the time of
swearing his affidavit on 20 September 2012.

Before me:


Signature of person taking affidavit

STEVEN MICHAEL TANG
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

Exhibit "ADF-1"
Copy of Constitution of TOT#3

Constitution**OIM #2 Pty Ltd**

Timbercorp Orchard Trust #3**BAKER & MCKENZIE**

Solicitors
Level 39, Rialto
525 Collins Street
MELBOURNE VIC 3000
Tel: (03) 9617-4200
Fax: (03) 9614-2103
Email: Lewis.Apostolou@BAKERNET.com

Ref: 53583-v6/LA3



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Date

9 September

2005

Parties

OIM #2 Pty Ltd (ACN 112 691 997) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (*Trustee*)

Recitals

- A. This deed poll comprises the Constitution of the Trust and is made with the intent that it be legally enforceable as between the Trustee and each Member.
- B. The Trust Fund is to be held and administered by the Trustee with, and subject to, the powers and provisions of this Constitution.

Operative provisions

This deed poll records and the Trustee covenants and declares as follows:

1 Preliminary

Declaration

- 1.1 This deed poll is declared by the Trustee to be the constitution of the Trust.
- 1.2 OIM #2 Pty Ltd hereby agrees to act as trustee of the Trust on the terms of this Constitution.
- 1.3 The Trust commences when Orchard Investments Management Limited as trustee of Timbercorp Agribusiness Trust gives the Trustee A\$100.00 for 100 Units, and the Trustee issues 100 Units in return.
- 1.4 Orchard Investments Management Limited as trustee of Timbercorp Agribusiness Trust will give the Trustee A\$100.00 immediately following execution of this Constitution.

Name of Trust

- 1.5 The Trust is called the *Timbercorp Orchard Trust #3* or such other name as the Trustee determines from time to time.
- 1.6 If Timbercorp Asset Management Pty Limited ceases to be the Asset Manager, the Trustee must, unless otherwise agreed by Timbercorp Asset Management Pty Limited, change the name of the Trust to a name that does not imply an association with Timbercorp Asset Management Pty Limited or its business.

Definitions

- 1.7 In this Constitution, unless there is something in the subject matter or context that is inconsistent:

Accounting Principles mean generally accepted Australian accounting principles and accounting standards determined by the Trustee after consultation with the Auditor;

Application Price means the application price for a Unit calculated in accordance with this Constitution;

Original Declaration Of Trust
Stamped with \$200.00
Doc ID 2014256, 29 Sep 2005
SRD Victoria Duty, PEVD

Approved Valuer means a person who is appointed to act as a valuer or an expert by the Trustee in relation to the Trust (including any Asset of the Trust or the Units), who is independent of the Trustee and is experienced in relation to the valuation or assessment of assets, investments or proposals of the kind required to be valued or assessed;

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions;

Asset Manager means any person appointed by the trustee of the Timbercorp Agribusiness Trust to manage the assets of the Timbercorp Agribusiness Trust and the Controlled Entities of the trustee of the Timbercorp Agribusiness Trust;

Assets means all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, any Redemption Price not yet paid or any Distributable Income or Amount payable but not paid;

Auditor means a person appointed in accordance with clause 27.1 to act as an auditor of the Trust;

Business Day means:

- (a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne; and
- (b) any other day specified by the Trustee to be a business day for the purposes of this definition;

Cash means money in any currency and includes cheques drawn in such currency;

Class means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only one Class;

Commencement Date means the date of the issue of the first Unit in accordance with clause 1.3;

Confirmation means a transaction statement issued by the Trustee, or if the law permits, the custodian, confirming the number of Units Registered in the name of the Member or person named in that statement;

Constitution means this deed poll;

Controlled Entity means an entity, including a body corporate or trust, directly or indirectly controlled by TAT, including this Trust;

Corporations Act means the *Corporations Act 2001 (Cth)* and the Corporations Regulations;

Custodian means the custodian for the time being of the Trust (if any);

Designated Time means 5 pm or such other time as may be specified by the Trustee in the jurisdiction in which the Office is located;

Disclosure Document includes a disclosure document (as that expression is defined in section 9 of the Corporations Act) and any information memorandum under which offers to subscribe for the Units in the Trust are made;

Distributable Amount means the amount, if any, determined by the Trustee in accordance with clause 11.10(c);

Distributable Income in respect of a Distribution Period or Financial Year, as the case requires, means the amount, if any, determined by the Trustee in accordance with clauses 10.4 to 10.6 for the Distribution Period;

Distribution Calculation Date means the last day of each Distribution Period or such other days as the Trustee designates;

Distribution Account means the account described in clause 11.33;

Distribution Period means each of the periods commencing on the day after the last day of the last preceding Distribution Period and ending on:

- (a) the last day of June and December; or
- (b) such other day as the Trustee specifies in accordance with clause 12,

in each year during the continuance of the Trust, and includes the period commencing on the Commencement Date and terminating on the next Distribution Calculation Date with the exception of the last Distribution Period which commences on the day after the last day of the last preceding Distribution Period and ends on the date of termination of the Trust;

Dollars, A\$ and \$ means the lawful currency of the Commonwealth of Australia;

Financial Statements means the financial statements prepared by the Trustee from time to time in respect of the Trust;

Financial Year means:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June;

Governmental Agency means:

- (a) an Australian government, whether Commonwealth, State, municipal or local;
- (b) a foreign government, whether unitary, federal, provincial, regional, municipal or local; and
- (c) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation, statutory or otherwise, of a government referred to in paragraph (a) or (b);

GST means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

GST Rate means the rate of GST under the GST Law;

Income Distribution means the amount distributed in accordance with clause 11.1 in respect of a Member for a Distribution Period;

Liabilities means all present liabilities of the Trust including any provisions and reserves which the Trustee decides should be taken into account in determining the liabilities of the Trust, including:

- (a) proceeds of redemption which have not yet been paid;
- (b) any amount in the Distribution Account which has yet to be distributed; and
- (c) such other amounts as are required to meet contingent liabilities of the Trust;

but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the Financial Statements of the Trust;

Market Value of the Assets means the aggregate market value of the Assets calculated in accordance with clauses 8.4 to 8.6;

Member means the person Registered as the holder of a Unit including persons jointly Registered;

month means calendar month;

Net Asset Value means the amount calculated in accordance with clause 8.2 from time to time as ascertained by the Trustee by deducting from the aggregate of:

- (a) the Market Value of all Assets of the Trust; and
- (b) any other amounts which should be included in the aggregate for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to Accounting Principles current from time to time,

the aggregate of:

- (c) all Liabilities of the Trust; and
- (d) any other amounts which should be included in the aggregate:
 - (i) for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to Accounting Principles current from time to time; and
 - (ii) as a provision for income tax or capital gains tax which would be payable by the Trustee or the Members on the disposal of all or any of the Assets of the Trust;

Notional Income means any notional or deemed amount that will not result in the receipt of cash or property, such as franking and foreign tax credits (which, for the avoidance of doubt,

includes any notional amounts in the Trust's assessable income under sections 207-35 and 6AC of the Tax Acts);

Office means the registered office from time to time of the Trustee;

Ordinary Resolution means a Resolution that has been passed by at least 50% of the total votes that may be cast by Members at the relevant meeting (including Members who are not present in person or by proxy);

Other Instrument Holder means a holder of an Other Instrument;

Other Instruments has the meaning given to that expression in clause 3.24;

person includes a company, corporation, firm, authority, unincorporated association or body of persons;

Redemption Price means the redemption price for a Unit calculated in accordance with this Constitution;

Register means the register of Members kept by the Trustee under the Corporations Act;

Registered means recorded in the Register;

Registration means recording in the Register;

Resolution means a resolution passed at a meeting of Members in the Trust:

- (a) on a show of hands, by the **required majority** of Members present in person or by proxy and voting on the show of hands; or
- (b) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (c) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this Constitution or any applicable law provides otherwise, the **required majority** is a simple majority;

Security Interest Rules means the rules and policies adopted by the Trustee from time to time for the recognition of encumbrances over Units in accordance with clause 3.22;

Special Resolution means a Resolution where the required majority is 75% of votes cast at the relevant meeting (whether in person or by proxy);

TAT means Orchard Investments Management Limited (ACN 105 684 231) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000, as the trustee or responsible entity (as the case requires) of the Timbercorp Agribusiness Trust, and any replacement trustee or responsible entity of the Timbercorp Agribusiness Trust;

Tax means all kinds of taxes, duties, imposts, deductions and charges imposed by a government, including GST or any amounts recovered from the Trustee by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Trustee on account of GST, together with interest and penalties on such amounts;

Tax Acts means:

- (a) the *Income Tax Assessment Act 1936* (as amended);
- (b) the *Income Tax Assessment Act 1997* (as amended);
- (c) the *Income Tax (Transitional Provisions) Act 1997* (as amended);
- (d) *Taxation Administration Act 1953* (as amended); and
- (e) the taxation rating legislation,

of the Commonwealth of Australia, as the case requires;

Taxable Income means *net income* as defined by section 95 of the Tax Act of the trust estate constituted by the Trust for a year of income, or if repealed or replaced, any concept enacted to replace the definition of *net income*;

Transaction Costs mean:

- (a) when calculating the Application Price of a Unit, the Trustee's estimate of the *total cost* of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, the Trustee's estimate of the *total cost* of selling the Assets and any Tax that the Trustee determines would be payable by the Trust if all such Assets had been disposed of on that date,

as if the Assets were acquired or sold on the relevant calculation date at the respective amounts at which each of the Assets is brought to account in computing the Net Asset Value at that date.

For the purposes of this definition, *total cost* means the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees which would be incurred if all the Assets held at the date of calculation were acquired or sold, as the case requires;

Trust means the trust constituted or governed by this Constitution;

Trustee means OIM #2 Pty Ltd (ACN 112 691 997), the trustee of the Trust, and any replacement trustee;

Trust Fund means all of the Assets for the time being of the Trust, but subject to the Liabilities at that time of the Trust;

Trust Income means the net income of the Trust determined by the Trustee having regard to Accounting Principles for a Distribution Period or Financial Year, as the case requires;

Unit means an undivided share in the beneficial interest in the Trust as provided in this Constitution;

Valuation Time means the valuation time as determined by the Trustee in accordance with clause 8.

Interpretation

1.8 Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;

- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) words importing a gender include any gender;
- (e) where a word or phrase is given a defined meaning in this Constitution, any other part of speech or other grammatical form in respect of such word or phrase unless the context otherwise requires has a corresponding meaning;
- (f) the words *includes, including, for example* or *such as* when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (g) amend includes delete, modify or replace;
- (h) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution; and
- (i) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

Other documents

- 1.9 A document does not become part of this Constitution by reason only of that document referring to this Constitution or vice versa or any electronic link between them.

Constitution legally binding

- 1.10 This Constitution binds, and is legally enforceable as between, the Trustee and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

Governing law

- 1.11 The laws of Victoria, and where applicable the laws of the Commonwealth of Australia, govern this Constitution.
- 1.12 The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria.

Other obligations excluded

- 1.13 Except as required by the Corporations Act and this Constitution all obligations of the Trustee which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Trustee in its capacity as trustee of the Trust arising under any statute.

Wholly-owned sub-trust

- 1.14 Whilst TAT holds the entire beneficial interest in the Trust, the Trustee must:
- (a) only issue Units to TAT;
- (b) appoint the auditor of TAT from time to time as the Auditor of the Trust under clause 27;

- (c) the Trustee may only invest in Assets which TAT is authorised to invest in under TAT's trust deed;
- (d) act on the instructions of TAT and do such other things to ensure as far as possible that TAT has day to day control of the Trust (including that the Member has day to day control over the use of any contribution to the Trust to generate any return or benefit).

1.15 Clause 1.14 takes precedence over any other term or condition of this Constitution to the extent of any inconsistency, except that TAT may by written Resolution vary clause 1.14.

2 Assets held on trust

Assets vested in Trustee

- 2.1 The Assets will be vested in and held by the Trustee on trust for Members on the terms and subject to the conditions of this Constitution.

Assets must be held separately by the Trustee

- 2.2 The Trustee must clearly identify the Assets as property of the Trust and hold the Assets separately from the assets of the Trustee and any other trust or managed investment scheme.
- 2.3 The Trustee may from time to time appoint a Custodian to hold the Assets on trust for Members of the Trust, and subject to the terms, of this Constitution and the Custodian agreement.
- 2.4 All Assets must be registered or otherwise held in the name of the Trustee or any Custodian.

3 Units

Nature of Units

- 3.1 The beneficial interest in the Trust is divided into Units.
- 3.2 Subject to the rights, obligations or restrictions attaching to any particular Unit, each Unit other than a Fractional Unit, confers an equal undivided interest in the Trust and a Fractional Unit confers an interest of the same nature which is proportionate.
- 3.3 A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer:
- (a) an interest in a particular Asset;
 - (b) an entitlement to lodge a caveat in respect of a particular Asset;
 - (c) an entitlement to interfere with the rights or powers of the Trustee in its dealings with the Assets;
 - (d) an entitlement to exercise any rights, powers or privileges in respect of any Asset, other than as provided in this Constitution or permitted by the Corporations Act.
- 3.4 A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.

Income entitlement of Units

- 3.5 Except as otherwise expressly provided in this Constitution, the Trustee may in its discretion issue Units on terms that such Units:
- (a) participate fully in the Distributable Income of the Trust in respect of the Distribution Period in which they are issued; or
 - (b) do not entitle the holder of such Units to receive a distribution of the Distributable Income of the Trust in respect of the Distribution Period in which such Units are issued; or
 - (c) entitle the holder of such Units to receive a distribution of the Distributable Income of the Trust in respect of the Distribution Period in which such Units are issued which is not greater than the proportion of the Distributable Income of the Trust to which a Member holding a Unit during the whole of that Distribution Period is entitled multiplied by the number of days from and including the date of issue of those Units to the end of that Distribution Period divided by the total number of days in that Distribution Period; or
 - (d) entitle the holder of such Units, including Partly Paid Units, to a fixed rate of distribution for a period to be determined by the Trustee.

No fractions of Units

- 3.6 Fractions of a Unit may not be issued by the Trustee. Where any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is to be rounded down or up respectively to the nearest whole Unit.

Rounding of amounts

- 3.7 Any excess application or other money or property which results from rounding under any provision of this Constitution becomes an Asset of the Trust.

Additional Units and bonus Units

- 3.8 The Trustee may from time to time create additional Units. The number of additional Units created must be determined by the Trustee in accordance with clause 5.
- 3.9 Subject to this Constitution, the Trustee may issue Units subject to any rights, restrictions and obligations determined by the Trustee.
- 3.10 The Trustee may distribute capital of the Trust to Members by appropriating the whole or part of the amount standing to the credit of the reserve referred to in clause 29, such distribution to be satisfied by the payment of Cash or the issue of Units to Members in proportion to the number of Units held by them respectively (taking into account the number of Fully Paid Units and Partly Paid Units held by the Member).

Reconstruction, consolidation, division and reclassification of Units

- 3.11 Units may be reconstructed, consolidated, divided or reclassified as determined by the Trustee or any Resolution of Members, provided such reconstruction, consolidation, division or reclassification does not result in the proportionate interest of Members being affected.

Transfer of Units

- 3.12 Subject to this Constitution, Members may transfer Units.

- 3.13 Transfers must be in a form approved by the Trustee and if necessary be presented for Registration duly stamped, and must be accompanied by any evidence reasonably required by the Trustee to show the right of the transferor to make the transfer.
- 3.14 The transferee in respect of a transfer of Units is deemed to have agreed to accept the Units transferred to it subject to the terms and conditions on which the transferor held them immediately before execution of the instrument of transfer and to be bound by this Constitution.
- 3.15 A transfer is not effective until Registered and the transferor remains the holder of the Units specified in the transfer until the Transfer is Registered.
- 3.16 The Trustee may refuse to record any transfer of Units in the Register without giving any reason for the refusal.
- 3.17 The Trustee may refuse to record any transfer of Units in the Register during the 5 Business Days immediately preceding any distribution.
- 3.18 The Trustee may refuse to record any transfer of Units in the Register which is in breach of the Security Interest Rules.
- 3.19 The Trustee is not required to give effect to any transaction, transfer or dealing at the request of or for the benefit of a Member unless the Member has paid to the Trustee's satisfaction all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage and other charges which may have become or may be payable in respect of the transaction, transfer or dealing.
- 3.20 The Trustee may Register a transfer notwithstanding that the Trustee at the time of Registration has notice of the transferor Member's death.
- 3.21 Other than as provided in clauses 3.16 to 3.20, there is no restriction on the transfer of Units.

Security Interest Rules

- 3.22 The Trustee may make and amend rules and policies from time to time for the recognition of encumbrances over Units.

Rights Attaching to Units

- 3.23 The holders of Units issued by the Trustee hold those Units subject to the rights, restrictions and obligations attaching to those Units.

Creation and issue of Other Instruments

- 3.24 The Trustee may issue any other interests, rights or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature (*Other Instrument*) which the Trustee determines.
- 3.25 Such Other Instruments may be issued for such consideration and with such preferred, deferred or other special rights or such restrictions, whether with regard to dividends, voting, return of capital, payment of calls, redemption, conversion or otherwise, as the Trustee decides.
- 3.26 The holders of Other Instruments issued by the Trustee hold those Other Instruments subject to the rights, restrictions and obligations attaching to those securities or instruments.

Rule against perpetuities

- 3.27 The perpetuity period applicable to the Trust for the purposes of the rule against perpetuities or any other rule of law or equity is the period from the Commencement Date until the date which is the 80th anniversary of the day before the Commencement Date.
- 3.28 No Units may be issued or redeemed after the 80th anniversary of the day before the Commencement Date if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

4 Members

Non-Resident Members

- 4.1 A person who is not a resident of Australia may be a Member.

Joint tenancy

- 4.2 Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Trustee otherwise agrees.
- 4.3 Any person registered jointly may give an effective receipt on behalf of the joint holders.

Death or legal disability of a Member

- 4.4 If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only:
- (a) *the survivor*, where the deceased was a joint holder holding as a joint tenant; or
 - (b) *the legal personal representative*, in any other case,
- will be the person recognised as having any claim to Units Registered in the Member's name.
- 4.5 The survivor or legal personal representative, as the case may be:
- (a) may elect in a form approved by the Trustee either to be Registered, or for a nominee to be Registered, as the holder of those Units, subject to the production of any evidence which may be required by the Trustee from time to time; and
 - (b) will be entitled to receive and may give a discharge for all moneys payable in respect of the Units.
- 4.6 The survivor or legal personal representative, as the case may be, is not entitled to receive notices of or to attend or vote at any meetings of Members until Registered as a Member.

Register of Members

- 4.7 The Trustee must keep a Register at the Office in accordance with the Corporations Act.

Changes in Member's details

- 4.8 A Member must notify the Trustee of any change in its details kept in the Register.

5 Application for Units

Application form

- 5.1 An applicant for Units must complete a form which is approved by the Trustee and leave it for, or deliver it to, the Trustee at its Office, if the Trustee so requires.
- 5.2 The form may be transmitted electronically to the Trustee with its approval, provided the original application form is left for, or delivered to, the Trustee at its Office.

Payment of application moneys

- 5.3 Payment in a form acceptable to the Trustee or a transfer of property of a kind acceptable to the Trustee and able to be vested in the Trustee, must accompany the application form and be received by or be made available to the Trustee within such period before or after the Trustee receives the application form as the Trustee determines from time to time.
- 5.4 The Trustee may require property other than Cash being transferred to it under clause 5.3 to be valued by an Approved Valuer.
- 5.5 If the Trustee accepts a transfer of property other than Cash, any costs associated with the valuation or transfer of the property are to be paid or reimbursed out of the property being transferred.

Receipt of application

- 5.6 For the purposes of this clause 5, an application for Units is only taken to have been received by the Trustee when it has:
 - (a) received an application form for Units completed in full; and
 - (b) received the application moneys relating to the application for Units or had the property against which the Units are to be issued vested in it.
- 5.7 For the purposes of this clause 5, the Trustee may treat receipt of a cheque or other promise or direction to pay as receipt of the application moneys.
- 5.8 For the purposes of this clause 5, an application for Units or application moneys relating to the application for Units will be deemed to have been received by the Trustee at the following times:
 - (a) if left for or delivered personally to the Trustee at its Office during business hours on a Business Day, on the date and time of being so left or delivered;
 - (b) if left for or delivered at the Trustee's Office on a day that is not a Business Day or outside business hours on a Business Day, at 9:00 am on the next Business Day;
 - (c) if sent by post to the Trustee's Office, on the date and time of delivery to the Office; or
 - (d) if transmitted electronically to the Trustee's Office, at 9:00 am on the Business Day on which the Trustee receives the deposit of the application moneys in a bank account of the Trust.
- 5.9 In the case where the Trustee does not require an application form for Units to be completed, the Trustee may determine that it is deemed to have received the application at the time it receives the application moneys or the property against which the Units are to be issued are vested in it.

Trustee may reject application for Units

- 5.10 The Trustee may reject an application for Units in whole or in part without giving any reason for the rejection.
- 5.11 Where the Trustee rejects an application for Units, it must return any application moneys and property to the applicant not later than the next Business Day after it is deemed to have received the application in accordance with clause 5.6.

Acceptance of application

- 5.12 Where an application for Units is received and accepted by the Trustee not later than the Designated Time on a Business Day, the application for Units is received and accepted on that Business Day.
- 5.13 Where an application for Units is received and accepted:
- (a) after the Designated Time on a Business Day; or
 - (b) on a day that is not a Business Day,
- the application for Units is deemed to have been received and accepted on the next Business Day before the Designated Time.

Application Price of Units

- 5.14 Subject to clauses 5.16 and 5.17, all Units must only be issued at the Application Price equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue}}$$

- 5.15 Each of the variables in clause 5.14 must be determined as at the next Valuation Time after:
- (a) the Trustee receives the application for Units; or
 - (b) the Trustee receives the application money, or the property against which Units are to be issued or vested in the Trustee,
- whichever happens later.
- 5.16 All Units issued to TAT and / or its nominee on or before 30 June 2005 will be issued at the Application Price of A\$1.00 per Unit, including the Units issued under clause 1.3.
- 5.17 While the Trust is a wholly-owned sub-trust of TAT, the Trustee may determine that the Application Price for additional Units will be A\$1.00 unless otherwise determined by the Trustee.

Issue date

- 5.18 Subject to clauses 1.3 and 5.19, Units are taken to be issued on:
- (a) except in the case of a reinvestment of distribution in accordance with clause 11.14, when:
 - (i) the Trustee accepts the application; or

- (ii) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee,

whichever happens later; and

- (b) in the case of Units issued on a reinvestment of distribution in accordance with clause 11.14, on the first day after the end of the relevant Distribution Period on which date the application in respect of those Units is deemed to have been received.

5.19 The Trustee may determine a different issue date.

Rounding of Application Price

5.20 The Application Price may be rounded as the Trustee determines and any excess application moneys and property arising from such rounding become part of the Assets.

Uncleared funds and property which does not vest

5.21 Units issued against application moneys paid other than in cleared funds are void if the funds are not subsequently cleared within 5 Business Days of receipt of the application and the Trustee may make appropriate entries in the records of the Trust unless the Trustee otherwise determines.

5.22 Units issued against a transfer of property are void if the property does not vest in the Trustee within 5 Business Days of receipt of the application unless the Trustee otherwise determines.

Update Register

5.23 The Trustee must update the Register when Units are issued.

Pooling of amounts

5.24 Any amounts paid by any applicant may be pooled with any amounts paid by any other applicant.

No recognition of trust

5.25 Until Members have an absolute right to the Units registered in their name, the Trustee is not bound to recognise, even when having notice, any equitable, contingent or future interest, or a severable part interest, in a Unit, or a trust for the holding of a Unit, except as may otherwise be expressly provided by this Constitution.

Compliance with Corporations Act

5.26 The Trustee must ensure that all issues of Units in the Trust that are made or to be made do not need disclosure to investors under Part 7.9 of the Corporations Act when they were or are made.

6 Redemption price of Units

Redemption Price

6.1 Subject to clauses 6.2 and 6.3, a Unit may only be redeemed at a Redemption Price calculated as:

Net Asset Value - Transaction Costs

number of Units in issue

- 6.2 The Redemption Price for Units redeemed on or before 31 December 2005 will be A\$1.00 per Unit.
- 6.3 While the Trust is a wholly-owned sub-trust of TAT, the Redemption Price for Units will be A\$1.00 unless otherwise determined by the Trustee.

Determination of Redemption Price

- 6.4 Each of the variables in clause 6.1 must be determined no earlier than 60 days before an offer is made by the Trustee under clauses 7.1 to 7.9.

Redemption Price may be rounded

- 6.5 The Redemption Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1 cent.

7 Redemption procedures

Offer to redeem

- 7.1 The Trustee may offer Members an opportunity to redeem their Units, wholly or partly, to the extent that particular Assets are available and able to be converted to money in time to satisfy redemption requests that Members may make in response to the offer.
- 7.2 The offer must be in writing and be made by giving a copy of the offer to all Members of the Trust or to all members of a particular Class.
- 7.3 The offer must specify:
- (a) the period during which the offer will remain open (this period must last for at least 21 days after the offer is made); and
 - (b) the Assets that will be used to satisfy redemption requests; and
 - (c) the amount of money that is expected to be available when those Assets are converted to money; and
 - (d) the method for dealing with redemption requests if the money available is insufficient to satisfy all requests.
- 7.4 For joint Members, a copy of the withdrawal offer need only be given to the joint Member named first in the Register.

Satisfying redemption requests

- 7.5 Subject to clauses 7.6 to 7.9, the Trustee must ensure that redemption requests made in response to an offer are satisfied within 21 days after the offer closes.
- 7.6 No redemption request made under the offer may be satisfied while the offer is still open.
- 7.7 If an insufficient amount of money is available from the Assets specified in the offer to satisfy all requests, the requests are to be satisfied proportionately in accordance with the formula:

$$(A/B) \times C$$

where

- A* is the amount the member requested to redeem;
- B* is the aggregate of the amounts that all Members requested to withdraw;
- C* is the amount available to satisfy redemption requests made in response to the offer.

- 7.8 The Trustee may decide to satisfy a redemption request in relation to only some of the Units which are the subject of the request, if it is in the best interests of Members to do so.

Cancelling an offer

- 7.9 The Trustee may by notice in writing to the Members cancel an offer before it closes if:
- (a) the offer contains a material error; or
 - (b) it is in the best interests of Members to do so.

Request for redemption

- 7.10 Other than as set out in clauses 7.1 to 7.9, the Trustee is not required to give effect to any redemption request by a Member.

Redemption request

- 7.11 Where a redemption request is received by the Trustee not later than the Designated Time on a Business Day, that redemption request is deemed to be received on that Business Day.
- 7.12 Where a redemption request is received:
- (a) after the Designated Time on a Business Day; or
 - (b) on a day that is not a Business Day,
- that redemption request is deemed to have been received on the next Business Day before the Designated Time.

Processing of a redemption request

- 7.13 Subject to clauses 7.7, 7.8 and 7.9, a redemption request received in accordance with clauses 7.11 and 7.12 will be:
- (a) processed as at the Designated Time on the Business Day following the day on which the offer closes; and
 - (b) satisfied in accordance with clause 7.5.

Obligation to pay Redemption Price

- 7.14 The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.

Sums owed to Trustee

- 7.15 The Trustee may deduct from the proceeds of redemption any money due to it by the Member.

Transfer of Assets

- 7.16 The Trustee may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request.
- 7.17 The Assets together with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request.
- 7.18 If the Trustee requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

8 Valuation of Assets

Valuations

- 8.1 The Trustee may cause an Asset to be valued at any time.
- 8.2 The Trustee may determine Net Asset Value at any time, including more than once on each day.

Valuations for applications and redemptions

- 8.3 The Trustee must cause:
 - (a) the Application Price to be calculated at the Designated Time on each Designated Application Date;
 - (b) the Redemption Price to be calculated in accordance with clause 6.4.

Trustee may value

- 8.4 The Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.
- 8.5 Unless the Trustee determines otherwise, the value of an Asset will be its market value.
- 8.6 Where the Trustee values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Trustee must be reasonable and capable of resulting in a calculation that is independently verifiable.

9 Confirmations

No Certificate issued

- 9.1 No certificate will be issued by the Trustee evidencing the title of a person to Units in respect of which that person is Registered.

Confirmation

- 9.2 Within 1 month of issuing, transferring or redeeming any Unit to a person, the Trustee must issue a Confirmation to that person.

10 Trust Income and entitlement of Members

Income distributions

10.1 Clauses 11.1 to 11.7 will apply unless the Trustee makes a determination under clause 11.10.

Income for each Financial Year

10.2 The Trustee must receive and collect all income of the Trust.

10.3 The Trustee must determine;

- (a) the Trust Income of the Trust for each Distribution Period and Financial Year;
- (b) the Taxable Income of the Trust for each Distribution Period and Financial Year;
- (c) the Distributable Income for each Distribution Period and Financial Year; and
- (d) the entitlement of the Members to Distributable Income for each Distribution Period.

Calculation of Distributable Income

10.4 Subject to clause 10.5, the distributable income of the Trust for each Financial Year is the Taxable Income of the Trust for that Financial Year.

10.5 If it is necessary in calculating the Taxable Income of the Trust to gross up any amount of income, or include any amount of deemed assessable income or to make any deemed deductions, the grossing up or deemed assessable income (excluding net capital gains included in assessable income) or deemed deductions must not be included in calculating the Taxable Income of the Trust unless the Trustee determines that the grossing up or deemed assessable income or deemed deductions should be included in calculating the Taxable Income of the Trust.

10.6 The Trustee must determine the Distributable Income of the Trust for each Distribution Period in accordance with clauses 10.4 to 10.5 with any necessary modifications, as if the Distribution Period were a Financial Year.

Preparation of Financial Statements

10.7 Notwithstanding that the Distributable Income of the Trust may, in accordance with clause 10.4, be calculated in the same manner as the Taxable Income of the Trust, the Financial Statements of the Trust are to be prepared in accordance with Accounting Principles.

10.8 The preparation of the Financial Statements of the Trust in accordance with clause 10.7 is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 10.4.

Classification of income and capital

10.9 The classification of any item as being on income or capital account, and the extent to which reserves or provisions need to be made, must be determined by the Trustee in accordance with legal principles and Accounting Principles.

Entitlement to Distributable Income of the Trust

10.10 At the end of each Distribution Period the Members on the Register on the last day of the Distribution Period have a vested and indefeasible interest in, and are presently entitled to, the

Distributable Income of the Trust for that Distribution Period in accordance with the Income Distributions made (or allocated) under clause 11.1.

11 Distribution of income

Income Distribution

11.1 An income distribution in respect of a Member means an amount calculated by the Trustee as follows, and any amount so calculated is taken to be allocated to the Member:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than the last day of a Financial Year in any year, an amount calculated as follows:

$$(A/B) \times C$$

where:

- A* is the aggregate of the number of Units held by the Member at the end of the Distribution Period;
- B* is the aggregate of the number of Units in issue as at the end of the Distribution Period;
- C* is an estimate of the Distributable Income of the Trust for the Distribution Period calculated as if the Distribution Period were a Financial Year; and

- (b) in respect of a Distribution Period ending on the last day of a Financial Year in any year, an amount calculated as follows:

$$(A/B) \times C$$

where

- A* is the aggregate of the number of Units held by the Member at the end of the Distribution Period;
- B* is the aggregate of the number of Units in issue as at the end of the Distribution Period;
- C* is the amount (if any) by which the Distributable Income of the Trust for the Financial Year exceeds the aggregate of the estimates of Distributable Income of the Trust calculated for the purposes of variable *C* in clause 11.1(a) in respect of the previous Distribution Periods of the Financial Year.

Satisfaction of present entitlement

11.2 The present entitlement of a Member to the Distributable Income of the Trust for a Financial Year will be satisfied by:

- (a) the payment of the Income Distributions to the Member in respect of the Financial Year;
- (b) if an Income Distribution is not paid to the Member by reason of a transfer of Units by the Member, the payment by the Trustee of an amount equal to that Income

Distribution in respect of those Units to the person to whom the Units have been transferred; or

- (c) the reinvestment of the Income Distribution in Units in accordance with clauses 11.11 to 11.19.

11.3 Income Distributions must be paid within two months after the Distribution Calculation Date.

11.4 The Trustee must have distributed all of the Distributable Income of the Trust for the Financial Year within two months after the end of the Financial Year.

Additional distributions

11.5 The Trustee may distribute amounts in a Distribution Period in addition to, and in the same manner as, the amounts calculated in accordance with clauses 10.4 to 10.6, including where it is necessary to enable distributions to Members of the minimum amount necessary to avoid the Trustee as trustee of the Trust becoming assessable to pay tax under the Tax Acts.

11.6 The Members on the Register on the last day of the Distribution Period will have a vested and indefeasible interest in, and be presently entitled to, any amount distributed (or allocated) to them under clause 11.5. The present entitlement of a Member to any amount distributed (or allocated) to them under clauses 11.5 is to be satisfied in the same manner as clause 11.2 (with any necessary modifications).

Notional Income

11.7 The benefit of any tax credit or rebate attributable to Notional Income is deemed to have been distributed to Members in proportion to their entitlement to any Distributable Income of the Trust for a Distribution Period of the category or source of income in respect of which the credit or rebate is referable.

Other distributions

11.8 The Trustee may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Trustee. The distribution may be in cash, by way of additional Units or of Assets (pursuant to clause 11.22 to 11.27).

11.9 The distribution of cash or other Assets to each Member under clause 11.8 is to be calculated in accordance with the following formula or in any other manner determined by the Trustee:

$$(A/B) \times C$$

where:

- A* is the aggregate of the number of Units held by the Member on the day of calculation;
- B* is the aggregate of the number of Units in issue on the day of calculation;
- C* is the amount of cash or the Value of Assets (determined by the Trustee) to be distributed.

Trust taxed as a company

11.10 If the Trust is to be taxed as if it were a company, the Trustee may determine that this clause 11.10 applies to a Distribution Period instead of clauses 11.1 to 11.8. If it does so:

- (a) as soon as practicable after the end of the Distribution Period the Trustee must determine the income in respect of the Distribution Period. Unless the Trustee

determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with Accounting Principles.

- (b) the Trustee must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) the Trustee may, in its discretion from time to time determine to pay such amount or amounts (if any) of income as a distribution in respect of the Distribution Period (each a ***Distributable Amount***) to the Members on the register on any date determined by the Trustee (***Books Closing Date***).
- (d) in respect of a Distributable Amount being paid to Members pursuant to this clause 11.10:
 - (i) the Trustee must comply with the provisions of the Tax Act and take all necessary or desirable steps to do so, including the franking of the distributions; and
 - (ii) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) a Member is entitled to a portion of the Distributable Amount, calculated as follows:

$$(A/B) \times C$$

where

- A*** is the aggregate of the number of Units held by the Member at the Books Closing Date for the Distributable Amount;
- B*** is the aggregate of the number of all Units in issue as at the Books Closing Date;
- C*** is the Distributable Amount; and

- (f) the Distributable Amount must be paid to Members within two months after the Books Closing Date.

Reinvestment

- 11.11 The Trustee may decide whether to permit or require the Members to reinvest some or all of any distributions made to them under this clause 11 to acquire Units.
- 11.12 If the Trustee decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- 11.13 Any right of reinvestment conferred by the Trustee may be exercised by the Member by giving notice in writing to the Trustee (in the form determined by the Trustee from time to time) to request that the Trustee retain and reinvest in Units the money or part of the money to be distributed to the Member.
- 11.14 If reinvestment applies, the Trustee is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.
- 11.15 The Trustee may make provision for, and payment of, the Application Price for the additional Units out of the distribution which is available for reinvestment.

- 11.16 If reinvestment applies the Application Price for each additional Unit and the Application Price for the Units:
- (a) while the Trust is a wholly-owned sub-trust of TAT, will be A\$1.00 unless otherwise determined by the Trustee; and
 - (b) otherwise is to be calculated in accordance with clause 5.14, less such discount, if any, not exceeding 10% as the Trustee may determine.
- 11.17 If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust and the Trustee for Members, in such proportions as the Trustee may determine on behalf of the relevant Member.
- 11.18 If the Member has cancelled any previous notice under clause 11.13, the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the current Distribution Period.
- 11.19 The Trustee may arrange for any reinvestment of distributions to Members to be underwritten, in which case any Units issued to the underwriter or any nominee of the underwriter will be issued at the Application Price determined in accordance with clause 11.16.

Aggregation of money held on behalf of Members

- 11.20 Whenever under this Constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit the amount will be applied in the purchase of a new Unit for issue to the Member.

Position on transfer of Units

- 11.21 Distributable Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

Distribution on transfer of Assets

- 11.22 The Trustee may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units.
- 11.23 If the Trustee wishes to do so, it must effect the distribution to all Members in the same way.
- 11.24 The Assets transferred to each Member must be of the same type, have the same rights and be fully paid.
- 11.25 The Assets transferred may comprise solely a beneficial interest in tangible or intangible property.
- 11.26 In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Trustee:
- (a) to act as their agent to agree to obtain the Assets; and
 - (b) where the Assets comprise shares or an interest in shares in a company, to agree to become a member of that company.
- 11.27 The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Trustee requires, the costs involved in transfer

of those Assets must be paid by the Member or deducted from the distribution due to the Member.

Categories and sources of income

- 11.28 The Trustee is empowered but not bound to make an apportionment or keep separate accounts of the different categories and sources of income that relate to different types of investments of the Trust and the costs, charges and expenses attributable to each of those types of income.
- 11.29 The Trustee may allocate to a Member all or part of the Distributable Income to which the Member is entitled from a particular category or source of income in which case the Trustee must advise the Member of the extent to which Distributable Income allocated to the Member consists of income from a particular category and / or source.

Deductions from Income

- 11.30 The Trustee may deduct from any Income Distributions or other distribution payable to a Member any sums of money presently payable by the Member to the Trustee on account of an instalment due in respect of Units or otherwise.

Liability

- 11.31 The Trustee does not incur any liability and is not obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 11 or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power notwithstanding any error or miscalculation in any provision made for Tax.

Rounding

- 11.32 If the Member's entitlement to a distribution includes a fraction of a cent the entitlement is to be adjusted to the nearest cent below the amount of the Member's entitlement and the fraction of the cent becomes an Asset of the Trust.

Distribution Account

- 11.33 The Distributable Income of the Trust in respect of a Distribution Period and any other amounts to be distributed in accordance with this Deed are to be held in a separate account in the name of the Trustee and designated as a ***Distribution Account***.
- 11.34 Any amount in the Distribution Account (including any Distributable Income to be distributed) does not form part of the Trust Fund but must be held by the Trustee, subject to clause 11.30, on trust for distribution to the Members entitled to the amount.
- 11.35 The Trustee may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Trustee will have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets of the Trust.
- 11.36 Income earned from the investment of any moneys standing to the credit of the Distribution Account is deemed to be income of the Trust and must be dealt with accordingly.
- 11.37 If the Trustee has exercised its power under clauses 11.28 and 11.29 the separate categories and sources of income must be shown in the Distribution Account.

12 Variation of Distribution Period

- 12.1 If the Trustee decides that the Distribution Period should end on a date other than the date from time to time prevailing under the provisions of this Constitution, it may change that date subject to:
- (a) the new date being not later than the pre-existing date, and
 - (b) Members receiving notice of the new Distribution Period at least 30 days before the commencement of the new Distribution Period.

13 Taxation of Trust

Payment of Tax

- 13.1 The Trustee will determine and pay all Taxes payable in respect of the Trust under the Tax Act or imposed by any foreign government or authority in respect of any Financial Year.
- 13.2 The Trustee may realise any Assets to pay Taxes.

Provision for Tax

- 13.3 The Trustee may at any time make provision for such Tax in respect of the Trust as it in its absolute discretion estimates will be payable from time to time by the Trust under the Tax Acts in respect of that Financial Year having regard to:
- (a) taxation losses accumulated in the Trust;
 - (b) capital gains and losses realised on the Assets of the Trust; and
 - (c) any other matter or thing which the Trustee in its absolute discretion considers appropriate.
- 13.4 Any provision may be made against such Assets or categories of Assets as the Trustee in its absolute discretion deems appropriate.

Taxation Credits

- 13.5 Subject to the Tax Acts, where the Trustee is in receipt of any Taxable Income in respect of which there arises any Tax credit or rebate, including without limitation, Notional Income, it may:
- (a) offset such credits or rebates against the provision for Tax established under clause 13.3 in respect of the Trust; and
 - (b) accrue such credits or rebates as they arise despite the time at which such credits or rebates are received.

14 Taxation of Members

Definitions

- 14.1 In this clause 14, unless there is something in the subject matter or context that is inconsistent:

- (a) **Taxation Amount** means in relation to a Taxpayer an amount of Tax which in the opinion of the Trustee the Taxpayer is primarily liable to pay.
- (b) **Taxpayer** means a person who at any time is, was, or becomes a Member.

Deduct Taxation Amount

- 14.2 The Trustee may deduct from any amount payable to, or to be applied in respect of, a Taxpayer the Taxation Amount of that Taxpayer which is payable or anticipated to become payable by the Trustee on its own account or out of the Assets.

Taxpayer to Supply Details

- 14.3 The Taxpayer must give the Trustee such details regarding its holding of Units or any other relevant matter necessary for the Trustee to determine whether there exists or may in the future exist a Taxation Amount in relation to that Taxpayer.
- 14.4 The Taxpayer must be given:
- (a) the request in writing; and
 - (b) at least 14 days to respond to the request.

15 Payments

Payments to Members

- 15.1 Money payable by the Trustee to a Member may be paid in any manner the Trustee decides.

Unpresented cheques

- 15.2 Cheques issued by the Trustee that are not presented within 6 months may be cancelled.
- 15.3 Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Trustee for the Member or paid by the Trustee in accordance with the legislation relating to unclaimed moneys.

Unsuccessful transfer

- 15.4 Where the Trustee attempts to make a payment to a Member by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money is to be held by the Trustee for the Member or paid by the Trustee in accordance with the legislation relating to unclaimed moneys.

Fraction of cents

- 15.5 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

Payments to joint Members

- 15.6 A payment to any one of joint Member will discharge the Trustee in respect of the payment.

Deduction of amounts payable to Member

- 15.7 The Trustee may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:
- (a) any amount of Tax (or an estimate of it); or

- (b) any withholding tax required to be deducted by law; or
- (c) any other amount owed by the Member to the Trustee or any other person,

which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted.

- 15.8 Clause 15.7 is in addition to the powers given to the Trustee under clause 14.

16 Powers and duties of the Trustee

General powers

- 16.1 Subject to this Constitution, the Trustee has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

Contracting and borrowing powers

- 16.2 Without limiting clause 16.1, the Trustee in its capacity as trustee of the Trust has power to borrow or raise money whether or not on security of the Assets and to incur all types of obligations and liabilities, including guarantees.

Underwriting

- 16.3 Without limiting the effect of clause 16.2, the Trustee in its capacity as trustee of the Trust has power to enter into an arrangement with a person to underwrite the subscription or purchase of Units on such terms as the Trustee determines.
- 16.4 Unless the agreement between the Trustee and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Trustee.

Controlled Entities

- 16.5 Without limiting the effect of clause 16.2, the Trustee may provide financial assistance to TAT or any Controlled Entity, including guaranteeing or indemnifying, or granting security in favour of, a creditor of TAT or a Controlled Entity.

Investment powers

- 16.6 Without limiting clause 16.1, the Trustee may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

Power of delegation

- 16.7 The Trustee may authorise any person to act as its agent, attorney or delegate:
- (a) to hold title to any Asset as Custodian; and
 - (b) perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate.
- 16.8 The Trustee may include in the authorisation such provisions necessary to protect and assist those dealing with the agent, attorney or delegate as the Trustee thinks fit.
- 16.9 The agent, attorney or delegate may be an associate of the Trustee.

- 16.10 In the case of a joint appointment, the agent, attorney or delegate will be appointed jointly and severally.

Powers of the Trustee

- 16.11 A reference to the *power* of the Trustee under this clause 16 includes all the powers that a natural person would have in that particular context.

Exercise of discretion

- 16.12 The Trustee may in its absolute discretion decide how and when to exercise its powers, authorities and discretions.

17 Retirement of Trustee

Voluntary retirement

- 17.1 Subject to clause 17.2, the Trustee may retire as the trustee of the Trust upon giving three months' written notice to Members.
- 17.2 The Trustee's retirement under clause 17.1 will only be effective when:
- (a) a new Trustee's appointment is complete under clauses 17.5 and 17.6; and
 - (b) the appointment of the new Trustee is approved by the passing of a Special Resolution of Members.

Compulsory retirement

- 17.3 The Trustee must retire as the trustee of the Trust:
- (a) as required by law; or
 - (b) upon the passing of a Special Resolution of Members.

Transfer of records and property

- 17.4 Upon the resignation, retirement or removal of the Trustee, the Trustee must promptly, at the expense of the Trust:
- (a) hand to the new Trustee all books, records, documents and other property of or relating to the Trust;
 - (b) do all things necessary to transfer the legal title in the Assets to the new Trustee;
 - (c) sign authorities and give directions reasonably required by the new Trustee to give possession or control of any part of the Trust in the hands of third parties; and
 - (d) give any assistance reasonably required by the new Trustee to put the new Trustee into full knowledge of the affairs of the Trust.

New Trustee to enter into deed

- 17.5 Any proposed replacement Trustee must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- 17.6 An appointment of a new Trustee is not complete until the new Trustee covenants by deed poll to be bound by this Constitution.

Release

- 17.7 When it retires or is removed, the Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed, except that the Trustee is still obliged to vest the Assets in the new Trustee and to deliver all books and records relating to the Trust to the new Trustee.

18 Notices to Members

Communications with Members

- 18.1 A notice or other communication required under this Constitution to be given to a Member may be:
- (a) given in writing or in such other manner, including electronic communication, as the Trustee determines; and
 - (b) delivered or sent to the Member at its physical or electronic address last advised to the Trustee for delivery of notices.
- 18.2 A notice or communication sent by facsimile or electronic mail is deemed to have been given in writing.

Cheques

- 18.3 A cheque payable to a Member may be posted to its physical address or handed to the Member or a person authorised in writing by the Member.

Communications with joint Members

- 18.4 In the case of joint Members, the physical or electronic address of the Member will be the physical or electronic address of the Member first named in the Register.

Deemed receipt of communications

- 18.5 A notice, cheque or other communication sent by post is taken to be received on the third day after it is posted.
- 18.6 A facsimile is taken to be received upon receipt by the sender of an acknowledgement or transmission report generated from the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number.
- 18.7 Subject to the law, the Trustee may determine the time at which other forms of communication will be taken to be received.
- 18.8 Proof of actual receipt is not required.
- 18.9 Every person who becomes a Member other than by way of application for Units is bound by every notice which was duly given to the person from whom he derived title to those Units.

19 Notices to the Trustee

Communications with the Trustee

- 19.1 A notice required under this Constitution to be given to the Trustee must be given in writing or in such other manner, including electronic communication, as the Trustee determines.
- 19.2 A notice or communication sent by facsimile is deemed to have been given in writing.

Effectiveness of notice

- 19.3 The notice is effective only at the time of receipt.

Signature

- 19.4 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Trustee dispenses with this requirement.

20 Meetings of Members

Convening and adjourning a meeting of Members

- 20.1 The Trustee may whenever it thinks fit convene a meeting of Members.
- 20.2 The Trustee must convene a meeting of Members if required to do so by a requisition signed by or on behalf of Members registered as the holders in total of 50% or more of Units.
- 20.3 The Trustee may adjourn a meeting of Members, whether called by itself or the Members, to that date and time, being within 21 days of the date of the adjourned meeting, and at that place, as the Trustee may determine.

Notice of meetings

- 20.4 Not less than 14 days' notice must be given of every meeting of Members and any notice must be given to all Members specifying the general nature of the business to be transacted. The date of service of the notice is to be counted as the first day but the day of the meeting is not to be counted.
- 20.5 A meeting may be held at shorter notice, being at least twenty-four hours, with the consent of Members holding 75% or more of the Units entitled to receive notice and attend any meeting.
- 20.6 A meeting may be held at less than 24 hours notice with the consent of all Members entitled to receive notice and attend that meeting.
- 20.7 All meetings must be held in Melbourne, Australia unless the Trustee otherwise determines.

Appointment of chairman

- 20.8 At every meeting of Members the Trustee must nominate some person, whether a Member or not, to preside as chairman.
- 20.9 If there is an equality of votes, the chairman does not have a casting vote.

Determination of questions

20.10 Every question arising at a meeting of Members is to be decided in the first instance by a show of hands unless:

- (a) it is a question which under this Constitution must be decided by the holders of a prescribed percentage or more of the Units, in which case a poll is to be taken; or
- (b) a poll is demanded under clause 20.11.

Calling a poll

20.11 A poll may be demanded by Members present in person or by proxy entitled to vote at meetings of the Members or by the chairman of the meeting.

One vote per Unit

20.12 Upon a poll every Member present in person or by proxy, subject to any contrary special right, restriction or condition attaching to a Unit, will have one vote for every whole Unit held.

Giving of votes

20.13 Votes may be given either personally, by proxy, by attorney or, in the case of a Member which is a company, by a person appointed as an authorised representative of the company under the Corporations Act.

Proxies and representatives

20.14 Every instrument of proxy or appointment of a representative must be in the form prescribed by the Trustee or otherwise in a common or ordinary form and must be signed by the Member.

20.15 The instrument appointing a proxy must be deposited at the office of the Trustee not less than 24 hours, or any lesser period agreed to by the Trustee, before the time of holding the meeting or adjourned meeting (as the case may be) at which the person named as proxy proposes to vote.

Quorum

20.16 The quorum for a meeting is one Member, where there is only one Member, and otherwise 2 or more Members present personally or by proxy or by representative or attorney, who represent in total not less than 50% of the Units.

No quorum

20.17 If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members, dissolved; or
- (b) otherwise, adjourned to a place and time decided by the Trustee.

20.18 At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

Resolutions binding

20.19 A Resolution by Members binds all Members and the Trustee, whether or not they are present at the meeting.

20.20 The Trustee is, subject to clause 20.21, obliged to act in accordance with any Resolution and shall have no liability to any Member for doing so.

Trustee may require indemnity

- 20.21 The obligation of the Trustee to act in accordance with any Resolution or to exercise any power under this Constitution is subject to:
- (a) this Constitution; and
 - (b) if required by the Trustee (in its absolute discretion) the receipt from the Members of an indemnity in a form reasonably satisfactory to the Trustee against all costs, charges, losses, damages and expenses which the Trustee may suffer or incur in giving effect to any such Resolution or exercising any such power.

Objections

- 20.22 No objection may be made to any vote cast unless the objection is made at the meeting.

Validity of meeting

- 20.23 A meeting is still valid even if a Member does not receive a notice of meeting, including where the notice is accidentally not given to the Member.

Chairman

- 20.24 The decision of the chairman on any matter is final.

Non-physical meetings

- 20.25 The Trustee may hold meetings in any manner it determines, including by way of circular resolution or the Members agreeing in writing (such as an exchange of emails or faxes).

21 Rights and liabilities of Trustee

Holding Units

- 21.1 The Trustee and its associates may hold Units in the Trust in any capacity.

Other capacities

- 21.2 Subject to the Corporations Act, nothing in this Constitution restricts the Trustee (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), with an associate, with TAT, with a Controlled Entity or with any Member;
 - (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), with an associate, with TAT, with a Controlled Entity or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
 - (c) acting in the same or a similar capacity in relation to any other managed investment scheme; or
 - (d) dealing with Units in the Trust,
- provided that the Trustee, its directors, officers or related bodies corporate act in connection with any such matters in the utmost good faith to all Members.

Reliance by Trustee

21.3 The Trustee may take and may act upon:

- (a) the opinion or advice of counsel or lawyers, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document whether statutory or otherwise or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Trustee believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

22 Limitation of liability and indemnity in favour of Trustee

Limitation on Trustee's liability

- 22.1 If the Trustee acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 22.2 The limitation of liability under clause 22.1 applies to any liability arising from any act or omission of a delegate, attorney or agent appointed by the Trustee.
- 22.3 The liability of the Trustee to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Trustee's ability to be indemnified from the Assets.

Indemnity in favour of Trustee

- 22.4 The Trustee is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- 22.5 To the extent permitted by law, the indemnity under clause 22.4 includes any liability incurred as a result of any act or omission of a delegate, attorney or agent appointed by the Trustee.
- 22.6 To the extent permitted by law, the indemnity under clause 22.4 applies notwithstanding the existence of an unrelated breach of trust.
- 22.7 The indemnity under clause 22.4:
 - (a) is in addition to any indemnity allowed by law; and
 - (b) continues to apply after the Trustee retires or is removed as trustee of the Trust.

23 Liability of Members

Liability limited

- 23.1 Subject to clause 23.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's unpaid application moneys for their Units.
- 23.2 A Member need not indemnify the Trustee if there is a deficiency in the Assets or meet the claim of any creditor of the Trustee in respect of the Trust.

Recourse

- 23.3 The recourse of the Trustee and any creditor is limited to the Assets, subject to any separate agreement with a Member.

Restrictions on Members

- 23.4 A Member:
- (a) must not interfere with any rights or powers of the Trustee under this Constitution;
 - (b) must not exercise any right, power or privilege in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
 - (c) may not require an Asset to be transferred to the Member.

24 Remuneration and expenses of Trustee

Remuneration of the Trustee

- 24.1 In this clause 24, unless the context or contrary intention appears *Management Fee* means the management fee calculated in accordance with the following formula as at the last day of each month:

$$F = [(A/B)/100] \times C$$

where:

- F* is the *Management Fee* for the month;
- A* is an amount determined by the Trustee but not exceeding 2;
- B* is 12;
- C* is the aggregate Market Value of the Assets as at the last day of the month;

- 24.2 Subject to clause 24.4, the Trustee is entitled to receive out of the Assets of the Trust and retain for its own use and benefit the *Management Fee* calculated monthly not later than 7 Business Days after the end of each month to which it relates until the date of the final distribution made in accordance with clause 31.3.
- 24.3 The Management Fee is to be adjusted on a pro rata basis if the month in respect of which the calculation is made is the month ending on the date of termination of the Trust or the month commencing on the Commencement Date.

- 24.4 While the Trust is a wholly-owned sub-trust of TAT, the Trustee has no right to fees unless the Member agrees otherwise.

Waiver of fees

- 24.5 The Trustee may:

- (a) accept or charge lower fees than it is entitled to receive under this Constitution; or
 - (b) postpone or defer payment for any period,
- on such terms as it thinks fit and as notified to Members.

Expenses

- 24.6 The Trustee, in addition to its remuneration, is entitled to pay, or be reimbursed for, out of the Assets of Trust, all out of pocket charges, expenses and outgoings reasonably and properly incurred by or on behalf of the Trustee connected with:

- (a) this Constitution and formation of the Trust;
- (b) the preparation, review, distribution and promotion of any Disclosure Document in respect of Units or other promotion of the Trust including all expenses, costs, disbursement and charges incurred in connection with the offering of Units for sale or subscription including legal, valuation, underwriting, brokerage, printing and marketing costs on a cost basis;
- (c) the preparation of, and compliance with, the Security Interest Rules;
- (d) such commission, trailing commission, procuration or other fees or brokerage as the Trustee may determine to any person subscribing or obtaining subscriptions for or underwriting the issue or purchase of Units;
- (e) the acquisition, disposal, insurance, custody and any other dealing with Assets, including all amounts payable under any Custody Agreements;
- (f) any proposed acquisition, disposal or other dealing with an Asset of the Trust;
- (g) the administration or management of the Trust or its Assets and Liabilities;
- (h) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (i) underwriting of any subscription or purchase of Units including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Trustee of its obligations, representations or warranties under any such underwriting agreement;
- (j) the cost of printing Confirmations, Financial Statements, cheques, distribution statements, reports, audit reports, notices of meeting and other documents required to be circulated amongst or sent out to Members under this Constitution;
- (k) costs of postage of all Confirmations, cheques, Financial Statements, distribution statements, notices, reports, audit reports and other documents circulated amongst or sent out to Members under this Constitution or the Corporations Act;

- (l) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (m) Tax and financial institution fees and charges;
- (n) any GST charged by a supplier of goods or services, or both, to the Trustee in connection with the Trust;
- (o) the engagement of administrators, agents, valuers, contractors and advisers (including legal advisers) whether or not the administrators, agents, valuers, contractors or advisers are associates of the Trustee;
- (p) preparation and audit of the taxation returns, Financial Statements and the Register of the Trust and examination of Confirmations by an auditor;
- (q) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;
- (r) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Trustee, except to the extent that the Trustee is found by a court to have acted fraudulently or in wilful default, or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 24.6(r) must be repaid;
- (s) complying with any law, and any request or requirement of ASIC;
- (t) while the Trust is a Controlled Entity, any fees and expenses allocated to the Trust by TAT in accordance with the TAT Constitution.

24.7 In clause 24.6, ***charges, expenses and outgoings*** includes:

- (a) internal charges, expenses and outgoings of the Trustee incurred in connection with the items referred to in clause 24.6, including the costs of appointing and maintaining staff in connection with those items; and
- (b) amounts paid or owing by the Trustee to related entities for services provided to the Trustee in connection with the Trust where the amounts would have been payable, or reimbursed to the Trustee, out of Assets had the services been provided to the Trustee by a third party.

GST

- 24.8 Expression and words defined in the GST Law and used in clauses 24.9 to 24.15 have the meanings defined in the GST Law.
- 24.9 If any supply made by a party (***Supplier***) to the other (***Recipient***) under this Constitution is a taxable supply so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply does not include any amount referable to GST (the ***GST Exclusive Amount***).
- 24.10 In addition to the GST Exclusive Amount for a taxable supply under this Constitution, and subject to clause 24.11, the Recipient must pay to the Supplier a further amount calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- 24.11 GST payable under clause 24.10 must be payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount.

- 24.12 The right of a Supplier to payment under this clause 24.10 is subject to a valid tax invoice being provided by the Supplier to the Recipient.
- 24.13 If at any time an adjustment is made as between the Supplier and a taxing authority of an amount paid on account of GST on any supply made to the Recipient under or in connection with this Constitution, a corresponding adjustment must be made as between the Supplier and the Recipient.
- 24.14 If either party is required to reimburse to the other any cost, expense or other amount (or part) that the other party has incurred in connection with this Constitution, the amount to be reimbursed must be reduced by any part of that amount which is recoverable by the other party by way of an input tax credit, partial input tax credit or other like set off.
- 24.15 Clauses 24.8 to 24.15 take precedence over any other term or condition of this Constitution to the extent of any inconsistency.
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25 Amendments to this Constitution

Amendments to the Constitution

- 25.1 At any time prior to the termination of the Trust, this Constitution may be altered, modified, varied, amended, revoked or added to (all of which are referred to in this clause 25 as a *variation*) as follows:
- (a) variations may be effected by the passing of a resolution by the Trustee approving the variations;
 - (b) a resolution signed by a duly authorised officer of the Trustee will be a variation to this Constitution on the terms of that resolution;
 - (c) following the passing of a resolution the Trustee may elect to enter into a deed or other document detailing the variation;
 - (d) a variation which concerns:
 - (i) a provision of clause 1.14;
 - (ii) a provision of clauses 3.1 to 3.4;
 - (iii) a provision dealing with the issue, transfer or redemption of Units;
 - (iv) a provision dealing with the appointment or removal of a Trustee;
 - (v) a provision dealing with the audit of the Trust;
 - (vi) a provision of clause 16;
 - (vii) a provision dealing with the remuneration of the Trustee;
 - (viii) a provision of this clause 25;
 - (ix) a provision dealing with voting rights at meetings of the Members;
 - (x) a provision of clause 22; or
 - (xi) a provision of clause 30;

is not effective unless the Members have by Special Resolution approved the proposed variation, on or before the instrument of variation is executed.

25.2 A variation may not:

- (a) prejudicially affect the rights of a Member to income of the Trust previously set aside for it or held for its benefit; or
- (b) prejudicially affect the rights of Members, to participate in the income or capital of the Trust in accordance with the provisions of this Constitution;

unless the consent of the Member prejudicially affected or the consents of all Members whose rights are to be prejudicially affected are obtained at or prior to the time any such variation is made.

Time variation takes effect

25.3 If the requirements of this clause 25 have been complied with, the provisions of this Constitution will be effectively altered, modified, varied, amended, revoked or added to, as the case may be, on the date specified in the resolution or, (if applicable), amending deed, or if no date is specified, the later of the date of the resolution, the deed poll or the date of any necessary approval.

26 Inspection and copies of the Constitution

Inspection of Constitution

26.1 Members may inspect a copy of this Constitution during usual business hours at the Office.

Copy of Constitution

26.2 The Trustee must give a Member a copy of this Constitution and any amending deeds within 7 days if the Member:

- (a) asks the Trustee in writing for a copy of the Constitution; and
- (b) pays any reasonable fee required by the Trustee.

27 Audit

Appointment of Auditor

27.1 The Trustee must from time to time appoint an auditor of the Financial Statements.

27.2 The Auditor of the Financial Statements must at all times be a person who is a registered company auditor under the Corporations Act.

Retirement of Auditor

27.3 An Auditor of the Financial Statements may:

- (a) retire at any time by notice in writing to the Trustee;
- (b) be removed from office by the Trustee; or

- (c) be removed from office by Special Resolution of the Members.

Appointment of New Auditor

- 27.4 Any vacancy in the office of the Auditor must be filled by an appointment made by the Trustee.

First audit of the Financial Statements

- 27.5 Subject to the Corporations Act, the first audit of the Trust's Financial Statements will be in respect of the period commencing on the Commencement Date and ending on 30 June 2006.

28 Documents of title

- 28.1 The Trustee must:

- (a) hold in custody all documents of title in relation to an Asset; or
- (b) use reasonable endeavours to ensure documents of title in relation to an Asset are held in safe custody by any of its agents, attorneys or delegates.

29 Reserves

Reserves

- 29.1 The Trustee may at any time create reserves or provisions in respect of the Trust and debit and credit such reserves to take into account such amounts as it determines in its absolute discretion, including:
- (a) unrealised increases or decreases in the value of the Assets;
 - (b) capital gains and losses which are not assessable or deductible under the Tax Act;
 - (c) Tax that will be payable on realised capital gains of the Trust; or
 - (d) any future expense or liability which may be incurred by the Trustee on account of the Trust.

30 Duration of the Trust

Period of the Trust

- 30.1 The Trust commences upon the Commencement Date.

Termination

- 30.2 Unless otherwise determined pursuant to any other provision of this Constitution, the Trust terminates on the earliest of:
- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Members;
 - (b) the date on which the Trust terminates in accordance with another provision of this Constitution or by law;

- (c) the date on which a court directs the Trustee to wind up the Trust; and
- (d) the date on which the Members resolve that the Trust must terminate as determined by an Extraordinary Resolution of the Members at a meeting called for that purpose.

31 Procedure on termination

Realisation of Assets

- 31.1 Following termination of the Trust, the Trustee must realise the Assets. This must be completed in 180 days if practicable and in any event as soon as possible after that.

Audit of winding up

- 31.2 The Trustee must arrange for an independent review or audit of the final Financial Statements of the Trust by a registered company auditor.

Distribution following termination

- 31.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), and meeting the expenses (including anticipated expenses) of the termination, must be distributed to each Member in accordance with the following formula:

$$A \times (B / C)$$

where:

- A* is the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 31.3;
- B* is the aggregate of the number of Units held by the Member as at termination; and
- C* is the number of Units in issue as at termination.

- 31.4 The Trustee may distribute proceeds of realisation in instalments.

Constitution continues to apply during period of termination

- 31.5 The provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 31.3.

Dealing in Units after termination

- 31.6 No Units may be issued, redeemed or transferred after the Trust is terminated.

32 General provisions

Waiver and exercise of rights

- 32.1 A waiver of a provision or of a right arising under this Constitution must be given in writing signed by the other party.
- 32.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

- 32.3 A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of another right.
- 32.4 Failure by one party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

Rights cumulative

- 32.5 The rights, remedies and powers of the other parties under this Constitution are cumulative and not exclusive of any rights, remedies or powers conferred on the parties by law.

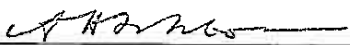
Consents and approval

- 32.6 A party may give its consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Constitution expressly provides otherwise.


REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK.

Executed as a deed

Signed sealed and delivered
by OIM #2 Pty Ltd
by a director and secretary/director:



Signature of secretary/director



Signature of director

ANDREW ASHBOLT

Name of secretary/director (please print)

TREVOR MANN

Name of director (please print)

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012

Filed on behalf of: The First and Second Defendants

Prepared by:

Maddocks

Lawyers

140 William Street

Melbourne VIC 3000

Solicitor's Code: 230

DX 259 Melbourne

Tel: (03) 9288 0555

Fax: (03) 9288 0666

Ref: 5885053.001

Attention: Philip Jones

Email: philip.jones@maddocks.com.au

This is the exhibit marked "ADF-2" now produced and shown to **Alan David Fisher** at the time of
swearing his affidavit on 20 September 2012.

Before me:



Signature of person taking affidavit

STEVEN MICHAEL TANG
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

Exhibit "ADF-2"
Copy of TOT#5 Constitution

1.6



Constitution

OIM #5 Pty Ltd

Timbercorp Orchard Trust #5

BAKER & MCKENZIE
Solicitors
Level 39, Rialto
525 Collins Street
MELBOURNE VIC 3000
Tel: (03) 9617-4100
Fax: (03) 9614-2103
Email: lewis.apostolou@bakernet.com



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Date

23

February 2006

Parties

OIM #5 Pty Ltd (ACN 118 204 701) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (*Trustee*)

Recitals

- A. This deed poll comprises the Constitution of the Trust and is made with the intent that it be legally enforceable as between the Trustee and each Member.
- B. The Trust Fund is to be held and administered by the Trustee with, and subject to, the powers and provisions of this Constitution.

Operative provisions

This deed poll records and the Trustee covenants and declares as follows:

1 Preliminary

Declaration

- 1.1 This deed poll is declared by the Trustee to be the constitution of the Trust.
- 1.2 OIM #5 Pty Ltd hereby agrees to act as trustee of the Trust on the terms of this Constitution.
- 1.3 The Trust commences when Orchard Investments Management Limited as trustee of Timbercorp Agribusiness Trust gives the Trustee A\$100.00 for 100 Units, and the Trustee issues 100 Units in return.
- 1.4 Orchard Investments Management Limited as trustee of Timbercorp Agribusiness Trust will give the Trustee A\$100.00 immediately following execution of this Constitution.

Name of Trust

- 1.5 The Trust is called the *Timbercorp Orchard Trust #5* or such other name as the Trustee determines from time to time.
- 1.6 If Timbercorp Asset Management Pty Limited ceases to be the Asset Manager, the Trustee must, unless otherwise agreed by Timbercorp Asset Management Pty Limited, change the name of the Trust to a name that does not imply an association with Timbercorp Asset Management Pty Limited or its business.

Definitions

- 1.7 In this Constitution, unless there is something in the subject matter or context that is inconsistent:

Accounting Principles mean generally accepted Australian accounting principles and accounting standards determined by the Trustee after consultation with the Auditor;

Application Price means the application price for a Unit calculated in accordance with this Constitution;

Approved Valuer means a person who is appointed to act as a valuer or an expert by the Trustee in relation to the Trust (including any Asset of the Trust or the Units), who is independent of the Trustee and is experienced in relation to the valuation or assessment of assets, investments or proposals of the kind required to be valued or assessed;

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions;

Asset Manager means any person appointed by the trustee of the Timbercorp Agribusiness Trust to manage the assets of the Timbercorp Agribusiness Trust and the Controlled Entities of the trustee of the Timbercorp Agribusiness Trust;

Assets means all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, any Redemption Price not yet paid or any Distributable Income or Amount payable but not paid;

Auditor means a person appointed in accordance with clause 27.1 to act as an auditor of the Trust;

Business Day means:

- (a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Melbourne; and
- (b) any other day specified by the Trustee to be a business day for the purposes of this definition;

Cash means money in any currency and includes cheques drawn in such currency;

Class means a class of Units, being Units which have the same rights (disregarding any differences connected with the first distribution following an issue of Units). If all Units have the same rights (disregarding any differences connected with the first distribution following an issue of Units), there is only one Class;

Commencement Date means the date of the issue of the first Unit in accordance with clause 1.3;

Confirmation means a transaction statement issued by the Trustee, or if the law permits, the custodian, confirming the number of Units Registered in the name of the Member or person named in that statement;

Constitution means this deed poll;

Controlled Entity means an entity, including a body corporate or trust, directly or indirectly controlled by TAT, including this Trust;

Corporations Act means the *Corporations Act 2001 (Cth)* and the Corporations Regulations;

Custodian means the custodian for the time being of the Trust (if any);

Designated Time means 5.00 pm or such other time as may be specified by the Trustee in the jurisdiction in which the Office is located;

Disclosure Document includes a disclosure document (as that expression is defined in section 9 of the Corporations Act) and any information memorandum under which offers to subscribe for the Units in the Trust are made;

Distributable Amount means the amount, if any, determined by the Trustee in accordance with clause 11.10(c);

Distributable Income in respect of a Distribution Period or Financial Year, as the case requires, means the amount, if any, determined by the Trustee in accordance with clauses 10.4 to 10.6 for the Distribution Period;

Distribution Calculation Date means the last day of each Distribution Period or such other days as the Trustee designates;

Distribution Account means the account described in clause 11.33;

Distribution Period means each of the periods commencing on the day after the last day of the last preceding Distribution Period and ending on:

- (a) the last day of June and December; or
- (b) such other day as the Trustee specifies in accordance with clause 12,

in each year during the continuance of the Trust, and includes the period commencing on the Commencement Date and terminating on the next Distribution Calculation Date with the exception of the last Distribution Period which commences on the day after the last day of the last preceding Distribution Period and ends on the date of termination of the Trust;

Dollars, A\$ and \$ means the lawful currency of the Commonwealth of Australia;

Financial Statements means the financial statements prepared by the Trustee from time to time in respect of the Trust;

Financial Year means:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June;

Governmental Agency means:

- (a) an Australian government, whether Commonwealth, State, municipal or local;
- (b) a foreign government, whether unitary, federal, provincial, regional, municipal or local; and
- (c) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation, statutory or otherwise, of a government referred to in paragraph (a) or (b);

GST means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;

GST Law has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999*;

GST Rate means the rate of GST under the GST Law;

Income Distribution means the amount distributed in accordance with clause 11.1 in respect of a Member for a Distribution Period;

Liabilities means all present liabilities of the Trust including any provisions and reserves which the Trustee decides should be taken into account in determining the liabilities of the Trust, including:

- (a) proceeds of redemption which have not yet been paid;
- (b) any amount in the Distribution Account which has yet to be distributed; and
- (c) such other amounts as are required to meet contingent liabilities of the Trust;

but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the Financial Statements of the Trust;

Market Value of the Assets means the aggregate market value of the Assets calculated in accordance with clauses 8.4 to 8.6;

Member means the person Registered as the holder of a Unit including persons jointly Registered;

month means calendar month;

Net Asset Value means the amount calculated in accordance with clause 8.2 from time to time as ascertained by the Trustee by deducting from the aggregate of:

- (a) the Market Value of all Assets of the Trust; and
- (b) any other amounts which should be included in the aggregate for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to Accounting Principles current from time to time,

the aggregate of:

- (c) all Liabilities of the Trust; and
- (d) any other amounts which should be included in the aggregate:
 - (i) for the purpose of making a fair and reasonable determination of the value of the Trust Fund having due regard to Accounting Principles current from time to time; and
 - (ii) as a provision for income tax or capital gains tax which would be payable by the Trustee or the Members on the disposal of all or any of the Assets of the Trust;

Notional Income means any notional or deemed amount that will not result in the receipt of cash or property, such as franking and foreign tax credits (which, for the avoidance of doubt,



includes any notional amounts in the Trust's assessable income under sections 207-35 and 6AC of the Tax Acts);

Office means the registered office from time to time of the Trustee;

Ordinary Resolution means a Resolution that has been passed by at least 50% of the total votes that may be cast by Members at the relevant meeting (including Members who are not present in person or by proxy);

Other Instrument Holder means a holder of an Other Instrument;

Other Instruments has the meaning given to that expression in clause 3.24;

person includes a company, corporation, firm, authority, unincorporated association or body of persons;

Redemption Price means the redemption price for a Unit calculated in accordance with this Constitution;

Register means the register of Members kept by the Trustee under the Corporations Act;

Registered means recorded in the Register;

Registration means recording in the Register;

Resolution means a resolution passed at a meeting of Members in the Trust:

- (a) on a show of hands, by the **required majority** of Members present in person or by proxy and voting on the show of hands; or
- (b) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or
- (c) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

Except where this Constitution or any applicable law provides otherwise, the **required majority** is a simple majority;

Security Interest Rules means the rules and policies adopted by the Trustee from time to time for the recognition of encumbrances over Units in accordance with clause 3.22;

Special Resolution means a Resolution where the required majority is 75% of votes cast at the relevant meeting (whether in person or by proxy);

TAT means Orchard Investments Management Limited (ACN 105 684 231) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000, as the responsible entity of the Timbercorp Agribusiness Trust (ARSN 116 024 830), and any replacement trustee or responsible entity of the Timbercorp Agribusiness Trust (ARSN 116 024 830);

Tax means all kinds of taxes, duties, imposts, deductions and charges imposed by a government, including GST or any amounts recovered from the Trustee by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Trustee on account of GST, together with interest and penalties on such amounts;

- 3.13 Transfers must be in a form approved by the Trustee and if necessary be presented for Registration duly stamped, and must be accompanied by any evidence reasonably required by the Trustee to show the right of the transferor to make the transfer.
- 3.14 The transferee in respect of a transfer of Units is deemed to have agreed to accept the Units transferred to it subject to the terms and conditions on which the transferor held them immediately before execution of the instrument of transfer and to be bound by this Constitution.
- 3.15 A transfer is not effective until Registered and the transferor remains the holder of the Units specified in the transfer until the Transfer is Registered.
- 3.16 The Trustee may refuse to record any transfer of Units in the Register without giving any reason for the refusal.
- 3.17 The Trustee may refuse to record any transfer of Units in the Register during the 5 Business Days immediately preceding any distribution.
- 3.18 The Trustee may refuse to record any transfer of Units in the Register which is in breach of the Security Interest Rules.
- 3.19 The Trustee is not required to give effect to any transaction, transfer or dealing at the request of or for the benefit of a Member unless the Member has paid to the Trustee's satisfaction all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage and other charges which may have become or may be payable in respect of the transaction, transfer or dealing.
- 3.20 The Trustee may Register a transfer notwithstanding that the Trustee at the time of Registration has notice of the transferor Member's death.
- 3.21 Other than as provided in clauses 3.16 to 3.20, there is no restriction on the transfer of Units.

Security Interest Rules

- 3.22 The Trustee may make and amend rules and policies from time to time for the recognition of encumbrances over Units.

Rights Attaching to Units

- 3.23 The holders of Units issued by the Trustee hold those Units subject to the rights, restrictions and obligations attaching to those Units.

Creation and Issue of Other Instruments

- 3.24 The Trustee may issue any other interests, rights or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature (*Other Instrument*) which the Trustee determines.
- 3.25 Such Other Instruments may be issued for such consideration and with such preferred, deferred or other special rights or such restrictions, whether with regard to dividends, voting, return of capital, payment of calls, redemption, conversion or otherwise, as the Trustee decides.
- 3.26 The holders of Other Instruments issued by the Trustee hold those Other Instruments subject to the rights, restrictions and obligations attaching to those securities or instruments.

Trustee may reject application for Units

- 5.10 The Trustee may reject an application for Units in whole or in part without giving any reason for the rejection.
- 5.11 Where the Trustee rejects an application for Units, it must return any application moneys and property to the applicant not later than the next Business Day after it is deemed to have received the application in accordance with clause 5.6.

Acceptance of application

- 5.12 Where an application for Units is received and accepted by the Trustee not later than the Designated Time on a Business Day, the application for Units is received and accepted on that Business Day.
- 5.13 Where an application for Units is received and accepted:
- (a) after the Designated Time on a Business Day; or
 - (b) on a day that is not a Business Day,
- the application for Units is deemed to have been received and accepted on the next Business Day before the Designated Time.

Application Price of Units

- 5.14 Subject to clauses 5.16 and 5.17, all Units must only be issued at the Application Price equal to:

$$\frac{\text{Net Asset Value} + \text{Transaction Costs}}{\text{number of Units in issue}}$$

- 5.15 Each of the variables in clause 5.14 must be determined as at the next Valuation Time after:
- (a) the Trustee receives the application for Units; or
 - (b) the Trustee receives the application money, or the property against which Units are to be issued or vested in the Trustee,
- whichever happens later.
- 5.16 All Units issued to TAT and / or its nominee on or before 30 June 2006 will be issued at the Application Price of A\$1.00 per Unit, including the Units issued under clause 1.3.
- 5.17 While the Trust is a wholly-owned sub-trust of TAT, the Trustee may determine that the Application Price for additional Units will be A\$1.00 unless otherwise determined by the Trustee.

Issue date

- 5.18 Subject to clauses 1.3 and 5.19, Units are taken to be issued on:
- (a) except in the case of a reinvestment of distribution in accordance with clause 11.14, when:
 - (i) the Trustee accepts the application; or

(ii) the Trustee receives the application money, or the property against which Units are to be issued is vested in the Trustee.

Net Asset Value - Transaction Costs

number of Units in issue

- 6.2 While the Trust is a wholly-owned sub-trust of TAT, the Redemption Price for Units will be A\$1.00 unless otherwise determined by the Trustee.

Determination of Redemption Price

- 6.3 Each of the variables in clause 6.1 must be determined no earlier than 60 days before an offer is made by the Trustee under clauses 7.1 to 7.9.

Redemption Price may be rounded

- 6.4 The Redemption Price may be rounded as the Trustee determines. The amount of the rounding must not be more than 1 cent.

7 Redemption procedures

Offer to redeem


- 7.1 The Trustee may offer Members an opportunity to redeem their Units, wholly or partly, to the extent that particular Assets are available and able to be converted to money in time to satisfy redemption requests that Members may make in response to the offer.
- 7.2 The offer must be in writing and be made by giving a copy of the offer to all Members of the Trust or to all members of a particular Class.
- 7.3 The offer must specify:
- (a) the period during which the offer will remain open (this period must last for at least 21 days after the offer is made); and
 - (b) the Assets that will be used to satisfy redemption requests; and
 - (c) the amount of money that is expected to be available when those Assets are converted to money; and
 - (d) the method for dealing with redemption requests if the money available is insufficient to satisfy all requests.
- 7.4 For joint Members, a copy of the withdrawal offer need only be given to the joint Member named first in the Register.

Satisfying redemption requests

- 7.5 Subject to clauses 7.6 to 7.9, the Trustee must ensure that redemption requests made in response to an offer are satisfied within 21 days after the offer closes.
- 7.6 No redemption request made under the offer may be satisfied while the offer is still open.
- 7.7 If an insufficient amount of money is available from the Assets specified in the offer to satisfy all requests, the requests are to be satisfied proportionately in accordance with the formula:

$$(A/B) \times C$$

where

- 
- A* is the amount the member requested to redeem;
- B* is the aggregate of the amounts that all Members requested to withdraw;
- C* is the amount available to satisfy redemption requests made in response to the offer.

- 7.8 The Trustee may decide to satisfy a redemption request in relation to only some of the Units which are the subject of the request, if it is in the best interests of Members to do so.

Cancelling an offer

- 7.9 The Trustee may by notice in writing to the Members cancel an offer before it closes if:

- (a) the offer contains a material error; or
- (b) it is in the best interests of Members to do so.

Request for redemption

- 7.10 Other than as set out in clauses 7.1 to 7.9, the Trustee is not required to give effect to any redemption request by a Member.

Redemption request

- 7.11 Where a redemption request is received by the Trustee not later than the Designated Time on a Business Day, that redemption request is deemed to be received on that Business Day.

- 7.12 Where a redemption request is received:

- (a) after the Designated Time on a Business Day; or
- (b) on a day that is not a Business Day,

that redemption request is deemed to have been received on the next Business Day before the Designated Time.

Processing of a redemption request

- 7.13 Subject to clauses 7.7, 7.8 and 7.9, a redemption request received in accordance with clauses 7.11 and 7.12 will be:

- (a) processed as at the Designated Time on the Business Day following the day on which the offer closes; and
- (b) satisfied in accordance with clause 7.5.

Obligation to pay Redemption Price

- 7.14 The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.

Sums owed to Trustee

- 7.15 The Trustee may deduct from the proceeds of redemption any money due to it by the Member.

Transfer of Assets

- 7.16 The Trustee may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request.

- 7.17 The Assets together with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request.
- 7.18 If the Trustee requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

8 Valuation of Assets

Valuations

- 8.1 The Trustee may cause an Asset to be valued at any time.
- 8.2 The Trustee may determine Net Asset Value at any time, including more than once on each day.

Valuations for applications and redemptions

- 8.3 The Trustee must cause:
- (a) the Application Price to be calculated at the Designated Time on each Designated Application Date;
 - (b) the Redemption Price to be calculated in accordance with clause 6.3.

Trustee may value

- 8.4 The Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.
- 8.5 Unless the Trustee determines otherwise, the value of an Asset will be its market value.
- 8.6 Where the Trustee values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Trustee must be reasonable and capable of resulting in a calculation that is independently verifiable.

9 Confirmations

No Certificate issued

- 9.1 No certificate will be issued by the Trustee evidencing the title of a person to Units in respect of which that person is Registered.

Confirmation

- 9.2 Within 1 month of issuing, transferring or redeeming any Unit to a person, the Trustee must issue a Confirmation to that person.

10 Trust Income and entitlement of Members

Income distributions

- 10.1 Clauses 11.1 to 11.7 will apply unless the Trustee makes a determination under clause 11.10.

Income for each Financial Year

- 10.2 The Trustee must receive and collect all income of the Trust.
- 10.3 The Trustee must determine;
- (a) the Trust Income of the Trust for each Distribution Period and Financial Year;
 - (b) the Taxable Income of the Trust for each Distribution Period and Financial Year;
 - (c) the Distributable Income for each Distribution Period and Financial Year; and
 - (d) the entitlement of the Members to Distributable Income for each Distribution Period.

Calculation of Distributable Income

- 10.4 Subject to clause 10.5, the distributable income of the Trust for each Financial Year is the Taxable Income of the Trust for that Financial Year.
- 10.5 If it is necessary in calculating the Taxable Income of the Trust to gross up any amount of income, or include any amount of deemed assessable income or to make any deemed deductions, the grossing up or deemed assessable income (excluding net capital gains included in assessable income) or deemed deductions must not be included in calculating the Taxable Income of the Trust unless the Trustee determines that the grossing up or deemed assessable income or deemed deductions should be included in calculating the Taxable Income of the Trust.
- 10.6 The Trustee must determine the Distributable Income of the Trust for each Distribution Period in accordance with clauses 10.4 to 10.5 with any necessary modifications, as if the Distribution Period were a Financial Year.

Preparation of Financial Statements

- 10.7 Notwithstanding that the Distributable Income of the Trust may, in accordance with clause 10.4, be calculated in the same manner as the Taxable Income of the Trust, the Financial Statements of the Trust are to be prepared in accordance with Accounting Principles.
- 10.8 The preparation of the Financial Statements of the Trust in accordance with clause 10.7 is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 10.4.

Classification of income and capital

- 10.9 The classification of any item as being on income or capital account, and the extent to which reserves or provisions need to be made, must be determined by the Trustee in accordance with legal principles and Accounting Principles.

Entitlement to Distributable Income of the Trust

- 10.10 At the end of each Distribution Period the Members on the Register on the last day of the Distribution Period have a vested and indefeasible interest in, and are presently entitled to, the Distributable Income of the Trust for that Distribution Period in accordance with the Income Distributions made (or allocated) under clause 11.1.

11 Distribution of income

Income Distribution

11.1 An income distribution in respect of a Member means an amount calculated by the Trustee as follows, and any amount so calculated is taken to be allocated to the Member:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than the last day of a Financial Year in any year, an amount calculated as follows:

$$(A/B) \times C$$

where:

- A* is the aggregate of the number of Units held by the Member at the end of the Distribution Period;
- B* is the aggregate of the number of Units in issue as at the end of the Distribution Period;
- C* is an estimate of the Distributable Income of the Trust for the Distribution Period calculated as if the Distribution Period were a Financial Year; and

- (b) in respect of a Distribution Period ending on the last day of a Financial Year in any year, an amount calculated as follows:

$$(A/B) \times C$$

where

- A* is the aggregate of the number of Units held by the Member at the end of the Distribution Period;
- B* is the aggregate of the number of Units in issue as at the end of the Distribution Period;
- C* is the amount (if any) by which the Distributable Income of the Trust for the Financial Year exceeds the aggregate of the estimates of Distributable Income of the Trust calculated for the purposes of variable *C* in clause 11.1(a) in respect of the previous Distribution Periods of the Financial Year.

Satisfaction of present entitlement

11.2 The present entitlement of a Member to the Distributable Income of the Trust for a Financial Year will be satisfied by:

- (a) the payment of the Income Distributions to the Member in respect of the Financial Year;
- (b) if an Income Distribution is not paid to the Member by reason of a transfer of Units by the Member, the payment by the Trustee of an amount equal to that Income Distribution in respect of those Units to the person to whom the Units have been transferred; or

- (c) the reinvestment of the Income Distribution in Units in accordance with clauses 11.11 to 11.19.

- 11.3 Income Distributions must be paid within two months after the Distribution Calculation Date.
- 11.4 The Trustee must have distributed all of the Distributable Income of the Trust for the Financial Year within two months after the end of the Financial Year.

Additional distributions

- 11.5 The Trustee may distribute amounts in a Distribution Period in addition to, and in the same manner as, the amounts calculated in accordance with clauses 10.4 to 10.6, including where it is necessary to enable distributions to Members of the minimum amount necessary to avoid the Trustee as trustee of the Trust becoming assessable to pay tax under the Tax Acts.
- 11.6 The Members on the Register on the last day of the Distribution Period will have a vested and indefeasible interest in, and be presently entitled to, any amount distributed (or allocated) to them under clause 11.5. The present entitlement of a Member to any amount distributed (or allocated) to them under clauses 11.5 is to be satisfied in the same manner as clause 11.2 (with any necessary modifications).

Notional Income

- 11.7 The benefit of any tax credit or rebate attributable to Notional Income is deemed to have been distributed to Members in proportion to their entitlement to any Distributable Income of the Trust for a Distribution Period of the category or source of income in respect of which the credit or rebate is referable.

Other distributions

- 11.8 The Trustee may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Trustee. The distribution may be in cash, by way of additional Units or of Assets (pursuant to clause 11.22 to 11.27).
- 11.9 The distribution of cash or other Assets to each Member under clause 11.8 is to be calculated in accordance with the following formula or in any other manner determined by the Trustee:

$$(A/B) \times C$$

where:

- A* is the aggregate of the number of Units held by the Member on the day of calculation;
- B* is the aggregate of the number of Units in issue on the day of calculation;
- C* is the amount of cash or the Value of Assets (determined by the Trustee) to be distributed.

Trust taxed as a company

- 11.10 If the Trust is to be taxed as if it were a company, the Trustee may determine that this clause 11.10 applies to a Distribution Period instead of clauses 11.1 to 11.8. If it does so:
- (a) as soon as practicable after the end of the Distribution Period the Trustee must determine the income in respect of the Distribution Period. Unless the Trustee determines otherwise prior to the end of the Distribution Period, income will be calculated in accordance with Accounting Principles.

- (b) the Trustee must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) the Trustee may, in its discretion from time to time determine to pay such amount or amounts (if any) of income as a distribution in respect of the Distribution Period (each a *Distributable Amount*) to the Members on the register on any date determined by the Trustee (*Books Closing Date*).
- (d) in respect of a Distributable Amount being paid to Members pursuant to this clause 11.10:
- (i) the Trustee must comply with the provisions of the Tax Act and take all necessary or desirable steps to do so, including the franking of the distributions; and
 - (ii) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) a Member is entitled to a portion of the Distributable Amount, calculated as follows:

$$(A/B) \times C$$

where

A is the aggregate of the number of Units held by the Member at the Books Closing Date for the Distributable Amount;


B is the aggregate of the number of all Units in issue as at the Books Closing Date;

C is the Distributable Amount; and

- (f) the Distributable Amount must be paid to Members within two months after the Books Closing Date.

Reinvestment

- 11.11 The Trustee may decide whether to permit or require the Members to reinvest some or all of any distributions made to them under this clause 11 to acquire Units.
- 11.12 If the Trustee decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- 11.13 Any right of reinvestment conferred by the Trustee may be exercised by the Member by giving notice in writing to the Trustee (in the form determined by the Trustee from time to time) to request that the Trustee retain and reinvest in Units the money or part of the money to be distributed to the Member.
- 11.14 If reinvestment applies, the Trustee is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.
- 11.15 The Trustee may make provision for, and payment of, the Application Price for the additional Units out of the distribution which is available for reinvestment.
- 11.16 If reinvestment applies the Application Price for each additional Unit and the Application Price for the Units:

- 
- (a) while the Trust is a wholly-owned sub-trust of TAT, will be A\$1.00 unless otherwise determined by the Trustee; and
 - (b) otherwise is to be calculated in accordance with clause 5.14, less such discount, if any, not exceeding 10% as the Trustee may determine.
- 11.17 If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust and the Trustee for Members, in such proportions as the Trustee may determine on behalf of the relevant Member.
- 11.18 If the Member has cancelled any previous notice under clause 11.13, the money representing the fraction is to be paid to the Member as part of the Member's distribution in respect of the current Distribution Period.
- 11.19 The Trustee may arrange for any reinvestment of distributions to Members to be underwritten, in which case any Units issued to the underwriter or any nominee of the underwriter will be issued at the Application Price determined in accordance with clause 11.16.

Aggregation of money held on behalf of Members

- 11.20 Whenever under this Constitution or by law money is held on behalf of a Member for future reinvestment the money so held may be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit the amount will be applied in the purchase of a new Unit for issue to the Member.

Position on transfer of Units

- 11.21 Distributable Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

Distribution on transfer of Assets

- 11.22 The Trustee may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units.
- 11.23 If the Trustee wishes to do so, it must effect the distribution to all Members in the same way.
- 11.24 The Assets transferred to each Member must be of the same type, have the same rights and be fully paid.
- 11.25 The Assets transferred may comprise solely a beneficial interest in tangible or intangible property.
- 11.26 In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Trustee:
- (a) to act as their agent to agree to obtain the Assets; and
 - (b) where the Assets comprise shares or an interest in shares in a company, to agree to become a member of that company.
- 11.27 The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Trustee requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.



Categories and sources of income

- 11.28 The Trustee is empowered but not bound to make an apportionment or keep separate accounts of the different categories and sources of income that relate to different types of investments of the Trust and the costs, charges and expenses attributable to each of those types of income.
- 11.29 The Trustee may allocate to a Member all or part of the Distributable Income to which the Member is entitled from a particular category or source of income in which case the Trustee must advise the Member of the extent to which Distributable Income allocated to the Member consists of income from a particular category and / or source.

Deductions from Income

- 11.30 The Trustee may deduct from any Income Distributions or other distribution payable to a Member any sums of money presently payable by the Member to the Trustee on account of an instalment due in respect of Units or otherwise.

Liability

- 11.31 The Trustee does not incur any liability and is not obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 11 or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power notwithstanding any error or miscalculation in any provision made for Tax.

Rounding

- 11.32 If the Member's entitlement to a distribution includes a fraction of a cent the entitlement is to be adjusted to the nearest cent below the amount of the Member's entitlement and the fraction of the cent becomes an Asset of the Trust.

Distribution Account

- 11.33 The Distributable Income of the Trust in respect of a Distribution Period and any other amounts to be distributed in accordance with this Deed are to be held in a separate account in the name of the Trustee and designated as a *Distribution Account*.
- 11.34 Any amount in the Distribution Account (including any Distributable Income to be distributed) does not form part of the Trust Fund but must be held by the Trustee, subject to clause 11.30, on trust for distribution to the Members entitled to the amount.
- 11.35 The Trustee may invest any moneys standing to the credit of the Distribution Account pending disbursement and the Trustee will have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets of the Trust.
- 11.36 Income earned from the investment of any moneys standing to the credit of the Distribution Account is deemed to be income of the Trust and must be dealt with accordingly.
- 11.37 If the Trustee has exercised its power under clauses 11.28 and 11.29 the separate categories and sources of income must be shown in the Distribution Account.

12 Variation of Distribution Period

- 12.1 If the Trustee decides that the Distribution Period should end on a date other than the date from time to time prevailing under the provisions of this Constitution, it may change that date subject to:

- [REDACTED]
- (a) the new date being not later than the pre-existing date, and
 - (b) Members receiving notice of the new Distribution Period at least 30 days before the commencement of the new Distribution Period.

13 Taxation of Trust

Payment of Tax

- 13.1 The Trustee will determine and pay all Taxes payable in respect of the Trust under the Tax Act or imposed by any foreign government or authority in respect of any Financial Year.
- 13.2 The Trustee may realise any Assets to pay Taxes.

Provision for Tax

- 13.3 The Trustee may at any time make provision for such Tax in respect of the Trust as it in its absolute discretion estimates will be payable from time to time by the Trust under the Tax Acts in respect of that Financial Year having regard to:
 - (a) taxation losses accumulated in the Trust;
 - (b) capital gains and losses realised on the Assets of the Trust; and
 - (c) any other matter or thing which the Trustee in its absolute discretion considers appropriate.
- 13.4 Any provision may be made against such Assets or categories of Assets as the Trustee in its absolute discretion deems appropriate.

Taxation Credits

- 13.5 Subject to the Tax Acts, where the Trustee is in receipt of any Taxable Income in respect of which there arises any Tax credit or rebate, including without limitation, Notional Income, it may:
 - (a) offset such credits or rebates against the provision for Tax established under clause 13.3 in respect of the Trust; and
 - (b) accrue such credits or rebates as they arise despite the time at which such credits or rebates are received.

14 Taxation of Members

Definitions

- 14.1 In this clause 14, unless there is something in the subject matter or context that is inconsistent:
 - (a) *Taxation Amount* means in relation to a Taxpayer an amount of Tax which in the opinion of the Trustee the Taxpayer is primarily liable to pay.
 - (b) *Taxpayer* means a person who at any time is, was, or becomes a Member.

Deduct Taxation Amount

- 14.2 The Trustee may deduct from any amount payable to, or to be applied in respect of, a Taxpayer the Taxation Amount of that Taxpayer which is payable or anticipated to become payable by the Trustee on its own account or out of the Assets.

Taxpayer to Supply Details

- 14.3 The Taxpayer must give the Trustee such details regarding its holding of Units or any other relevant matter necessary for the Trustee to determine whether there exists or may in the future exist a Taxation Amount in relation to that Taxpayer.
- 14.4 The Taxpayer must be given:
- (a) the request in writing; and
 - (b) at least 14 days to respond to the request.

15 Payments

Payments to Members

- 15.1 Money payable by the Trustee to a Member may be paid in any manner the Trustee decides.

Unpresented cheques

- 15.2 Cheques issued by the Trustee that are not presented within 6 months may be cancelled.
- 15.3 Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Trustee for the Member or paid by the Trustee in accordance with the legislation relating to unclaimed moneys.

Unsuccessful transfer

- 15.4 Where the Trustee attempts to make a payment to a Member by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money is to be held by the Trustee for the Member or paid by the Trustee in accordance with the legislation relating to unclaimed moneys.

Fraction of cents


- 15.5 Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

Payments to joint Members

- 15.6 A payment to any one of joint Member will discharge the Trustee in respect of the payment.

Deduction of amounts payable to Member

- 15.7 The Trustee may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:
- (a) any amount of Tax (or an estimate of it); or
 - (b) any withholding tax required to be deducted by law; or
 - (c) any other amount owed by the Member to the Trustee or any other person,



which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted.

15.8 Clause 15.7 is in addition to the powers given to the Trustee under clause 14.

16 Powers and duties of the Trustee

General powers

16.1 Subject to this Constitution, the Trustee has all the powers in respect of the Trust that it is possible under the law to confer on a trustee and as though it were the absolute owner of the Assets and acting in its personal capacity.

Contracting and borrowing powers

16.2 Without limiting clause 16.1, the Trustee in its capacity as trustee of the Trust has power to borrow or raise money whether or not on security of the Assets and to incur all types of obligations and liabilities, including guarantees.

Underwriting

16.3 Without limiting the effect of clause 16.2, the Trustee in its capacity as trustee of the Trust has power to enter into an arrangement with a person to underwrite the subscription or purchase of Units on such terms as the Trustee determines.

16.4 Unless the agreement between the Trustee and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Trustee.

Controlled Entities

16.5 Without limiting the effect of clause 16.2, the Trustee may provide financial assistance to TAT or any Controlled Entity, including guaranteeing or indemnifying, or granting security in favour of, a creditor of TAT or a Controlled Entity.

Investment powers

16.6 Without limiting clause 16.1, the Trustee may in its capacity as trustee of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

Power of delegation

16.7 The Trustee may authorise any person to act as its agent, attorney or delegate:

- (a) to hold title to any Asset as Custodian; and
- (b) perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate.

16.8 The Trustee may include in the authorisation such provisions necessary to protect and assist those dealing with the agent, attorney or delegate as the Trustee thinks fit.

16.9 The agent, attorney or delegate may be an associate of the Trustee.

16.10 In the case of a joint appointment, the agent, attorney or delegate will be appointed jointly and severally.

Powers of the Trustee

- 16.11 A reference to the *power* of the Trustee under this clause 16 includes all the powers that a natural person would have in that particular context.

Exercise of discretion

- 16.12 The Trustee may in its absolute discretion decide how and when to exercise its powers, authorities and discretions.

17 Retirement of Trustee

Voluntary retirement

- 17.1 Subject to clause 17.2, the Trustee may retire as the trustee of the Trust upon giving three months' written notice to Members.
- 17.2 The Trustee's retirement under clause 17.1 will only be effective when:
- (a) a new Trustee's appointment is complete under clauses 17.5 and 17.6; and
 - (b) the appointment of the new Trustee is approved by the passing of a Special Resolution of Members.

Compulsory retirement

- 17.3 The Trustee must retire as the trustee of the Trust:
- (a) as required by law; or
 - (b) upon the passing of a Special Resolution of Members.

Transfer of records and property

- 17.4 Upon the resignation, retirement or removal of the Trustee, the Trustee must promptly, at the expense of the Trust:
- (a) hand to the new Trustee all books, records, documents and other property of or relating to the Trust;
 - (b) do all things necessary to transfer the legal title in the Assets to the new Trustee;
 - (c) sign authorities and give directions reasonably required by the new Trustee to give possession or control of any part of the Trust in the hands of third parties; and
 - (d) give any assistance reasonably required by the new Trustee to put the new Trustee into full knowledge of the affairs of the Trust.

New Trustee to enter into deed

- 17.5 Any proposed replacement Trustee must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.
- 17.6 An appointment of a new Trustee is not complete until the new Trustee covenants by deed poll to be bound by this Constitution.

Release

- 17.7 When it retires or is removed, the Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed, except that the Trustee is still obliged to vest the Assets in the new Trustee and to deliver all books and records relating to the Trust to the new Trustee.

18 Notices to Members

Communications with Members

- 18.1 A notice or other communication required under this Constitution to be given to a Member may be:
- (a) given in writing or in such other manner, including electronic communication, as the Trustee determines; and
 - (b) delivered or sent to the Member at its physical or electronic address last advised to the Trustee for delivery of notices.
- 18.2 A notice or communication sent by facsimile or electronic mail is deemed to have been given in writing.

Cheques

- 18.3 A cheque payable to a Member may be posted to its physical address or handed to the Member or a person authorised in writing by the Member.

Communications with joint Members

- 18.4 In the case of joint Members, the physical or electronic address of the Member will be the physical or electronic address of the Member first named in the Register.

Deemed receipt of communications

- 18.5 A notice, cheque or other communication sent by post is taken to be received on the third day after it is posted.
- 18.6 A facsimile is taken to be received upon receipt by the sender of an acknowledgement or transmission report generated from the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number.
- 18.7 Subject to the law, the Trustee may determine the time at which other forms of communication will be taken to be received.
- 18.8 Proof of actual receipt is not required.
- 18.9 Every person who becomes a Member other than by way of application for Units is bound by every notice which was duly given to the person from whom he derived title to those Units.

19 Notices to the Trustee

Communications with the Trustee

- 19.1 A notice required under this Constitution to be given to the Trustee must be given in writing or in such other manner, including electronic communication, as the Trustee determines.
- 19.2 A notice or communication sent by facsimile is deemed to have been given in writing.

Effectiveness of notice

- 19.3 The notice is effective only at the time of receipt.

Signature

- 19.4 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Trustee dispenses with this requirement.

20 Meetings of Members

Convening and adjourning a meeting of Members

- 20.1 The Trustee may whenever it thinks fit convene a meeting of Members.
- 20.2 The Trustee must convene a meeting of Members if required to do so by a requisition signed by or on behalf of Members registered as the holders in total of 50% or more of Units.
- 20.3 The Trustee may adjourn a meeting of Members, whether called by itself or the Members, to that date and time, being within 21 days of the date of the adjourned meeting, and at that place, as the Trustee may determine.

Notice of meetings

- 20.4 Not less than 14 days' notice must be given of every meeting of Members and any notice must be given to all Members specifying the general nature of the business to be transacted. The date of service of the notice is to be counted as the first day but the day of the meeting is not to be counted.
- 20.5 A meeting may be held at shorter notice, being at least twenty-four hours, with the consent of Members holding 75% or more of the Units entitled to receive notice and attend any meeting.
- 20.6 A meeting may be held at less than 24 hours notice with the consent of all Members entitled to receive notice and attend that meeting.
- 20.7 All meetings must be held in Melbourne, Australia unless the Trustee otherwise determines.

Appointment of chairman

- 20.8 At every meeting of Members the Trustee must nominate some person, whether a Member or not, to preside as chairman.
- 20.9 If there is an equality of votes, the chairman does not have a casting vote.

Determination of questions

20.10 Every question arising at a meeting of Members is to be decided in the first instance by a show of hands unless:

- (a) it is a question which under this Constitution must be decided by the holders of a prescribed percentage or more of the Units, in which case a poll is to be taken; or
- (b) a poll is demanded under clause 20.11.

Calling a poll

20.11 A poll may be demanded by Members present in person or by proxy entitled to vote at meetings of the Members or by the chairman of the meeting.

One vote per Unit

20.12 Upon a poll every Member present in person or by proxy, subject to any contrary special right, restriction or condition attaching to a Unit, will have one vote for every whole Unit held.

Giving of votes

20.13 Votes may be given either personally, by proxy, by attorney or, in the case of a Member which is a company, by a person appointed as an authorised representative of the company under the Corporations Act.

Proxies and representatives

20.14 Every instrument of proxy or appointment of a representative must be in the form prescribed by the Trustee or otherwise in a common or ordinary form and must be signed by the Member.

20.15 The instrument appointing a proxy must be deposited at the office of the Trustee not less than 24 hours, or any lesser period agreed to by the Trustee, before the time of holding the meeting or adjourned meeting (as the case may be) at which the person named as proxy proposes to vote.

Quorum

20.16 The quorum for a meeting is one Member, where there is only one Member, and otherwise 2 or more Members present personally or by proxy or by representative or attorney, who represent in total not less than 50% of the Units.

No quorum

20.17 If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members, dissolved; or
- (b) otherwise, adjourned to a place and time decided by the Trustee.

20.18 At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

Resolutions binding

20.19 A Resolution by Members binds all Members and the Trustee, whether or not they are present at the meeting.

20.20 The Trustee is, subject to clause 20.21, obliged to act in accordance with any Resolution and shall have no liability to any Member for doing so.

Trustee may require indemnity

20.21 The obligation of the Trustee to act in accordance with any Resolution or to exercise any power under this Constitution is subject to:

- (a) this Constitution; and
- (b) if required by the Trustee (in its absolute discretion) the receipt from the Members of an indemnity in a form reasonably satisfactory to the Trustee against all costs, charges, losses, damages and expenses which the Trustee may suffer or incur in giving effect to any such Resolution or exercising any such power.

Objections

20.22 No objection may be made to any vote cast unless the objection is made at the meeting.

Validity of meeting

20.23 A meeting is still valid even if a Member does not receive a notice of meeting, including where the notice is accidentally not given to the Member.

Chairman

20.24 The decision of the chairman on any matter is final.

Non-physical meetings

20.25 The Trustee may hold meetings in any manner it determines, including by way of circular resolution or the Members agreeing in writing (such as an exchange of emails or faxes).

21 Rights and liabilities of Trustee

Holding Units

21.1 The Trustee and its associates may hold Units in the Trust in any capacity.

Other capacities

21.2 Subject to the Corporations Act, nothing in this Constitution restricts the Trustee (or its associates) from:

- (a) dealing with itself (as trustee of the Trust or in another capacity), with an associate, with TAT, with a Controlled Entity or with any Member;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), with an associate, with TAT, with a Controlled Entity or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme; or
- (d) dealing with Units in the Trust,

provided that the Trustee, its directors, officers or related bodies corporate act in connection with any such matters in the utmost good faith to all Members.

Reliance by Trustee

21.3 The Trustee may take and may act upon:

- (a) the opinion or advice of counsel or lawyers, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document whether statutory or otherwise or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Trustee believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

22 Limitation of liability and indemnity in favour of Trustee

Limitation on Trustee's liability

- 22.1 If the Trustee acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.¹
- 22.2 The limitation of liability under clause 22.1 applies to any liability arising from any act or omission of a delegate, attorney or agent appointed by the Trustee.
- 22.3 The liability of the Trustee to any person other than a Member in respect of the Trust including any contracts entered into as trustee of the Trust or in relation to any Assets is limited to the Trustee's ability to be indemnified from the Assets.

Indemnity in favour of Trustee

- 22.4 The Trustee is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- 22.5 To the extent permitted by law, the indemnity under clause 22.4 includes any liability incurred as a result of any act or omission of a delegate, attorney or agent appointed by the Trustee.
- 22.6 To the extent permitted by law, the indemnity under clause 22.4 applies notwithstanding the existence of an unrelated breach of trust.
- 22.7 The indemnity under clause 22.4:
 - (a) is in addition to any indemnity allowed by law; and
 - (b) continues to apply after the Trustee retires or is removed as trustee of the Trust.

23 Liability of Members

Liability limited

- 23.1 Subject to clause 23.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's unpaid application moneys for their Units.
- 23.2 A Member need not indemnify the Trustee if there is a deficiency in the Assets or meet the claim of any creditor of the Trustee in respect of the Trust.

Recourse

- 23.3 The recourse of the Trustee and any creditor is limited to the Assets, subject to any separate agreement with a Member.

Restrictions on Members

- 23.4 A Member:
- (a) must not interfere with any rights or powers of the Trustee under this Constitution;
 - (b) must not exercise any right, power or privilege in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
 - (c) may not require an Asset to be transferred to the Member.

24 Remuneration and expenses of Trustee

Remuneration of the Trustee.

- 24.1 In this clause 24, unless the context or contrary intention appears *Management Fee* means the management fee calculated in accordance with the following formula as at the last day of each month:

$$F = [(A/B)/100] \times C$$

where:

- F* is the *Management Fee* for the month;
- A* is an amount determined by the Trustee but not exceeding 2;
- B* is 12;
- C* is the aggregate Market Value of the Assets as at the last day of the month;
- 24.2 Subject to clause 24.4, the Trustee is entitled to receive out of the Assets of the Trust and retain for its own use and benefit the *Management Fee* calculated monthly not later than 7 Business Days after the end of each month to which it relates until the date of the final distribution made in accordance with clause 31.3.
- 24.3 The Management Fee is to be adjusted on a pro rata basis if the month in respect of which the calculation is made is the month ending on the date of termination of the Trust or the month commencing on the Commencement Date.

- 24.4 While the Trust is a wholly-owned sub-trust of TAT, the Trustee has no right to fees unless the Member agrees otherwise.

Waiver of fees

- 24.5 The Trustee may:

- (a) accept or charge lower fees than it is entitled to receive under this Constitution; or
 - (b) postpone or defer payment for any period,
- on such terms as it thinks fit and as notified to Members.

Expenses

- 24.6 The Trustee, in addition to its remuneration, is entitled to pay, or be reimbursed for, out of the Assets of Trust, all out of pocket charges, expenses and outgoings reasonably and properly incurred by or on behalf of the Trustee connected with:

- (a) this Constitution and formation of the Trust;
- (b) the preparation, review, distribution and promotion of any Disclosure Document in respect of Units or other promotion of the Trust including all expenses, costs, disbursement and charges incurred in connection with the offering of Units for sale or subscription including legal, valuation, underwriting, brokerage, printing and marketing costs on a cost basis;
- (c) the preparation of, and compliance with, the Security Interest Rules;
- (d) such commission, trailing commission, procuration or other fees or brokerage as the Trustee may determine to any person subscribing or obtaining subscriptions for or underwriting the issue or purchase of Units;
- (e) the acquisition, disposal, insurance, custody and any other dealing with Assets, including all amounts payable under any Custody Agreements;
- (f) any proposed acquisition, disposal or other dealing with an Asset of the Trust;
- (g) the administration or management of the Trust or its Assets and Liabilities;
- (h) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (i) underwriting of any subscription or purchase of Units including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Trustee of its obligations, representations or warranties under any such underwriting agreement;
- (j) the cost of printing Confirmations, Financial Statements, cheques, distribution statements, reports, audit reports, notices of meeting and other documents required to be circulated amongst or sent out to Members under this Constitution;
- (k) costs of postage of all Confirmations, cheques, Financial Statements, distribution statements, notices, reports, audit reports and other documents circulated amongst or sent out to Members under this Constitution or the Corporations Act;


- (l) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (m) Tax and financial institution fees and charges;
- (n) any GST charged by a supplier of goods or services, or both, to the Trustee in connection with the Trust;
- (o) the engagement of administrators, agents, valuers, contractors and advisers (including legal advisers) whether or not the administrators, agents, valuers, contractors or advisers are associates of the Trustee;
- (p) preparation and audit of the taxation returns, Financial Statements and the Register of the Trust and examination of Confirmations by an auditor;
- (q) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;
- (r) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Trustee, except to the extent that the Trustee is found by a court to have acted fraudulently or in wilful default, or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 24.6(r) must be repaid;
- (s) complying with any law, and any request or requirement of ASIC;
- (t) while the Trust is a Controlled Entity, any fees and expenses allocated to the Trust by TAT in accordance with the TAT Constitution.

24.7 In clause 24.6, *charges, expenses and outgoings* includes:

- (a) internal charges, expenses and outgoings of the Trustee incurred in connection with the items referred to in clause 24.6, including the costs of appointing and maintaining staff in connection with those items; and
- (b) amounts paid or owing by the Trustee to related entities for services provided to the Trustee in connection with the Trust where the amounts would have been payable, or reimbursed to the Trustee, out of Assets had the services been provided to the Trustee by a third party.

GST

- 24.8 Expression and words defined in the GST Law and used in clauses 24.9 to 24.15 have the meanings defined in the GST Law.
- 24.9 If any supply made by a party (*Supplier*) to the other (*Recipient*) under this Constitution is a taxable supply so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply does not include any amount referable to GST (the *GST Exclusive Amount*).
- 24.10 In addition to the GST Exclusive Amount for a taxable supply under this Constitution, and subject to clause 24.11, the Recipient must pay to the Supplier a further amount calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- 24.11 GST payable under clause 24.10 must be payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount.

- 
- 24.12 The right of a Supplier to payment under this clause 24.10 is subject to a valid tax invoice being provided by the Supplier to the Recipient.
- 24.13 If at any time an adjustment is made as between the Supplier and a taxing authority of an amount paid on account of GST on any supply made to the Recipient under or in connection with this Constitution, a corresponding adjustment must be made as between the Supplier and the Recipient.
- 24.14 If either party is required to reimburse to the other any cost, expense or other amount (or part) that the other party has incurred in connection with this Constitution, the amount to be reimbursed must be reduced by any part of that amount which is recoverable by the other party by way of an input tax credit, partial input tax credit or other like set off.
- 24.15 Clauses 24.8 to 24.15 take precedence over any other term or condition of this Constitution to the extent of any inconsistency.
-

25 Amendments to this Constitution

Amendments to the Constitution

- 25.1 At any time prior to the termination of the Trust, this Constitution may be altered, modified, varied, amended, revoked or added to (all of which are referred to in this clause 25 as a *variation*) as follows:
- (a) variations may be effected by the passing of a resolution by the Trustee approving the variations;
 - (b) a resolution signed by a duly authorised officer of the Trustee will be a variation to this Constitution on the terms of that resolution;
 - (c) following the passing of a resolution the Trustee may elect to enter into a deed or other document detailing the variation;
 - (d) a variation which concerns:
 - (i) a provision of clause 1.14;
 - (ii) a provision of clauses 3.1 to 3.4;
 - (iii) a provision dealing with the issue, transfer or redemption of Units;
 - (iv) a provision dealing with the appointment or removal of a Trustee;
 - (v) a provision dealing with the audit of the Trust;
 - (vi) a provision of clause 16;
 - (vii) a provision dealing with the remuneration of the Trustee;
 - (viii) a provision of this clause 25;
 - (ix) a provision dealing with voting rights at meetings of the Members;
 - (x) a provision of clause 22; or
 - (xi) a provision of clause 30;

[REDACTED]

is not effective unless the Members have by Special Resolution approved the proposed variation, on or before the instrument of variation is executed.

25.2 A variation may not:

- (a) prejudicially affect the rights of a Member to income of the Trust previously set aside for it or held for its benefit; or
- (b) prejudicially affect the rights of Members, to participate in the income or capital of the Trust in accordance with the provisions of this Constitution;

unless the consent of the Member prejudicially affected or the consents of all Members whose rights are to be prejudicially affected are obtained at or prior to the time any such variation is made.

Time variation takes effect

25.3 If the requirements of this clause 25 have been complied with, the provisions of this Constitution will be effectively altered, modified, varied, amended, revoked or added to, as the case may be, on the date specified in the resolution or, (if applicable), amending deed, or if no date is specified, the later of the date of the resolution, the deed poll or the date of any necessary approval.

26 Inspection and copies of the Constitution

Inspection of Constitution

26.1 Members may inspect a copy of this Constitution during usual business hours at the Office.

Copy of Constitution

26.2 The Trustee must give a Member a copy of this Constitution and any amending deeds within 7 days if the Member:

- (a) asks the Trustee in writing for a copy of the Constitution; and
- (b) pays any reasonable fee required by the Trustee.

27 Audit

Appointment of Auditor

27.1 The Trustee must from time to time appoint an auditor of the Financial Statements.

27.2 The Auditor of the Financial Statements must at all times be a person who is a registered company auditor under the Corporations Act.

Retirement of Auditor

27.3 An Auditor of the Financial Statements may:

- (a) retire at any time by notice in writing to the Trustee;
- (b) be removed from office by the Trustee; or

- (c) be removed from office by Special Resolution of the Members.

Appointment of New Auditor

- 27.4 Any vacancy in the office of the Auditor must be filled by an appointment made by the Trustee.

First audit of the Financial Statements

- 27.5 Subject to the Corporations Act, the first audit of the Trust's Financial Statements will be in respect of the period commencing on the Commencement Date and ending on 30 June 2006.

28 Documents of title

- 28.1 The Trustee must:

- (a) hold in custody all documents of title in relation to an Asset; or
- (b) use reasonable endeavours to ensure documents of title in relation to an Asset are held in safe custody by any of its agents, attorneys or delegates.

29 Reserves

Reserves

- 29.1 The Trustee may at any time create reserves or provisions in respect of the Trust and debit and credit such reserves to take into account such amounts as it determines in its absolute discretion, including:
- (a) unrealised increases or decreases in the value of the Assets;
 - (b) capital gains and losses which are not assessable or deductible under the Tax Act;
 - (c) Tax that will be payable on realised capital gains of the Trust; or
 - (d) any future expense or liability which may be incurred by the Trustee on account of the Trust.

30 Duration of the Trust

Period of the Trust

- 30.1 The Trust commences upon the Commencement Date.

Termination

- 30.2 Unless otherwise determined pursuant to any other provision of this Constitution, the Trust terminates on the earliest of:
- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Members;
 - (b) the date on which the Trust terminates in accordance with another provision of this Constitution or by law;

- (c) the date on which a court directs the Trustee to wind up the Trust; and
- (d) the date on which the Members resolve that the Trust must terminate as determined by an Extraordinary Resolution of the Members at a meeting called for that purpose.

31 Procedure on termination

Realisation of Assets

- 31.1 Following termination of the Trust, the Trustee must realise the Assets. This must be completed in 180 days if practicable and in any event as soon as possible after that.

Audit of winding up

- 31.2 The Trustee must arrange for an independent review or audit of the final Financial Statements of the Trust by a registered company auditor.

Distribution following termination

- 31.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), and meeting the expenses (including anticipated expenses) of the termination, must be distributed to each Member in accordance with the following formula:

$$A \times (B / C)$$

where:

- A* is the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 31.3;
- B* is the aggregate of the number of Units held by the Member as at termination; and
- C* is the number of Units in issue as at termination.

- 31.4 The Trustee may distribute proceeds of realisation in instalments.

Constitution continues to apply during period of termination

- 31.5 The provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 31.3.

Dealing in Units after termination

- 31.6 No Units may be issued, redeemed or transferred after the Trust is terminated.

32 General provisions

Waiver and exercise of rights

- 32.1 A waiver of a provision or of a right arising under this Constitution must be given in writing signed by the other party.
- 32.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

32.3 A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of another right.

32.4 Failure by one party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

Rights cumulative

32.5 The rights, remedies and powers of the other parties under this Constitution are cumulative and not exclusive of any rights, remedies or powers conferred on the parties by law.

Consents and approval

32.6 A party may give its consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Constitution expressly provides otherwise.

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Executed as a deed

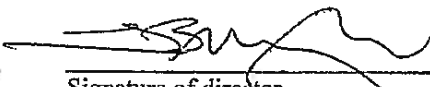
Signed sealed and delivered
by **OIM #5 Pty Ltd**
by a director and secretary/director:



Signature of secretary/director

Andrew Henry Ashbolt

Name of secretary/director (please print)



Signature of director

Trevor Bruce Moyle

Name of director (please print)

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012

Filed on behalf of: The First and Second Defendants

Prepared by:

Maddocks

Lawyers

140 William Street

Melbourne VIC 3000

Solicitor's Code: 230

DX 259 Melbourne

Tel: (03) 9288 0555

Fax: (03) 9288 0666

Ref: 5885053.001

Attention: Philip Jones

Email: philip.jones@maddocks.com.au

This is the exhibit marked "ADF-3" now produced and shown to **Alan David Fisher** at the time of
swearing his affidavit on 20 September 2012.

Before me:



Signature of person taking affidavit

STEVEN MICHAEL TANG
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

Exhibit "ADF-3"
Unit registers of TOT#3 and TOT#5

TOT#3 Unit Holder Register

Unit Holder No.	Investment Name	Investment Name 2	Address Line 1	Address Line 2	Suburb	P/Code	State	ABN	Units	Comments/Transfer
1	Orchard Investment Management Limited	< Timbercorp Agribusiness Trust >	Level 8	461 Bourke Street	MELBOURNE	3000	VIC	70 484 035 954		On 30 Sept 2005, 100 (\$1) units redeemed, original certificate 0 cancelled
2	Orchard Investment Management Limited	< Timbercorp Agribusiness Trust >	Level 8	461 Bourke Street	MELBOURNE	3001	VIC	71 484 035 954		Certificate #2 with 19,567,749 (\$1) units cancelled on 30 Sept 0 2005, original certificate cancelled and certificate #3 issued.
3	Orchard Investment Management Limited	< Timbercorp Agribusiness Trust >	Level 8	461 Bourke Street	MELBOURNE	3000	VIC	70 484 035 954		New certificate #3 issued with 20,364,639 units on 30 Sept 2005 following issue of additional units; and cancellation of certificate 0 #2.
4	Orchard Investment Management Limited	< Timbercorp Agribusiness Trust >	Level 8	461 Bourke Street	MELBOURNE	3000	VIC	70 484 035 954	20,363,163	Certificated issued 30 June 2006

TOT#5 Register

Unit Holder No.	Investment Name	Investment Name 2	Address Line 1	Address Line 2	Suburb	P/Code	State	ABN	Units	Amount Value	Comments
-----------------------	-----------------	-------------------	-------------------	----------------	--------	--------	-------	-----	-------	--------------	----------

1	Orchard Investment Management Limited	< Timbercorp Agribusiness Trust >	Level 8	461 Bourke Street	MELBOURNE	3000	VIC	27 125 832 631	54,514,848	\$58,876,036.00	\$1.08 per unit
---	---------------------------------------	-----------------------------------	---------	-------------------	-----------	------	-----	----------------	------------	-----------------	-----------------

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012
Filed on behalf of: The First and Second Defendants
Prepared by:
Maddocks
Lawyers
140 William Street
Melbourne VIC 3000

Solicitor's Code: 230
DX 259 Melbourne
Tel: (03) 9288 0555
Fax: (03) 9288 0666
Ref: 5885053.001
Attention: Philip Jones
Email: philip.jones@maddocks.com.au

This is the exhibit marked "**ADF-4**" now produced and shown to **Alan David Fisher** at the time of
swearing his affidavit on 20 September 2012.

Before me:


Signature of person taking affidavit

STEVEN MICHAEL TANG
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

Exhibit "ADF-4"
Copy of Bond Trust Deed

Bond Trust Deed

Orchard Investments Management Limited

Permanent Trustee Company Limited

Timbercorp Agribusiness Trust

BAKER & MCKENZIE

Solicitors
Level 39, Rialto
525 Collins Street
MELBOURNE VIC 3000
Tel: (03) 9617-4200
Fax: (03) 9614-2103
Email: Bruce.Taylor@BAKERNET.com

Ref: 66300-v3\BT3\HW1\LA3



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Date 30 September 2005

Parties **Orchard Investments Management Limited** (ACN 105 684 231) of Level 8, 461 Bourke Street, Melbourne Vic 3000 in its capacity as responsible entity of the Timbercorp Agribusiness Trust (**OIML**)

Permanent Trustee Company Limited ACN 000 000 993 of Level 3, 151 Rathdowne Street, Carlton, Vic 3053 (**Trustee**)

Recitals

- A OIML is the holder of an Australian Financial Services Licence issued by ASIC authorising it to operate the Scheme known as the *Timbercorp Agribusiness Trust*.
- B OIML will hold the Scheme Assets in its capacity as responsible entity of the Timbercorp Agribusiness Trust in accordance with section 601FC(2) of the Corporations Act.
- C OIML is empowered by clause 18 of the Constitution to borrow money from time to time for the purposes of the Scheme.
- D The Trustee has agreed on the terms and conditions contained in this Deed to act as trustee of this Deed for the benefit of holders for the time being and from time to time of Bonds issued under this Deed.

Operative provisions

1 Definitions and Interpretation

Definitions

- 1.1 In this Deed, the Schedules and all documents issued under this Deed, unless the context or subject matter otherwise indicates or requires, the following words have the meanings set out opposite them:

A\$, \$, dollars or Australian dollars means the lawful currency of Australia;

ADI has the same meaning as *Australian ADI* in section 9 of the *Corporations Act*;

Administrator has the same meaning as *administrator* in section 9 of the *Corporations Act*;

Almond Crop means the products, rights, benefits or credits derived from almond trees on the Land;

Almond Projects means any almond projects conducted on the Land, interests in which have been or will be, offered by the Timbercorp Group or other responsible entities or managers under a Disclosure Document, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;

Assets has the same meaning as in the Constitution;

ASIC means Australian Securities and Investments Commission;

Attorney means any attorney appointed under clause 4.28 and any person who derives a right directly or indirectly from an Attorney;

Auditors means the auditors of OIML from time to time;

Australia means all States and Territories in Australia;

Authorised Investment means any of the following denominated in Australian dollars:

- (a) bonds, notes or other securities issued or guaranteed by the Commonwealth or a State or Territory of Australia with, at the relevant time, a term to maturity of not later than the next Payment Date;
- (b) deposits with, or loans to, or secured or guaranteed by the Commonwealth or a State or Territory of Australia or an ADI authorised under the *Banking Act 1959 (Cth)* and which have a rating of not less than *A-1* by S&P and a short term credit rating of not less than *P-1* by Moody's or a long term rating of *AA* and *Aa2* by S&P and Moody's respectively, with, at the relevant time, a term to maturity of not later than the next Payment Date;
- (c) certificates of deposit or bonds, notes or securities issued by an ADI authorised under the *Banking Act 1959 (Cth)* and which have a rating of not less than *A-1* by S&P and a short term credit rating of not less than *P-1* by Moody's or a long term rating of *AA* and *Aa2* by S&P and Moody's respectively, with, at the relevant time, a term to maturity of not later than the next Payment Date;
- (d) bills of exchange, promissory notes, debentures or other negotiable instruments issued or accepted by the Commonwealth or a State or Territory of Australia or an ADI authorised under the *Banking Act 1959 (Cth)* and which have a rating of not less than *A-1* by S&P and a short term credit rating of not less than *P-1* by Moody's or a long term rating of *AA* and *Aa2* by S&P and Moody's respectively, with, at the relevant time, a term to maturity of not later than the date moneys will be required for the purchase of Land or the construction of Improvements or otherwise for the purposes of this Deed (*the End Date*);
- (e) any other investment approved by the Trustee with, at the relevant time, a term to maturity of not later than the End Date and, which, except in the case of paragraph (d) must be issued or guaranteed by or drawn, issued, accepted or endorsed by a person which has a short term credit rating of not less than *A-1* by S&P and *P-1* by Moody's or a long term rating of *AA* and *Aa2* by S&P and Moody's respectively;

Authorised Representative means:

- (a) a company secretary or director of the party or an employee of the party whose title includes the word "manager" or "director";
- (b) a person who is acting temporarily in one of those positions; or
- (c) a person, or a person holding a position, nominated by a party to the other party;

Bond Holder means in relation to any of the Bonds at any time a person who is for the time being registered as the holder of those Bonds;

Bonds means debt obligations of OIML as responsible entity of the Scheme from time to time arising under this Deed;

Books has the same meaning as *books* in section 9 of the *Corporations Act*;

Business Day means a day the banks are open for general banking business in Melbourne, other than a Saturday, Sunday or a public holiday;

Cash means at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all cash and cash equivalents of the Scheme, including:

- (a) deposits at call; and
- (b) short-term money market securities;

Citrus Crop means the products, rights, benefits or credits derived from citrus trees on the Land;

Citrus Projects means any citrus projects conducted on the Land, interests in which have been or will be, offered by the Timbercorp Group or other responsible entities or managers under a Disclosure Document, whether or not registered as a managed investment scheme under Chapter 5C of the *Corporations Act*;

Constitution means the deed executed by OIML constituting the Scheme;

control or **controlled** has the meaning given in section 50AA of the *Corporations Act*;

Controlled Entity means an entity, including a body corporate or trust, directly or indirectly controlled by OIML in its capacity as responsible entity of the Scheme;

Controller has the meaning given to *controller* in section 9 of the *Corporations Act*;

corporation means any body corporate wherever incorporated or domiciled;

Corporations Act means the *Corporations Act 2001 (Cth)* and the *Corporations Regulations*;

CPI means the *Weighted Average of Eight Capital Cities All Groups Consumer Price Index* as currently maintained and published by the Australian Bureau of Statistics;

If the *Weighted Average of Eight Capital Cities All Groups Consumer Price Index* is discontinued, suspended or ceases to be calculated in a manner in which it is calculated as at the date of this Deed, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is determined by the Auditor;

Debt means at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Liabilities of the Group, excluding:

- (a) all Liabilities which are non-interest bearing;
- (b) the amount of all hybrid Units and instruments convertible to ordinary Units;
- (c) all Subordinated Member Loans;
- (d) contingent Liabilities;

Deed or Trust Deed means this trust deed (including Schedules) as originally executed and as it may from time to time be amended in accordance with its terms;

Director means a director of OIML;

Disclosure Document includes:

- (a) a **disclosure document** as defined in section 9 of the Corporations Act;
- (b) a **product disclosure statement** as defined in section 9 of the Corporations Act;
- (c) a document, including an information memorandum under which offers to participate in a Project are made;

Encumbrance means any mortgage, pledge, charge, lien or assignment by way of security (excluding any such thing arising by operation of law);

Event of Default means an event set out in clause 12.1 of this Deed;

Financial Statements means:

- (a) a statement of financial performance;
- (b) a statement of financial position;
- (c) a statement of cash flows;
- (d) if required by the accounting standards a consolidated statement of financial performance, statement of financial position and statement of cash flows; and
- (e) other information required to give a true and fair view of the financial position of the Scheme or OIML, as the case requires;

First Issue means the issue of 10,100,000 Bonds with a face value of \$1.00 at Financial Close (as that expression is defined in the First PDS);

First Issue Date means the date of Financial Close, as that expression is referred to in the First PDS;

First PDS means the first product disclosure statement issued by Scheme dated 14 September 2005 annexed as Schedule 3;

Fixed and Floating Charge means the fixed and floating charge created under this Deed and granted by OIML in favour of the Trustee over the Scheme Assets;

Gearing Ratio means at any time as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, the ratio calculated in accordance with the following formula:

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

where:

- A** = the Gearing Ratio;
- B** = Debt (expressed as a positive);
- C** = Cash;
- D** = at any time the aggregate amount, as disclosed by the statement of financial position which is at the relevant date the Last Statement of Financial Position, of all Group Assets;

Government Body means:

- (a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;
- (b) any public authority constituted by or under a law of any country or political sub-division of any country; and
- (c) any person deriving a right directly or indirectly from any other Government Body;

Grape Crops means the products, rights, benefits or credits derived from the grapevines developed under a Viticultural Project on the Land;

Group means:

- (a) the Scheme; and
- (b) the Scheme's Controlled Entities, including OIM #2, TOT #2 and TOT #3;

Group Assets means:

- (a) the Scheme Assets; and
- (b) the assets of any Controlled Entity, including the assets of TOT #2 (as defined in the constitution for TOT #2) and the assets of TOT #3 (as defined in the constitution for TOT #3),

calculated on a consolidated basis with the effects of all transactions between the Scheme and the Scheme's Controlled Entities being eliminated in full;

GST means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty, fine or other charge, imposed by or under a GST Law;

GST Law has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

GST Rate means the rate of GST under the GST Law;

Improvements means all capital works, trees, Water Licences attributed to the Land and other improvements forming part of the Group Assets, including irrigation works;

Interest Calculation Date means the last day of each Quarter;

Interest Payment Date means, in respect of a Quarter, the day 3 Business Days after the end of that Quarter;

Issue Conditions means the conditions set out in Schedule 1 applicable to the First Issue, and all subsequent issues unless otherwise expressly stated in this Deed, as determined by the directors under clause 3.3 or agreed between OIML and the Trustee;

Issue Date means the date of issue of any Bonds as determined by OIML, and in the case of the First Issue means the First Issue Date;

Land means the real property forming part of the Group Assets;

Last Statement of Financial Position means:

- (a) until the first occasion on which a consolidated statement of financial position of the Group is delivered to the Trustee under clauses 7.2(d) or 7.2(e), the pro-forma consolidated statement of financial position of the Scheme as at 30 June 2005;

- (b) on that first occasion and any time after that first occasion, the consolidated statement of financial position of the Group then most recently delivered by OIML to the Trustee under clauses 7.2(d) or 7.2(e);

Liabilities has the same meaning as in the Constitution;

Liparoo means the land described as Hattah-Robinvale Road, Liparoo in the State of Victoria and comprising:

- (a) Crown Allotment 6 and being all of the land more particularly described in Certificate of Title Volume 9861 Folio 747; and
- (b) Lot 2 on Plan of Subdivision 442837A, being all of the land described in Certificate of Title Volume 10789 Folio 309

Liquidation includes winding up, dissolution, deregistration, administration, amalgamation, receivership, reconstruction, assignment for the benefit of creditors, arrangement or compromise of the creditors or bankruptcy;

Maturity Date means 30 September 2012;

Member means a holder of a Unit;

Moneys Owning means the principal moneys and interest from time to time payable in respect of the Bonds to the Trustee or to any Bond Holder, any Redemption Amount which is payable as a result of the Bond's redemption under or pursuant to this Deed or the terms of issue of any of the Bonds and all other moneys from time to time payable under or by virtue of this Deed;

Month means calendar month;

Occupancy Agreements means any lease, licence or other occupancy agreement entered into by the Group in respect of the Land and Improvements;

OIML means Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Scheme, or the responsible entity for the time being of the Scheme;

OIM #2 means OIM #2 Pty Ltd (ACN 112 691 997);

Ordinary Resolution has the meaning given in Rule 22(a), subject to Rule 24;

Other Crops means crops, products, rights, benefits or credits derived from horticultural, viticultural, silvicultural or other agricultural activities undertaken on the Land;

Outstanding Bonds means in relation to the Bonds, all the Bonds on issue at a particular date, other than:

- (a) those which have been redeemed in accordance with this Deed or the Issue Conditions; and
- (b) those in respect of which the date for redemption in accordance with the Issue Conditions has occurred and for which the Redemption Amounts have been duly paid to the Trustee and remain available for payment to Bond Holders holding such Bonds;

Payment Date means an Interest Payment Date or Maturity Date, as the case requires;

Potential Event of Default means any thing which with the giving of notice or lapse of time will constitute an Event of Default;

Price has the meaning, in clause 28 of this Deed, as in the GST Law;

Projects means the Almond Projects, Citrus Projects, Viticultural Projects and such other projects undertaken on the Land from time to time by the Timbercorp Group or other responsible entities or managers of a horticultural or viticultural nature, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;

Quarter means the three month period ending on the last day of March, June, September or December with the exception of:

- (a) the first Quarter which commences on the First Issue Date and ends on the day before the first day of the next Quarter;
- (b) the last Quarter which commences on the day following the last day of the immediately preceding Quarter and ends on the Maturity Date;

Receiver means a receiver or receiver and manager appointed under this Deed and any person who derives a right directly or indirectly from any Receiver;

Record Date means 7 Business Days before the relevant Interest Calculation Date;

Redemption Amount means the principal moneys and interest from time to time payable in respect of the Bonds to the Trustee or to any Bond Holder on the Redemption Date;

Redemption Calculation Date means the day which is 7 Business Days before the relevant Redemption Date;

Redemption Date means the Maturity Date or the date on which Bonds are redeemed in accordance with Issue Conditions 5.5 to 5.8;

Register means any register in respect of the Bond Holders kept pursuant to this Deed;

Registrar means the person who from time to time is appointed by OIML to act as registrar in respect of the Bonds and in the absence of such appointment, OIML;

Related Corporation means:

- (a) a **related body corporate** as that expression is defined in the Corporations Act and includes a body corporate which is at any time after the date of this Deed a **related body corporate** but ceases to be a **related body corporate** because of an amendment, consolidation or replacement of the Corporations Act; but
- (b) with any necessary modifications to reflect that any reference to a **related body corporate** in the context of the Scheme is a reference to a **related body corporate** of OIML solely in its capacity as responsible entity of the Scheme;

Repay includes **redeem** and vice versa and **repaid**, **repayable** and **repayment**, and **redeemed**, **redeemable** and **redemption** are to be construed accordingly;

Rules means the rules for meetings of Bond Holders set out in Schedule 3;

Schedules means the schedules to this Deed;

Scheme means the trust constituted under the Constitution and known as **Timbercorp Agribusiness Trust** registered as a managed investment scheme under Chapter 5C of the Corporations Act with ARSN 116 024 830 and of which OIML is the responsible entity;

Scheme Assets means all Assets of the Scheme;

Secured Property means the Scheme Assets;

Security Interest means an interest or right:

- (a) reserved over property; or
- (b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,

by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding:

- (i) any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge; and
- (ii) any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;

Solara South means the land described as Certificates of Title Vol. 5945, Folio 418, Vol. 5945 Folio 419, Vol. 5945 Folio 421, Vol. 5945 Folio 422 and Underlease No. 4983702 of Crown Lease Perpetual No. 5345, all located at Bookpurnong, South Australia;

Special Resolution, subject to Rule 24, has the meaning given in Rule 21(a);

Specified Office means the registered office of OIML or such other office advised by OIML to the Trustee from time to time;

Subordinated Member Loans means the aggregate of all moneys advanced to the Group:

- (a) by persons who at the time of their advance are Members of the Scheme or any of such Member's Related Corporations, the repayment of which is postponed until all of the interest bearing Liabilities of the Group (other than Liabilities in respect of other debts which are Subordinated Member Loans or in respect of debts to which a condition similar in substance to this definition applies) are paid, redeemed or satisfied in full and in respect of which the relevant creditor is not entitled to prove in Liquidation in the event of any one or more of the Group going into Liquidation until those interest bearing Liabilities of the Group (other than Liabilities in respect of other debts which are Subordinated Member Loans or in respect of debts to which a condition similar in substance to this definition applies) have been paid, redeemed or satisfied in full; or
- (b) by Timbercorp pursuant to the Timbercorp Facility (as defined in the First PDS);

Tax Event means the receipt by OIML of an opinion from a reputable legal counsel or other tax adviser in Australia, experienced in such matters to the effect that, as a result of:

- (a) any amendment to, clarification of, or change (including any announced prospective change) in, the laws or treaties (or any regulations thereunder) of Australia or any political subdivision or taxing authority thereof or therein affecting taxation;
- (b) any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (*Administrative Action*); or
- (c) any amendment to, clarification of, or change in, the pronouncement that provides for a position with respect to an Administrative Action that differs from the theretofore

generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known,

which amendment, clarification, change or Administrative Action is effective, or which pronouncement or decision is announced, on or after the Issue Date (and which does not relate to GST), there is more than an insubstantial risk that OIML or the Scheme would be exposed to more than a de minimus increase in its costs or tax liabilities as a result of changes to taxes, duties, imposts or other governmental charges or civil liabilities.

Taxes means taxes, including GST, levies, imposts, deductions, charges, withholdings and duties imposed by any authority of or in Australia or any other jurisdiction from or through which payment is made, or any political subdivision of any of them including, without limitation, stamp and transaction duties, together with any related interest, penalties, fines and expenses in connection with them, except if imposed on the overall net income of the person to whom such taxes apply;

Timbercorp means Timbercorp Limited (ACN 055 185 067);

Timbercorp Group means Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";

TOT #2 means the trust known as the *Timbercorp Orchard Trust #2* established pursuant to the trust deed made on 25 February 2005;

TOT #3 means the trust known as the *Timbercorp Orchard Trust #3* established pursuant to the trust deed made on 8 September 2005;

Transaction Documents means:

- (a) this Deed, any deed subsequently amending or replacing this Deed, any other document or documents which are used in or assist in the carrying out of any act or obligation under this Deed (including the Fixed and Floating Charge); and
- (b) any other documents agreed by OIML and the Trustee to be Transaction Documents;

Units means a fully paid unit in the Scheme issued on terms and conditions set out in the Constitution;

Valuer means a person:

- (a) who has at least five year's experience in assessment of rural properties in such area where the Land and Improvements are situated;
- (b) being a member or members of Australian Property Institute Incorporated or its successor; and
- (c) who has no pecuniary interest that could reasonably be regarded as being capable of affecting his or her ability to give an unbiased opinion;

Viticultural Projects means any wine or table grape project conducted on the Land, interests in which have been or will be offered by the Timbercorp Group or other responsible entities or managers under a Disclosure Document, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act;

Water Licences means the temporary and permanent water licences forming part of the Group Assets;

writing includes printing, typing, lithography and other modes of reproducing words in a visible form and *written* has a corresponding meaning; and

Written Resolution has the meaning given in Rule 23(a).

Interpretation

1.2 In this Deed and the Schedules unless the context otherwise requires:

- (a) reference to any Act, code, regulation or ordinance or to any provision of any Act, code, regulation or ordinance includes any modification or re-enactment of the Act, code, regulation or ordinance or any provisions substituted for Act, code, regulation or ordinance and all statutory instruments issued under such Act, code, regulation or ordinance;
- (b) a word denoting the singular number includes the plural and vice versa;
- (c) a reference to a person includes individuals, corporations, partnerships, limited partnerships, joint ventures, associations, companies, trusts or other organisations, whether or not legal entities;
- (d) a heading and a cross reference to a heading is for convenience only and does not affect interpretation;
- (e) a reference to a paragraph, clause or Schedule is a reference to a paragraph to, or clause of or schedule of, this Deed;
- (f) a reference to a statement of financial position and statement of financial performance of OIML and the Scheme includes a reference to all notes thereto;
- (g) a reference to any document, deed or agreement including this Deed includes a reference to such a document, deed or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a word denoting any gender includes all genders; and
- (i) the words *includes, including, for example* or *such as* when introducing a list of items do not exclude a reference to other items, whether or the same class or genus or not.

Rights of Bond Holders

1.3 The issue of Bonds confers on the relevant Bond Holder in respect of such Bonds the benefit of:

- (a) the covenants and warranties given in its favour as set out in this Deed; and
- (b) the conditions set out in the Issue Conditions.

1.4 Each Bond Holder and any person claiming under that Bond Holder is bound by the terms and conditions of this Deed.

Bond Holder Obligations

1.5 The rights and obligations of each Bond Holder under this Deed are several and:

- (a) failure by any Bond Holder to carry out its obligations will not relieve any other Bond Holder or OIML of any of its obligations; and

- (b) no Bond Holder is responsible for the obligations of any other Bond Holder.

2 Trust and Trustee

Appointment of Trustee

- 2.1 The Trustee is hereby appointed as trustee and agrees for the consideration expressed in this Deed to act in the interests, and for the benefit, of the Bond Holders on the terms contained in this Deed. The Trustee's duties and obligations to Bond Holders are owed to Bond Holders only in their capacity as Bond Holders.

Trust

- 2.2 The Trustee will hold the following on trust for the benefit of the Bond Holders:
- (a) a right to enforce OIML's obligations to repay Bonds under this Deed and the Issue Conditions;
 - (b) the Fixed and Floating Charge or any other Encumbrance granted under the terms of this Deed; or
 - (c) the right to enforce any other duties of OIML (and any guarantor) under this Deed and the trust created by it, the Fixed and Floating Charge, any other Encumbrance granted for the benefit of the Bond Holders, a Bond, the Issue Conditions and the Corporations Act.

Term

- 2.3 The trust created by this Deed starts on the date of this Deed and, unless terminated earlier, ends on the day before the 80th anniversary of the date of this Deed.

Name of the Trust

- 2.4 The trust created by this Deed is known as the TAT Debenture Trust.

3 Creation and Issue of Bonds

Issue of Bonds

- 3.1 OIML will issue 10,100,000 Bonds with a face value of \$1.00 each on the First Issue Date. The Issue Conditions set out in Schedule 1 will apply to the First Issue.

Further Issues

- 3.2 Subject to clauses 3.4 and 7.1 of this Deed, OIML may at any time and from time to time issue further Bonds pursuant to this Deed to such persons, in such amounts and bearing such respective tenors and rates of interest (if any) and for such consideration and generally on such other terms and conditions as the directors of OIML may from time to time determine.
- 3.3 Subject to clause 3.4, the Bonds issued pursuant to clause 3.1 and any other Bonds issued thereafter pursuant to clause 3.2 will be issued with the benefit of and subject to the provisions of this Deed. Any new issue of Bonds (other than the Bonds issued under clause 3.1) will be issued on the terms and conditions prescribed for that issue (as to which a certificate signed by 2 directors of OIML on behalf of all directors will constitute sufficient evidence on which the

Trustee or any Bond Holder may rely), and those prescribed terms and conditions and the provisions of this Deed (or such of them as are applicable to the issue) is binding on OIML and the Bond Holders.

Auditor's Report and Notification to Trustee

3.4 Subject to clause 7.1 of this Deed:

- (a) whenever OIML desires to issue any further Bonds it must:
 - (i) notify the Trustee in writing of the amount of the Bonds which it proposes to issue; and
 - (ii) indicate to the Trustee whether the issue is for retail or wholesale issue; and
 - (iii) at the same time provide to the Trustee a report by the Auditor stating as at a date no more than 2 months before providing such report that, based on the Last Statement of Financial Position, the amount of the Bonds proposed to be issued could be issued without contravention of clause 7.1;
- (b) the Trustee may accept the report provided under clause 3.4(a) or, if the Trustee reasonably thinks that in the circumstances it should require a check report it may within 7 days after the receipt of the report furnished under clause 3.4(a) give notice to OIML that a check report is required, whereupon a check report must be obtained by OIML with all reasonable expedition at OIML's expense from a registered company auditor acceptable to it and chosen by the Trustee. Any accountant appointed by the Trustee to prepare a check report may make every adjustment to the Last Statement of Financial Position which in his opinion is an adjustment necessary to make a proper determination made by the Auditor for the purpose of any statement of financial position or in respect of any definition or other provision contained in this Deed and any reference in any such definition or other provision to a statement or report by, or to the opinion of, the Auditor must for the purposes of the check report or other report or determination be read as a reference to a statement or report by, or to the opinion of, the author of that check report;
- (c) the Trustee must within 14 days after the receipt of the report furnished under clause 3.4(a) or, if it requires a check report, within 7 days after the receipt of the check report, notify OIML in writing that OIML may issue:
 - (i) the amount of Bonds proposed to be issued; or
 - (ii) the amount specified in the report furnished under clause 3.4(a) as the amount of Bonds which could be issued without contravention of clause 7.1; or
 - (iii) the amount shown in the check report (if any) as the amount of the Bonds which could be issued without contravention of clause 7.1,

whichever is the least amount and OIML may, subject always to clause 7.1, at any time within 6 months after notice in writing is given by the Trustee under this clause 3.4(c) issue Bonds to an amount not exceeding the amount so notified by the Trustee.

Issue of Bonds by Inscribing Register

3.5 OIML will issue Bonds by registering or causing the Registrar to register the Bond Holder as the holder of the Bonds. Each Bond will be issued when the Bond Holder is inscribed in the Register as the holder of those Bonds. When Bonds are issued to a Bond Holder OIML will

include, or cause the Registrar to include in the Register, the particulars required by clause 20.1.

All Bond Holders Rank Equally

3.6 All Bond Holders will rank equally.

Bond Holders are Beneficial Owners of Bonds

3.7 The Bond Holders are deemed to be the beneficial owners of the Bonds registered in their respective names.

Payment of Commissions

3.8 OIML may pay commission, brokerage or procuration or other fees in relation to the issue of Bonds (including, without limitation, for underwriting the issue of Bonds) to any person.

Bonds Valid Despite Contravention of Clause 3

- 3.9 Bonds will be deemed to have been validly issued notwithstanding that their issue results in the contravention of this clause 3 or that at the time of the issue OIML was in contravention of clause 3.
- 3.10 OIML must take all action possible to remedy any contravention of this clause 3 within 7 days of becoming aware of the contravention.
- 3.11 OIML must not proceed with any issue of Bonds, if such issue would cause OIML to contravene this clause 3.

Chapters 2L and 6D of the Corporations Act, and Minimum Subscription

3.12 Until such time (*Retail Date*) as OIML gives notice to the Trustee as contemplated by clause 9.15 and the Trust Deed complies with section 283AB of the Corporations Act as contemplated by clauses 9.15 and 18.1(a)(iii), OIML must ensure that all offers to issue Bonds in accordance with this Deed that are made or to be made do not need disclosure to investors under Chapter 6D of the Corporations Act and are not made to any person who is a *retail client* as that term is defined in section 761A of the Corporations Act when they were or are made. After the Retail Date, no Bonds will be issued to a Bond Holder unless that holder subscribes for a minimum of \$10,000 worth of Bonds.

4 Charge

Creation

4.1 OIML as responsible entity of the Scheme charges to the Trustee its respective right, title and interest in, and to, the Scheme Assets to secure the Moneys Owing.

Nature

- 4.2 The charge, subject to the provisions of this Deed, constitutes:
- (a) a floating charge over any interest of OIML in any of the following present or future Scheme Assets comprising:
 - (i) Cash;

- (ii) negotiable instruments given to OIML towards payment of any indebtedness to it;
 - (iii) the Scheme's stock in trade; and
 - (iv) any debt or other monetary obligation forming part of the Scheme Assets; and
- (b) a fixed charge over the balance of the Scheme Assets.

Acknowledgement

4.3 The Trustee and OIML acknowledge that:

- (a) the obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, OIML under or in respect of this Deed (*Obligations*) are incurred by OIML solely in its capacity as responsible entity of the Scheme and that OIML will cease to have any Obligations under this Deed if OIML ceases for any reason to be the responsible entity of the Scheme;
- (b) OIML will not be liable to pay or satisfy any Obligations except out of the Scheme Assets against which it is entitled to be indemnified in respect of any Obligation incurred by it as responsible entity of the Scheme;
- (c) the Trustee may enforce its rights against OIML arising from non-performance or breach of the Obligations only to the extent that OIML is entitled to be indemnified out of the Scheme Assets;
- (d) if the Trustee does not recover all money owing to it arising from non-performance or breach of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against OIML in its personal capacity, except as permitted by clause 4.3(c) or (f); or
 - (ii) applying to have OIML wound up or proving in the winding up of OIML;
- (e) clause 4.3(d) does not in any way restrict the rights of the Trustee under section 601ND of the Corporations Act;
- (f) this clause does not limit OIML's personal liability (including liability for Obligations arising at any time whilst it is or has been the responsible entity of the Scheme) or the Trustee's rights against OIML, in the case of fraud, gross negligence, breach of trust or breach of duty by OIML, and the Trustee may bring proceedings against OIML in its personal capacity in the case of fraud, gross negligence, breach of trust or breach of duty by OIML.

4.4 OIML must not cease to be responsible entity of the Scheme unless:

- (a) it is removed as responsible entity of the Scheme by Members;
- (b) a court orders that OIML be removed as responsible entity of the Scheme; or
- (c) OIML retires and is replaced as responsible entity of the Scheme with the approval of the Trustee, such approval not to be unreasonably withheld by the Trustee, and the approval of the Members, if required.

4.5 It is acknowledged by the Trustee that the Fixed and Floating Charge given by OIML under clause 4.1 does not include the Almond Crops, Citrus Crops, Grape Crops and crops derived from any other Projects as they remain the property of:

- (a) the participants in the Projects;
- (b) the responsible entities and managers of the Projects and their nominees;
- (c) any lessee or licensee of a person specified in clause 4.5(b); or
- (d) any other person who derives title to the Almond Crops, Citrus Crops, Grape Crops or crops derived from the Projects through any of the persons described in clauses 4.5(a) to (c).

Chattel Securities Act

- 4.6 To the extent that the Fixed and Floating Charge is a charge over Scheme Assets to which the *Chattel Securities Act 1987* of Victoria or any corresponding legislation of any other jurisdiction applies, it will be a legal interest over that part of the Scheme Assets for the purposes of that legislation.

Crystallisation

- 4.7 The Trustee may serve a written notice upon OIML if an Event of Default has occurred and is subsisting stating that the floating charge is to convert into a fixed charge and describing the property affected by the notice, whereupon the floating charge will convert into a fixed charge in respect to the property described in that notice.

Automatic Crystallisation

- 4.8 The floating charge will automatically convert into a fixed charge over:
- (a) the whole of the Scheme Assets:
 - (i) upon any notice being given by the Trustee under clause 4.7;
 - (ii) upon the Liquidation of OIML while it is responsible entity of the Scheme or any action being taken to put OIML as responsible entity of the Scheme into Liquidation;
 - (iii) upon OIML ceasing or threatening to cease to carry on business or a substantial part of its business except as permitted under a Transaction Document;
 - (b) any proceeds of any debt or other monetary obligation, upon any creditor of OIML as responsible entity of the Scheme proposing to take any action to have these proceeds paid to the creditor pursuant to any statute or other law;
 - (c) any part of the Scheme Assets:
 - (i) upon any breach or action being taken by OIML to breach its obligations under any Transaction Documents in relation to that part of the Scheme Assets;
 - (ii) upon any action being taken by any person to distrain, attach or execute against that part of the Scheme Assets;
 - (iii) which is subject to a Security Interest in favour of any other person upon that person taking any action to exercise any right against that part of the Scheme Assets; and

- (iv) upon the appointment by any person of an official or other manager, voluntary administrator, receiver or receiver and manager of that part of the Scheme Assets.

Reinstatement of Floating Charge

- 4.9 If the floating charge has converted into a fixed charge over any part of the Scheme Assets the Trustee may serve a written notice upon OIML stating that the fixed charge is to convert into a floating charge and describing the property affected by the notice, whereupon the fixed charge will convert into a floating charge over the property described in that notice.

Fixed Charge over Debt Proceeds

- 4.10 OIML must upon receipt of the proceeds of any debt or other monetary obligation which are subject to a fixed charge pay those moneys into an account nominated by the Trustee either with the Trustee or another person and of which the Trustee is the sole or a joint signatory.

Authority to deal with Floating Charge property

- 4.11 Subject to clauses 4.7 and 4.8, the Trustee authorises OIML to dispose of or otherwise deal with Scheme Assets subject to the floating charge in the ordinary course of its ordinary business.

Prohibited Dealings

- 4.12 OIML must not:
- (a) create, attempt to create or permit to exist any Encumbrance in relation to the Scheme Assets subject to the fixed charge (whether ranking ahead of, or equally with, the fixed charge) unless the Encumbrance;
 - (i) arises by operation of law to secure the payment of moneys which have been due and owing for less than 30 days;
 - (ii) ranks in priority below the fixed charge and has been fully disclosed to and approved in writing by the Trustee;
 - (iii) has otherwise been fully disclosed to and approved in writing by the Trustee; or
 - (iv) is acknowledged by the Trustee under clause 4.13.
 - (b) dispose of, declare a trust over or otherwise create or permit the creation or existence of any interest in, or part with possession of, any Scheme Assets subject to the fixed charge without the Trustee's consent, which must not be unreasonably withheld, unless the dealing in respect of the Scheme Asset has been disclosed in clause 4.13.

Acknowledgements

- 4.13 The Trustee provides its acknowledgment that the Group:
- (a) has entered into or may enter into Occupancy Agreements on terms and conditions consistent with those set out in the First PDS in relation to the Land and Improvements which will form part of Group Assets on or about 30 September 2005;
 - (b) may grant first-ranking mortgages to Australia and New Zealand Banking Group Limited over:
 - (i) Solara South;

(ii) Liparoo;

- (c) may provide the other securities expressly referred to in the First PDS and undertake the actions expressly referred to in the First PDS,

and acknowledges that the Transaction Documents are granted subject to the rights and interests described in clauses 4.13(a) to (c), whether those rights and interests exist at the date of this Deed or the Fixed and Floating Charge or arise subsequently.

- 4.14 The parties intend that the charge created by clause 4.1 takes priority over all other Encumbrances granted by OIML over the Scheme Assets.

Default Powers

- 4.15 The Trustee may only if an Event of Default has occurred and is subsisting exercise any or all of the rights set out in clauses 4.17 to 4.23 or Issue Condition 5.5 in any manner that it thinks fit and notwithstanding that a Receiver has been appointed.
- 4.16 The interpretation of any right set out in this clauses 4.17 to 4.23 will not be restricted by reference to or inference from any other right.

Statutory and Implied Powers

- 4.17 The Trustee may exercise all rights capable of being conferred by the legislation, regulations and other laws of any relevant jurisdiction upon chargees under mortgage, deeds or otherwise and such rights will be in augmentation of the powers expressly conferred upon the Trustee under this Deed and may be exercised by the Trustee immediately upon or at any time after any default by OIML without any notice or expiration of time under those laws being necessary and all other provisions of those laws will be deemed to be negated or varied only so far as they are inconsistent with the terms and provisions of this Deed.

Sale

- 4.18 The Trustee may sell the Secured Property and, without limitation, any sale may be:
- (a) by private treaty, public auction, tender or otherwise;
 - (b) together with the sale of any other property by any other person;
 - (c) upon terms and conditions that the Trustee thinks fit, including, without limitation, any terms and conditions:
 - (i) whereby:
 - (A) the purchaser is allowed time to pay the whole or any part of the purchase price either with or without interest and either with or without security;
 - (B) any rights over the Secured Property are reserved or granted;
 - (C) the consideration is expressed in any currency or consists of something other than money;
 - (D) the purchase price or other consideration is payable by instalments; and
 - (E) if the sale is by auction or tender, a reserve price determined by the Trustee is set;

(ii) relating to the title of the property;

and the Trustee may:

- (iii) buy in at any auction;
- (iv) disclose or not disclose any reserve price;
- (v) rescind any contract of sale and resell the property without being liable for any loss;
- (vi) advertise or not advertise the sale of the Secured Property; and
- (vii) make any agreements or arrangements relating to the sale.

General Dealings

4.19 The Trustee may:

- (a) take control of and get in the Secured Property;
- (b) manage and otherwise deal with the Secured Property;
- (c) exercise the rights of OIML and observe and perform its obligations in respect of the Secured Property and cause and permit any other person to observe or perform their obligations in respect of the Secured Property;
- (d) vary, replace or release any right or interest of OIML or any other person;
- (e) exchange any part of the Secured Property for any other property and, if there is a difference in value between the property exchanged, give or receive, as the case may be, any moneys or other consideration equal to the difference in value in order to give or receive equal value for the exchange; and
- (f) grant options and rights of first refusal to acquire the Secured Property.

Raise and Lend Money

4.20 The Trustee may upon any terms and conditions that the Trustee thinks fit:

- (a) borrow or otherwise raise moneys or obtain financial accommodation on the security of the Secured Property, including, without limitation, any moneys required in relation to the exercise of any right by the Trustee or a Receiver or an Attorney; and
- (b) lend or otherwise grant financial accommodation to a Receiver or an Attorney on the security of the Secured Property, including, without limitation, any moneys required in relation to the exercise of any right by the Trustee or a Receiver or an Attorney; and
- (c) deal with any mortgage granted by it over the Secured Property and enter into any agreement relating to the priority of that mortgage and discharge it.

Investment of Moneys

4.21 Any moneys received by the Trustee which are not required to be immediately applied in the exercise of any right or pursuant to clauses 4.17 to 4.22 may be invested in the name or under the control of the Trustee in any Authorised Investment that the Trustee may, in its absolute discretion, think fit and the Trustee may at any time or times vary any such investments for or into other Authorised Investments and shall not be responsible for any loss occasioned thereby, whether by depreciation in value or otherwise.

Receivers

4.22 The Trustee may:

- (a) either before or after it has taken control of the Secured Property:
 - (i) appoint in writing any one or more persons to be a receiver or receiver and manager of the Secured Property or a part of it; and
 - (ii) appoint a different receiver or receiver and manager for different parts of the Secured Property;
- (b) if more than one person is appointed as Receiver of any property, the Trustee may empower them to act jointly or jointly and severally;
- (c) remove the Receiver, appoint another in his or her place if the Receiver is removed, retires or dies, and reappoint a Receiver who has retired or been removed; and
- (d) fix the remuneration of the Receiver.

Ancillary Powers

4.23 The Trustee may:

- (a) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings;
- (b) give receipts and release, discharge or compromise any debt or other obligation owed to or by OIML;
- (c) enter into and execute and deliver documents and agreements in respect of the exercise of its other rights under clauses 4.17 to 4.22;
- (d) delegate to any person any other right (including this right of delegation) under clauses 4.17 to 4.22; and
- (e) do anything incidental or conducive to the exercise of any of its other rights clauses 4.17 to 4.22.

Receivers as agents

4.24 A Receiver, subject to clause 4.25, will be the agent of OIML who alone will be responsible for the Receiver's acts and omissions and remuneration.

4.25 The Trustee may appoint a Receiver as the agent of the Trustee and delegate to a Receiver any of the Trustee's rights under this document.

Powers of Receivers

4.26 A Receiver will have the right in relation to any property of which the Receiver is appointed to do everything that OIML may lawfully authorise an agent to do on behalf of OIML in relation to that property and, without limitation, a Receiver may in relation to that property exercise:

- (a) the rights capable of being conferred upon receivers and receivers and managers by the Corporations Act and statutes and laws of any relevant jurisdiction;
- (b) the rights set out in clauses 4.18 to 4.21 and clause 4.23 inclusive;
- (c) the rights of OIML and the directors of OIML; and

- (d) any other rights the Trustee may by written notice to a Receiver give to a Receiver.
- 4.27 The Trustee may by written notice to a Receiver at the time of a Receiver's appointment or any subsequent times give any rights to a Receiver that the Trustee thinks fit.

Attorneys

- 4.28 If an Event of Default has occurred, OIML irrevocably appoints the Trustee its attorney with the right for so long as an Event of Default has occurred and is subsisting to do everything that OIML may lawfully authorise an agent to do in respect of this Deed and the Secured Property including, without limitation, anything described in clauses 4.18 to 4.21 and clause 4.23.
- 4.29 Any Attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty.
- 4.30 Any Attorney may appoint substitutes and otherwise delegate its rights (including this right of delegation).
- 4.31 OIML must ratify any exercise of a right by an Attorney.
- 4.32 The power of attorney is granted to secure the performance of the obligations of OIML to the Trustee under this Deed, the proprietary interests of the Trustee under this Deed and the payment of the Moneys Owings to the Trustee.

Exercise of Default Rights

- 4.33 OIML must not cause or permit the Trustee, a Receiver or an Attorney to be prevented or hindered from exercising its rights under this Deed or any other Transaction Document.
- 4.34 If the Trustee has taken control of the Secured Property it may give up control of the Secured Property at any time.
- 4.35 The obligations of OIML under this document relating to the Secured Property will not be affected by the Trustee, any Receiver or any Attorney taking control of the Secured Property.

Exclusion of Legislation

- 4.36 The provisions implied in mortgages by the legislation and regulations of any relevant jurisdiction will for the purposes of this Deed be negated or varied only so far as they are inconsistent with the provisions of this document and are otherwise varied so as to become consistent with this Deed.
- 4.37 Any statutory restrictions (other than mandatory restrictions) upon any right of the Trustee, Receiver or Attorney to deal with the Secured Property will not apply to the rights of those persons under this Deed.
- 4.38 The provisions of any existing or future moratorium, financial emergency or other like legislation or regulations whether Commonwealth, State or Territory will not apply to this Deed or the Moneys Owings and to the extent legally able any such legislation and regulations are hereby expressly excluded.

5 Bond Conditions

- 5.1 The Bonds are to be held subject to and with the benefit of this Deed and the Issue Conditions. This Deed and the Issue Conditions are binding on OIML in its own right and in its capacity as

the responsible entity for the time being of the Scheme, and the Trustee and the Bond Holders and all persons claiming through or under them respectively.

6 Acknowledgement Of Indebtedness And Payment Of Principal Moneys And Interest

Acknowledgement

- 6.1 Subject to clause 6.2, OIML acknowledges its indebtedness to the Trustee in respect of the Moneys Owning.

Payment of Principal Moneys and Interest

- 6.2 OIML must pay to the Trustee the principal moneys represented by the Bonds or, as the case may be, such part of the Bonds as ought to be redeemed on the date due for repayment in accordance with the Issue Conditions and will, in the meantime and until the whole of the Bonds have been redeemed in accordance with the Issue Conditions pay to the Trustee interest on the principal moneys represented by the Bonds in accordance with the Issue Conditions, provided always that, unless an Event of Default has occurred and is subsisting, payment of such principal moneys and interest must, unless the Trustee otherwise directs, be made to the Bond Holders (net of any withholding or other Taxes required to be deducted) and every such payment operates to the extent of the payment in satisfaction of OIML's obligations under this clause 6.2.

Amount is Unable to be Distributed

- 6.3 If any amount to be distributed to a Bond Holder under clause 6.2 is unable to be distributed, for any reason, within six months of the date on which the amount was first sought to be distributed, the relevant amount will, at the end of such period, be:
- (a) if it has been paid by OIML to the Trustee for distribution to the Bond Holder, returned by the Trustee to OIML, provided no Event of Default or Potential Event of Default subsists at the relevant time; or
 - (b) retained by OIML, unless an Event of Default or Potential Event of Default subsists at the relevant time in which case OIML must pay the amount to the Trustee,
- as the case may be.
- 6.4 To the extent that OIML receives or retains any moneys under clause 6.3, OIML must pay the relevant amount to a Bond Holder entitled to it on demand by that Bond Holder at any time before the end of six years following the date on which the relevant amount was first sought to be distributed by OIML to the Bond Holder under clause 6.2.

7 OIML's Representations, Warranties And Covenants

Limitation on Issue of Bonds

- 7.1 OIML hereby covenants with the Trustee that OIML will not permit the Gearing Ratio set out in clause 7.2(a) to be exceeded while there are any Outstanding Bonds.

Covenants by OIML

- 7.2 OIML covenants with the Trustee that:

- (a) it will not suffer or permit the Gearing Ratio to exceed 80% whilst there are any Outstanding Bonds;
- (b) it will execute and do all such assurances and things as are reasonably required to give effect to this Deed and confer the full benefit of this Deed upon Bond Holders;
- (c) it will strive to carry on and conduct its business in a proper and efficient manner;
- (d) it will provide to the Trustee by the earlier of 21 days before the next annual general meeting after the end of the financial year, or 4 months after the end of the financial year a copy of the audited consolidated Financial Statements, Directors' report and Auditor's report for the Scheme and OIML as at the end of the financial year;
- (e) it will provide to the Trustee within 75 days after the end of each first half year of each financial year a copy of the consolidated half year Financial Statements, Directors' report and Auditor's report for the Scheme and OIML as at the end of that first half year;
- (f) it will provide to the Trustee a certificate signed by two of its directors at the same time that it provides the Financial Statements under clauses 7.2(d) or (e), which certificate must set out the Gearing Ratio as at the date of the relevant statement of financial position and the relevant calculations used in determining the Gearing Ratio;
- (g) it will make available for inspection by the Trustee or any authorised officer or employee of the Trustee or any registered company auditor appointed by the Trustee the whole of the Financial Statements or other records of the Scheme and OIML and give to the Trustee or any authorised officer or employee of the Trustee any information, explanations or other assistance that it reasonably requires with respect to all matters relating to the Financial Statements or other records of the Scheme and OIML;
- (h) it will duly comply with all statutory requirements with respect to the filing of reports, accounts and statements and the furnishing of reports, accounts and statements to the Trustee, the keeping open of registers for inspection and all other like matters;
- (i) on the delivery to its Specified Office of an application by persons holding not less than one-tenth of the amount of Outstanding Bonds, by giving notice to each of the Bond Holders at the Bond Holder's address as specified in the Register, it will convene a meeting of Bond Holders to give to the Trustee directions in relation to the exercise of its powers or consider the most recent Financial Statements, such meeting to be held at a time and place specified in the notice and presided over by a person nominated by the Trustee or failing such nomination such other person as is appointed for that purpose by the Bond Holders present at the meeting. If OIML is required to call a meeting under this clause 7.2(i), it must give notice of the time and place of the meeting to the Trustee and its Auditors;
- (j) it will duly and punctually observe, fulfil, perform and comply with all the covenants, terms, conditions and obligations imposed upon it or under this Deed or the Issue Conditions and the Corporations Act (including, Chapter 2L if applicable) and notify the Trustee in writing immediately on becoming aware that any of such covenants, terms, conditions and obligations cannot or are reasonably unlikely to be able to be fulfilled or performed;
- (k) it will:

- (i) as soon as reasonably practical and in any event within 45 calendar days from the First Issue Date, procure the provisional registration of the Fixed and Floating Charge with ASIC; and
- (ii) as soon as reasonably practical, cause the stamping of the Transaction Documents and the final registration of the Fixed and Floating Charge with ASIC;
- (l) it will use its best endeavours to ensure that all authorisations required for the validity, enforceability and performance of its obligations under this Deed and the effectiveness of the Transaction Documents are obtained and promptly renewed and remain in full force and effect;
- (m) it will notify the Trustee upon any entity becoming a Controlled Entity or upon any application, order, proceeding or resolution to which clause 12.1(d) applies being made, commenced or passed;
- (n) it will upon the happening of an Event of Default or a Potential Event of Default, give the Trustee a certificate signed by 2 Directors giving full written particulars of it and of the action taken or proposed to be taken by OIML to remedy it;
- (o) it will furnish to the Trustee within 21 days after each due date for payment of interest on the Bonds a report signed by not less than 2 of the directors of OIML on behalf of the Board of Directors stating:
 - (i) whether or not the interest due on the Bonds as at the due date for payment of interest last preceding the date of the report has been paid; and
 - (ii) the principal amount of the Bonds outstanding at such date;
- (p) it will provide a copy of this Deed to a Bond Holder or the Trustee if they request a copy; and
- (q) after receiving from the Auditor or any auditor of any Controlled Entity any report of any description relevant to the exercise and performance by the Trustee of its powers and duties under this Deed or under any legislation, it will immediately provide the Trustee with a copy of such report.

Representations by OIML

7.3 OIML represents and warrants to the Trustee that:

- (a) OIML has entered into this Deed in its capacity as responsible entity of the Scheme under the Constitution;
- (b) OIML has full, complete and valid authority and power to enter into this Deed under the terms of the Constitution in the capacity of responsible entity under the Scheme;
- (c) it is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;
- (d) this Deed is enforceable in accordance with its terms and is not void or voidable;
- (e) it has capacity unconditionally to execute and deliver and perform its obligations under this Deed and the Fixed and Floating Charge;

- (f) it has taken all necessary action to authorise its unconditional execution and delivery of and the performance and observance of its obligations under this Deed;
- (g) each authorisation from and filing and registration with a Government Body necessary to enable it to unconditionally execute and deliver and perform and observe its obligations under this Deed and carry on its principal business or activity has been obtained, effected and complied with;
- (h) the unconditional execution and delivery of and performance and observance by it of its obligations under this Deed does not contravene:
 - (i) a law or directive from a Government Body;
 - (ii) the constitution or other constituent documents of OIML;
 - (iii) an agreement or instrument to which OIML is a party; or
 - (iv) an obligation of OIML to any other person;
- (i) no Event of Default has occurred;
- (j) no Potential Event of Default has occurred which has not been notified to the Trustee in accordance with clause 7.2(n);
- (k) there is no material litigation commenced or threatened which has not been disclosed to the Trustee;
- (l) its payment obligations under each Transaction Document rank ahead of all its unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law;

Each warranty and representation under this clause 7.3 will survive the execution of this Deed and be deemed to be repeated with reference to the facts and circumstances then existing on each Interest Calculation Date and the Maturity Date.

Trustee's Role in Respect of Events of Default or Potential Events of Default

- 7.4 Notwithstanding anything else contained in this Deed other than clause 7.5, but always subject to its obligations under the Corporations Act, the Trustee is under no obligation at any time to consider whether any of the covenants contained in clause 7.2 or the representations contained in clause 7.3 have been breached or whether there is any matter or thing that has occurred or is likely to occur that may give rise to an Event of Default or Potential Event of Default and, in the absence of express notice to the contrary, the Trustee is entitled to assume at all times that the covenants contained in clause 7.2 and the representations contained in clause 7.3 have not been breached and are true and correct at all times.
- 7.5 Clause 7.4 does not relieve the Trustee from any obligation to monitor OIML's compliance with clauses 7.2(d), 7.2(e) and 7.2(f).

8 Reports, etc. by OIML

Maintenance of Register

- 8.1 OIML hereby covenants with the Trustee that, within 90 days of the close of each financial year, it will cause a report certified by 2 Directors to be lodged with the Trustee stating:

- (a) whether or not OIML or its agents have duly maintained the Register; and
- (b) whether or not to the best of OIML's knowledge, information and belief it has become aware of any matter which is in its opinion relevant to the exercise and performance of the powers and duties imposed by this Deed upon the Trustee.

Report by OIML

8.2 OIML must, within one month after the end of each Quarter provide to the Trustee, and ASIC (if required by law) a report signed by at least two Directors on behalf of all the Directors which sets out in detail any matters relating to that period adversely affecting the interests of Bond Holders and, without limiting the generality of the foregoing, stating:

- (a) whether or not since the end of the preceding period of three months (or, in the case of the first such report furnished, since the date of this Deed) in the opinion of the Directors:
 - (i) the limitations on the amount of Bonds which may be Outstanding at any one time under this Deed have been exceeded and, if they have been exceeded, particulars of issues exceeding those limitations;
 - (ii) OIML has complied with all the covenants and provisions binding upon them under the Bonds, this Deed, the Fixed and Floating Charge and the Issue Conditions, including clause 7.2(a);
 - (iii) any event has happened that has caused or could cause the Bonds or any provision of this Deed to become immediately enforceable and if so particulars of that event;
 - (iv) there has been any substantial change in the nature of the business of the Group since the issue of the Bonds that has not previously been reported and, if so, particulars of that change;
 - (v) any circumstances have occurred that materially prejudice OIML and any of the Controlled Entities or any security or charge included in or created by the Bonds, this Deed and the Fixed and Floating Charge and if so, particulars of those circumstances;
 - (vi) where OIML has deposited money with, lent money to, or assumed any liability of, a company which is a Related Corporation of OIML, particulars of:
 - (A) the total amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report, and
 - (B) the total amounts owing to OIML in respect of money so deposited or lent, and the extent of any liability so assumed as at the end of the period covered by the report;

distinguishing between deposits, loans and assumptions of liability that are secured and those that are unsecured, but not including any deposit with, loan to, or liability assumed on behalf of, a company if that company has guaranteed the repayment of the Bonds issued pursuant to this Deed and has secured the guarantee by a charge over its property in favour of the Trustee for the Bond Holders;

- (vii) the net amount outstanding on any advances at the end of the Quarter if it has created a charge other than the Fixed and Floating Charge where:
- (A) the total amount to be advanced on the security of the charge is indeterminate; and
 - (B) the advances are merged in a current account with bankers, trade creditors or anyone else; and
- (viii) any other matters that may materially prejudice any security or the interests of the Bond Holders.

8.3 Subject to clause 4.12, if OIML creates a charge over the Scheme Assets, other than the Fixed and Floating Charge, it must:

- (a) give the Trustee written details of the charge within 21 days after it is created; and
- (b) if the total amount to be advanced on the security of the charge is indeterminate and the advances are not merged in a current account with bankers, trade creditors or anyone else, give the Trustee written details of the amount of each advance within 7 days after it is made.

9 Discretion, Duties And Liability Of Trustee

Liability

- 9.1 The Trustee enters into this Deed and each Transaction Document to which it is a party only in its capacity as trustee of the Bond Holders and in no other capacity. A liability arising under or in connection with this Deed or a Transaction Document is limited to and can be enforced against the Trustee only to the extent to which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed or any other Transaction Document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, deed or transaction related to this Deed or any other Transaction Document.
- 9.2 The parties other than the Trustee may not sue the Trustee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee.
- 9.3 The provisions of clauses 9.1 to 9.7 do not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under this Deed or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets the subject of this Deed, as a result of the Trustee's fraud, gross negligence, breach of duty or breach of trust.
- 9.4 No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed or any other Transaction Document or otherwise, has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person, other than a person appointed by the Trustee itself, will be considered fraud, gross negligence, breach of duty or breach of trust by the Trustee for the purpose of clauses 9.1 to 9.7.
- 9.5 The Trustee is not obliged to do or refrain from doing anything under this Deed or any other Transaction Document (including incur any liability) unless the Trustee's liability is limited in a manner satisfactory to the Trustee in its absolute discretion.

- 9.6 A failure by the Trustee to comply with or a breach by the Trustee of any of its obligations under any Transaction Document will not be considered to be fraud, gross negligence, breach of duty or breach of trust by the Trustee if the relevant failure or breach:
- (a) arose as a result of a breach by a person other than the Trustee of a Transaction Document where the performance of the action by the other person, the non-performance of which gave rise to such breach, is a precondition to the Trustee performing the said obligation;
 - (b) was in accordance with a lawful court order or direction or otherwise required by law; or
 - (c) was in accordance with an instruction or direction of the Bond Holders given at a meeting of Bond Holders duly convened and held in accordance with this Deed or the written consent or authority of Bond Holders given in accordance with this Deed.
- 9.7 All of the terms, clauses and conditions of this Deed and any other Transaction Document are subject to clauses 9.1 to 9.6.

Information

- 9.8 All information and other matters provided to or obtained by the Trustee, a delegate or any officer, employee, professional adviser or other consultant of the Trustee under, in connection with or related to this Deed, the other Transaction Documents or any obligation, duty or power of the Trustee under this Deed (*the Information*) is confidential to OIML and its Controlled Entities and may not be disclosed to any person other than as set out in clauses 9.9 or 9.10.
- 9.9 Information which is in the public domain is not required to be kept confidential.
- 9.10 Information that would otherwise be required to be kept confidential may be disclosed:
- (a) as (but only to the extent) required by this Deed or in connection with any obligation, duty or power of the Trustee under this Deed, a law or any judicial or regulatory body or authority;
 - (b) to those officers, employees, delegates and professional advisers of the Trustee to whom the Trustee considers it is reasonably necessary to reveal the Information or any part of it; or
 - (c) to a person approved of in writing by OIML.

Application of Funds

- 9.11 The Trustee will not incur any responsibility in respect of moneys subscribed by applicants for Bonds or be bound to see the due application of those moneys.

Directions from Bond Holders

- 9.12 Where any matter is authorised or directed by:
- (a) a resolution of Bond Holders passed at a meeting of Bond Holders duly convened and held in accordance with this Deed; or
 - (b) the written consent or authority of Bond Holders given in accordance with this Deed,
- the Trustee is bound to act in accordance with the authority, agreement or direction of the Bond Holders (unless the Trustee is of the opinion that the direction is inconsistent with the terms of the Bonds or the provisions of the Trust Deed or is otherwise objectionable) and is

released from any obligation or liability that would or might otherwise attach to the Trustee in relation to the subject matter of the Bond Holders' resolution, direction or authority.

- 9.13 The Trustee is continuously indemnified by the Bond Holders in respect of all liabilities and expenses properly incurred or suffered by the Trustee by reason of acting in accordance with the authority or direction of the Bond Holders.

Scheme Assets

- 9.14 The Trustee or any of its Authorised Representatives may, upon giving 5 Business Days notice, enter at any reasonable time on any land or building occupied by OIML or forming part of the Scheme Assets subject to the Fixed and Floating Charge, or in which any goods that form part of the Scheme Assets subject to the Fixed and Floating Charge are located to:
- (a) inspect their state and condition; and
 - (b) inspect and take copies of or extracts from any Books that in any way relate to Scheme Assets subject to the Fixed and Floating Charge.

Duties for public offering

- 9.15 If OIML notifies the Trustee that OIML is required under section 283AA of the Corporations Act to have entered into a trust deed that complies with section 283AB of the Corporations Act or that it proposes to make a retail offering, and the Trust Deed complies with section 283AB of the Corporations Act (including as a result of any modification, alteration, amendment or addition contemplated by clause 18.1(a)(iii)), then the Trustee must perform and comply with all duties and obligations imposed on it under Chapter 2L of the Corporations Act.

10 Application Of Moneys Received By Trustee

- 10.1 If an Event of Default occurs and the Trustee recovers any amount after taking such action as is permitted under this Deed, the Transaction Documents, the Issue Conditions, such amounts must be held by the Trustee upon trust to apply them (subject to Issue Condition 5):
- (a) first, in payment of all costs, charges and expenses incurred and payments made by the Trustee in or about the execution and administration or enforcement of the trusts of this Deed and the Transaction Documents (including all remuneration payable to the Trustee);
 - (b) secondly, in or towards payment *pari passu* and rateably of the Moneys Owing in respect of all Outstanding Bonds; and
 - (c) thirdly, in payment of the balance (if any) to OIML without prejudice to the provisions of this clause 10.1.

11 Authorised Investments

- 11.1 Any moneys which under the trusts contained in this Deed ought to or may be invested by the Trustee may be invested in the name or under the control of the Trustee in any Authorised Investment that the Trustee may, in its absolute discretion, think fit and the Trustee may at any time or times vary any such investments for or into other Authorised Investments and will not be responsible for any loss occasioned thereby, whether by depreciation in value or otherwise.

12 Events And Evidence Of Default

Events of Default

12.1 Each of the following is an Event of Default:

- (a) if OIML does not repay or otherwise redeem any Bond within 14 days after the day upon which such repayment or redemption becomes due in accordance with the Issue Conditions of such Bond;
- (b) if OIML does not pay any interest or other moneys (except principal moneys) which become due and payable by OIML pursuant to this Deed, in the case of interest, within 14 days after it becomes due for payment and in the case of any such other moneys, within 14 days after demand therefore upon OIML;
- (c) if OIML is in breach of clause 7.2(a), as established by the Last Statement of Financial Position, and that breach has not been remedied within 30 days of receiving written notice of the breach from the Trustee requiring it to be remedied;
- (d) where, except for the purposes of a solvent reconstruction or amalgamation:
 - (i) an application to a Court (other than a frivolous or vexatious application or an application which is not withdrawn, stayed or otherwise rendered no longer applicable within 14 days or such longer period as the Trustee may allow) or an order is made, proceedings are commenced (other than proceedings which are not withdrawn, stayed or otherwise rendered no longer applicable within 14 days or such longer period as the Trustee may allow) or a resolution is passed for:
 - (A) the winding up (whether under section 461 of the Corporations Act or otherwise), dissolution, official management or administration of OIML; or
 - (B) OIML to enter into any arrangement, compromise or composition with or assignment for the benefit of any of their creditors or any class of them; or
 - (ii) OIML ceases or suspends the conduct of all of its business or disposes of all of its assets or it threatens to do so;
- (e) with respect to any substantial part of the Scheme Assets or the Land or Improvements:
 - (i) a receiver, receiver and manager, Administrator or Controller is appointed; or
 - (ii) any distress, attachment or execution is levied or enforced;
- (f) if OIML is unable to pay its debts generally;
- (g) if financial accommodation provided to OIML in excess of \$100,000 or its equivalent becomes due and owing or capable of being declared due and owing before its stated maturity other than by the exercise of an option of OIML to pay it before its maturity;
- (h) if OIML fails to pay when due and owing any financial accommodation provided to it in excess of \$100,000 or its equivalent;
- (i) this Deed is terminated;


- (j) if a representation, warranty or statement made or deemed to be made by OIML in a Transaction Document or any document contemplated by or relating to a Transaction Document is untrue or misleading in any material respect;
- (k) if the Fixed and Floating Charge is void, voidable or otherwise unenforceable by the Trustee or is claimed to be so by OIML, as the case requires;
- (l) if an Encumbrance which the Fixed and Floating Charge purports to constitute ceases to have the priority which it purports to have under the Fixed and Floating Charge or under any agreement between OIML and the Trustee or becomes ineffective as security for the payment of the moneys or the performance or observance of the obligations which it purports to secure, otherwise than by any act of the Trustee;
- (m) if an authorisation from a Government Body necessary to enable:
- (i) OIML to carry on its principal business or activity; or
 - (ii) the Trustee to exercise its rights under the Transaction Documents,
- ceases to be in full force and effect and the cessation is not rectified within 21 days of it first occurring;
- (n) if it becomes unlawful for OIML to perform or observe any of its material obligations under a Transaction Document and the illegality is not rectified within 21 days of it first occurring;
- (o) if any person who holds a Security Interest over the Land or Improvements exercises a right under that Security Interest to recover any moneys the payment of which is secured by that Security Interest or enforce any other obligation the performance or observance of which is secured by it;
- (p) if OIML breaches any covenant contained in clauses 7.2(d), (e), (f) or (g) and fails to rectify the breach within 21 days of receiving notice from the Trustee requiring it to remedy such breach;
- (q) if without the Trustee's prior written consent, any alteration is made to the terms and conditions of the Constitution which might, in the Trustee's reasonable opinion, detrimentally affect the Bond Holder's position under this Deed; and
- (r) if an investigation is instituted under the Corporations Act or other legislation into, or an inspector is appointed to investigate, the affairs of OIML other than an investigation, post-vet or surveillance visit by ASIC as part of its normal monitoring of responsible entities, issuers of securities and disclosure documents.

Only the Trustee May Enforce the Provisions of this Deed

- 12.2 Only the Trustee may enforce the provisions of this Deed, the Bonds and the other Transaction Documents (including without limitation applying for liquidation, lodging a proof or claim or seeking damages) on behalf of Bond Holders, except that a Bond Holder, subject to clause 12.5, may proceed directly against OIML to enforce the performance of any of the provisions of this Deed, the Bonds or any of the other Transaction Documents, if the Trustee has failed to do so after being directed to do so by Special Resolution passed at a meeting of Bond Holders and at least 21 days have elapsed since that direction was given to the Trustee.

Evidence of Default

- 12.3 Should the Trustee in accordance with this Deed, the Issue Conditions or any of the other Transaction Documents take any proceedings, proof that default has been made in paying any



Moneys Owning to the Bond Holders of any Bonds will (unless the contrary be proved) be sufficient evidence that default has been made as regards all other Bonds in respect of which a corresponding payment is then due.

Judgment to be Held in the Name of the Trustee

- 12.4 Any judgment or amount obtained by or on behalf of Bond Holders in respect of Moneys Owning on any Bonds as a result of proceedings instituted by, or to which the Trustee is a party, under this clause 12 must be entered or held in the name of the Trustee and will be held by or on behalf of the Trustee under and for application in accordance with this Deed and the Issue Conditions.

Circumstances in Which Bond Holders May Take Action

- 12.5 No Bond Holder may take action or institute proceedings against OIML for the enforcement of any provision of this Deed, the Bonds or any of the other Transaction Documents (including in particular recovery of Moneys Owning and including without limitation applying for Liquidation or lodging a proof or claim or seeking damages) unless the Trustee would in similar circumstances be entitled to take such action or institute such proceedings under this Deed or any of the other Transaction Documents.

Trustee to be Indemnified

- 12.6 The Trustee need not take any proceedings under this Deed or any of the other Transaction Documents unless it is indemnified to its satisfaction against all actions, proceedings, claims and demands to which it may thereby render itself liable and all costs, charges, damages and expenses which it may incur by so doing.

13 Payment To Bond Holders

- 13.1 Any payment to be made in respect of the Bonds by OIML or the Trustee may be made in the manner provided in the Issue Conditions and any payment so made will be a good discharge to OIML or the Trustee, as the case may be.

14 Provisions Supplemental To Trustee Act 1958

- 14.1 It is hereby declared that, in addition to the powers conferred by the *Trustee Act 1958 (Vic)* or any other law that grants powers to or regulates the conduct of trustees, the following provisions apply:
- (a) the Trustee may in relation to this Deed act or decline to act on the opinion or advice of or any information obtained from any lawyer, valuer, accountant, surveyor, broker, auctioneer or other expert and whether obtained by OIML or its Related Corporations or the Trustee or otherwise and so that any such advice may be conveyed by any written or electronic form of communication, including facsimile or electronic mail and is not to be responsible for any loss occasioned by so acting or any error in such electronic mail or facsimile transmission or the same not be authentic;
 - (b) the Trustee is at liberty to accept a certificate given or statement made by any barrister, solicitor, attorney, auditor or officer of OIML or its Related Corporations as the case may be and is not bound to call for further evidence or be responsible for any loss occasioned by failure to do so;

- (c) the Trustee is not under any liability whatsoever except for its wilful default, fraud, gross negligence or breach of trust or except for a default or breach of trust wilfully committed by its employee or employees acting as such;
- (d) without prejudice to the right of indemnity given by law to trustees, the Trustee is entitled to be indemnified by OIML in respect of all liabilities and expenses reasonably incurred in the execution or purported execution of the trusts hereof or the exercise or attempted exercise of any of the powers, authorities and discretions vested in it under this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted to be done relating to this Deed, other than to the extent to which a claim arises out of the wilful default, fraud, gross negligence or breach of trust of the Trustee or the Trustee is entitled to be indemnified by the Bond Holder under clause 9.13 and the Trustee may retain and pay out of any moneys in its hands all sums necessary to effectuate such indemnity;
- (e) the Trustee may unless it is directed in writing to the contrary by the holders for the time being of not less than three-quarters of the amount of Outstanding Bonds or is directed to do so by a resolution of Bond Holders passed at a meeting held under sections 283EA, 283EB or 283EC of the Corporations Act and at any time whenever it thinks it expedient in the interests of the Bond Holders to do so waive on such terms and conditions as it deems expedient any breach by OIML of any of the covenants obligations conditions or agreements contained in this Deed.

15 Delegation By Trustee And Applications To The Court

15.1 In addition to the powers conferred on the Trustee by law or otherwise in this Deed, the Trustee may in its discretion:

- (a) delegate from time to time and at any time and to any person or persons any of the trusts, powers, authorities or discretions vested in the Trustee which cannot conveniently be exercised by it or through its employees upon such terms and conditions and under such regulations (including the giving of power to sub-delegate) as the Trustee may think fit;
- (b) instead of acting personally or in the case of a company through its permanent employees employed in the carrying out of any of the trusts under this Trust Deed or in the conduct of the business of the company as the case may be and at the expense of the company as the case may be appoint an agent to transact all business and do all acts required to be done under or pursuant to this Deed including the receipt and payment of money;
- (c) delegate from time to time and at any time to one or some of its officers any of the trusts, powers, authorities and discretions vested in the Trustee;
- (d) apply to the Court for directions in relation to any questions arising either before or after Moneys Owning have become payable and assent to and approve of or oppose any application to the Court made by or at the instance of any Bond Holder;
- (e) at any time after Moneys Owning become payable apply to the Court for an order that the trusts hereof be carried into execution under the direction of the Court and for any other order or directions in relation to the administration of the trusts hereof as the Trustee may deem expedient.

16 Trustee's Remuneration

16.1 OIML covenants with the Trustee:

- (a) that OIML must pay to the Trustee by way of remuneration for its services as Trustee an annual fee of \$20,000 (*CPI Adjusted*) unless a second issue of Bonds has occurred or the Bonds issued on the First Issue Date are transferred to a person other than a Related Corporation or affiliate of the first Bond Holder under this Deed, in which case, \$30,000 (*CPI Adjusted*), payable in arrears by six-monthly payments (except for the first and last payments pursuant to this Deed which are proportionate to the number of days in the relevant period) for the six months ended December and June respectively in each year, with payments to be made within one month of the end of each such six monthly period;
- (b) that without limiting the generality of the other provisions of this Deed, OIML will pay to the Trustee on demand all costs, charges and expenses reasonably and properly incurred by or on behalf of the Trustee:
 - (i) in or about the preparation, execution and stamping of the Transaction Documents and any deed amending or supplementing the Transaction Documents;
 - (ii) in or in connection with the carrying out by the Trustee of any right, power or privilege by the Transaction Documents, the Issue Conditions or law conferred on the Trustee;
 - (iii) in or in connection with any breach or default in the observance or performance by OIML of the covenants and obligations of the Transaction Documents or the Issue Conditions, including (without limiting the generality of the foregoing) the rights powers and privileges referred to in clause 9;
 - (iv) in or in connection with the convening and holding of any meeting of Bond Holders or the carrying out of any directions or resolutions of any such meeting;
 - (v) in or in connection with or incidental to exercising its powers or carrying out its obligations under the Transaction Documents or under any statute of a special or unusual nature;
 - (vi) in relation to any act performed by the Trustee as agent of or on behalf of OIML, including without limitation, maintaining or causing to be maintained the Register;
- (c) that the remuneration and payments pursuant to clauses 16.1(a) and (b) and any indemnities granted to the Trustee under this Deed, including clause 14.1(d), must be paid in priority to any claim by any Bond Holder and continue to be payable until the trusts are finally wound up and whether or not the trusts are in the course of administration by or under the order of the Court and the Trustee may retain and pay to itself all such remuneration and payments and any moneys for the time being in its hands upon the trusts of this Deed or any guarantee pursuant to this Deed;
- (d) without limiting the generality of this clause 16.1, the Trustee may, in any case where it is entitled under clause 14.1(d) or this clause 16.1 to be indemnified or paid by OIML if it incurs a cost, charge, liability or expense (including all Taxes), require OIML to advance to it before that cost, charge, liability or expense is incurred a sum sufficient to cover that cost, charge, liability or expense. A certificate signed by an

authorised officer of the Trustee stating the amount of any advance required under this clause 16.1 will, in the absence of manifest error, be conclusive and binding on the parties to this Deed.

- 16.2 For the purposes of clause 16.1 *CPI Adjusted* on a specified day, means increased in the same proportion as the CPI published immediately before the specified day bears to the CPI published for the 31 December 2005 quarter.

17 Notices

- 17.1 Any Notice given under or pursuant to this Deed or the other Transaction Documents must be in writing and be deemed duly given or made if delivered or sent by post or facsimile transmission or electronic mail as follows:

(a) The Trustee


Level 3, 151 Rathdowne Street
Carlton Victoria 3053
Facsimile: 03 9639 0286
Email: ssilavecky@trust.com.au
Attention: Stenick Silavecky

(b) Orchard Investments Management Limited

Level 8, 461 Bourke Street
Melbourne Victoria 3000
Facsimile: 03 9670 4271
Email: OIMLenquiries@Timbercorp.com.au
Attention: Company Secretary

Any party may change its address or facsimile numbers for the purposes of this Deed and the other Transaction Documents by giving notice or such change to the other parties pursuant to the provisions of this clause 17.1.

- 17.2 Any notice, demand or other communication is deemed, in the absence of proof to the contrary, to have been received by the person to whom it was sent.
- 17.3 Any notice given by the Trustee or by OIML to a Bond Holder must be given in accordance with Issue Condition 9.
- 17.4 In this clause 17:
- (a) notice includes a demand, consent, request or other communication under or pursuant to a provision of this Deed and the Fixed and Floating Charge;
 - (b) given, in relation to a demand, means made; and
 - (c) cognate expressions have cognate meanings.
- 17.5 A notice, demand or other communication that complies with this clause is regarded as given and received:
- (a) if it is sent by post – it is deemed received if posted within Australia to an Australian address on the second Business Day after posting and in any other case, on the seventh Business Day after posting;

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- (b) if it is sent by facsimile – it is deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number. A communication given by facsimile is deemed given in the form transmitted unless the message is not fully received in legible form and the addressee immediately notifies the sender of that fact;
 - (c) if it is sent by electronic mail – it is deemed received:
 - (i) if the electronic message travels directly to the addressee, at the time when it enters the addressee's system; or
 - (ii) in all other cases, at the time when the electronic message enters the first system outside the control of the sender.
- 17.6 If a communication to a party is received by it:
- (a) after 5:00pm (local time in the place of receipt); or
 - (b) on a day which is not a Business Day,
- it is deemed to have been received at the commencement of the next Business Day.
- 17.7 OIML may rely on the notice, demand or other communication received from the Trustee which it believes to be genuine and correct without further verification from the Bond Holders.
- 17.8 The Trustee may rely on the notice, demand or other communication received from OIML which it believes to be genuine and correct without further verification from OIML.

18 Alteration And Assignment

Alteration by OIML and the Trustee

- 18.1 At any time and from time to time OIML and the Trustee may jointly modify, alter, amend or add to this Deed and the Issue Conditions:
- (a) if in their opinion such modification, alteration, amendment or addition is:
 - (i) of a formal or technical nature;
 - (ii) made to correct a manifest error;
 - (iii) necessary or desirable for the purpose of enabling the Bonds to be offered to retail investors in accordance with Chapter 2L of the Corporations Act or to be listed for quotation on any stock exchange and is otherwise not considered by the Trustee to be materially prejudicial to the interests of Bond Holders;
 - (iv) necessary to comply with the provisions of any statute or the requirements of any statutory authority; or
 - (v) expressly permitted by this Deed; or
 - (b) if such modification, alteration, amendment or addition is authorised by a Special Resolution passed at a meeting of Bond Holders held pursuant to the provisions of the Rules.

Changes to Trust Deed

- 18.2 The Trustee is bound to concur in any modification or alteration to, or amendment of, or addition to, this Deed or the Issue Conditions which is proposed or agreed to by OIML and which is assented to, authorised, sanctioned or directed by a Special Resolution passed at a meeting of Bond Holders held pursuant to the Rules except where the modification, alteration, amendment or addition would adversely affect:
- (a) the rates of remuneration of the Trustee prescribed by this Deed;
 - (b) any of the immunities or indemnities of the Trustee under this Deed; or
 - (c) would impose an additional duty or liability on the Trustee except to the extent arising from the application of Chapter 2L of the Corporations Act to this Deed or from an increase in the number of Bond Holders.

The Trustee will be indemnified by OIML for its reasonable costs and expenses of and incidental to any such modification, alteration, amendment or addition and in convening or holding any such meeting.

Assignment

- 18.3 Unless the Corporations Act requires, OIML may only dispose of, declare a trust over or otherwise create an interest in its rights under any Transaction Document with the consent of the Trustee, which must not be unreasonably withheld.
- 18.4 The Trustee will not be liable for:
- (a) any increased costs and expenses;
 - (b) any costs or expenses incurred by OIML; or
 - (c) any increased liability arising from this Deed,
- incurred as a result of any disposal, declaration of trust or creation of rights under the Transaction Documents in accordance with clause 18.3.
- 18.5 In addition to its rights under clause 18.3, and subject to clause 18.6, the Trustee may dispose of, declare a trust over or otherwise create an interest in its rights under any Transaction Document with the consent of OIML, which must not be unreasonably withheld, and may disclose to any potential holder of the right or interest any information relating to any Transaction Document or any party to any of them.
- 18.6 OIML will not be liable for:
- (a) any increased costs and expenses;
 - (b) any costs or expenses incurred by the Trustee; or
 - (c) any increased liability arising from this Deed,
- incurred as a result of any disposal, declaration of trust or creation of rights under the Transaction Documents in accordance with clause 18.5.

19 Resignation And Removal And Appointment Of Trustee

Resignation of Trustee

- 19.1 The Trustee may resign at any time upon giving OIML not less than 4 months' prior written notice, without assigning any reason. However, the resignation of the Trustee will not take effect until the appointment of a new Trustee is made and approved as provided in this clause 19.

Removal of Trustee

- 19.2 OIML may remove the Trustee from office by notice in writing addressed to the Trustee only if:
- (a) the Trustee ceases to exist;
 - (b) a Special Resolution of Bond Holders determines that the Trustee should be removed;
 - (c) the Trustee ceases to carry on business (other than its capacity as trustee of another trust), enters into a scheme of arrangement (other than for the purposes of or in connection with a solvent reconstruction or amalgamation) or goes into liquidation, provisional liquidation, official management or administration or has a receiver or receiver and manager or an Administrator or Controller appointed over any part of the assets or undertakings of the Trustee (not being assets or undertakings of the Trustee held in its capacity as trustee of another trust) which is not removed or withdrawn within 30 days after the date of the appointment; or
 - (d) the Trustee defaults in the observance or performance of any of its material obligations under this Deed, and if that default is capable of rectification, it is not rectified within 21 Business Days of its occurrence.

Appointment of New Trustee

- 19.3 Subject to clause 19.5, the power of appointing a new Trustee is vested in OIML.
- 19.4 OIML must exercise its power of appointment promptly upon receiving notice of the resignation the Trustee under clause 19.1.
- 19.5 Upon the service of a notice of retirement by the Trustee pursuant to clause 19.1, or a notice of removal of the Trustee pursuant to clause 19.2, OIML must use all reasonable endeavours to exercise the power of appointment conferred by clause 19.3 by appointing a person who is approved by an Ordinary Resolution of Bond Holders within 1 month of the notice, failing which the retiring or removed Trustee has the power to appoint the new Trustee.

Acceptance of Appointment by Successor

- 19.6 Every successor Trustee appointed in accordance with the above must (at the cost of OIML) execute and deliver to OIML and the retiring or removed Trustee an instrument accepting such appointment and must do all other things reasonably within its power to assume the obligations, duties and powers of the retiring or removed Trustee under this Deed.
- 19.7 Upon the resignation or removal of the Trustee, the successor Trustee becomes vested with all the powers, trusts and duties of the retiring or removed Trustee (who thereafter has no more such powers, trusts or duties).

Co-operation of Retiring or Removed Trustee

19.8 The retiring or removed Trustee must:

- (a) execute and deliver any documents and do any other thing reasonably within its power which is necessary or desirable to effect the appointment of the successor Trustee; and
- (b) deliver to the successor Trustee all documents (paper or electronic) relating to the Bonds and which are in the possession of or under the control of the retiring or removed Trustee, to the extent that such documents are necessary or desirable to carry out the functions and to exercise the rights of the successor Trustee.

Release and Discharge of Retiring or Removed Trustee

- 19.9 Upon the resignation or removal of the Trustee, the retiring or removed Trustee is absolved, released and discharged by OIML, the successor Trustee and the Bond Holders from all further obligations, duties and Powers under this Deed. However, this release and discharge so provided for and given in accordance with this clause 19.9 does not affect the rights and obligations of the retiring or removed Trustee arising during its term as Trustee.
- 19.10 If the retiring or removed Trustee exercises its power to appoint the successor Trustee pursuant to clause 19.5, the retiring or removed Trustee will not be responsible for or liable to OIML or any Bond Holder or any other person for loss caused by exercise of its power to appoint the successor Trustee.

20 Register Of Bonds

Establish Register of Bonds

- 20.1 OIML must establish a register of the Bonds, and if required, in accordance with the Corporations Act. There must be recorded in the Register the names and addresses of the Bond Holders and the date of issue or transfer of such Bonds and the amount of Bonds held by each such Bond Holder and the face value of these Bonds and as regards Bonds no longer Outstanding particulars of their redemption and such other details as required, if applicable, by the Corporations Act.

Register conclusive

20.2 Subject to the Corporations Act, to the extent it applies:

- (a) the Register will, in the absence of manifest error, be conclusive as to the identity of Bond Holders and the face value of Bonds they hold from time to time. If there is any inconsistency with any register kept by OIML, the Register will prevail;
- (b) a person whose name is entered on the Register as a Bond Holder will remain a Bond Holder for the purposes of this Deed until that name is removed from the Register by the Trustee with the consent of the Bond Holder. This applies whether or not:
 - (i) the Bond is or proves to have been void, invalid or improperly issued; or
 - (ii) the Bond has been redeemed, repaid or cancelled; and
- (c) Bond Holders whose names appear for the time being in the Register will be regarded as the beneficial owners of the Bond registered against their respective names. Except as required by law neither the Trustee nor OIML will recognise any other interest in any Bond (even if either of them has notice of any such interest).

Inspection of the Register of Bonds

- 20.3 Subject to the Corporations Act the Register must be open at all reasonable times during business hours for the inspection of the Trustee and of any Bond Holder or Bond Holder's legal personal representatives or any person authorised in writing by it or them respectively and, upon the request of any such person and at the expense of such person, OIML must provide to such person an extract from the Register, or a document which sets out the relevant Bond Holder's entry in the Register, as soon as practicable after the making of any such request. No notice of any trust whether expressed or implied or constructive will be entered in the Register.

Copy of the Register of Bonds to be Provided to Trustee on Request

- 20.4 OIML must provide, or arrange for the Registrar to provide, a copy of the Register to the Trustee within 5 Business Days of receiving a written request from the Trustee.

Delegation by OIML in Respect of the Register of Bonds

- 20.5 OIML may delegate any of its powers and obligations in respect of the Register provided that OIML will be and will remain liable for all acts and omissions of any delegate under this clause 20.5 as if those acts or omissions were its own.
- 20.6 If OIML delegates any of its powers and obligations in relation to the Register to the Trustee, the Trustee will perform those obligations only as OIML's agent and not in its capacity as Trustee.
- 20.7 The Trustee will not be considered, in the absence of express notice, to be aware of any matter which is relevant to the exercise and performance of its powers and duties under this Deed in its capacity as Trustee only by reason of it being appointed as OIML's agent to act as Registrar.

21 Payments By OIML Or Trustee

- 21.1 Whenever in respect of any of the Bonds registered in the name of any Bond Holder in consequence of:

- (a) the death of such Bond Holder;
- (b) the non-payment of any Taxes by such Bond Holder;
- (c) the non-payment of any estate, probate, succession, death, stamp or other duty by the legal representative of such Bond Holder by or out of the Bond Holder's estate;
- (d) any other act or thing,

any law for the time being of Australia or any State or Territory of Australia or any other country or place imposes or purports to impose any immediate or future or possible liability on OIML or the Trustee to make any payments to any government or taxation authority, OIML or the Trustee, as the case may be, in respect of such liability is to be indemnified by such Bond Holder and the Bond Holder's executors and administrators and any moneys paid by OIML or the Trustee in respect of such liability may be recovered by action from such Bond Holder and the Bond Holder's executors and administrators as a debt due to OIML or the Trustee, as the case may be, and OIML or the Trustee, (as the case may be), is entitled to set off the amount of such liability against any amount due to the Bond Holder under this Deed or the Issue Conditions. Nothing in this Deed prejudices or affects the right or remedy which any such law

may confer or purport to confer on OIML or the Trustee and as between OIML or the Trustee and every Bond Holder and the Bond Holder's legal representatives and estate wheresoever constituted or situate. Any right or remedy which such law confers on OIML or the Trustee is enforceable by it.

22 Determination By Trustee

- 22.1 The Trustee may determine as between itself and the Bond Holders all questions and matters of doubt arising in relation to any of the provisions of this Deed and every such determination made in good faith whether upon a question actually raised or implied in the acts or proceedings of the Trustee is conclusive as against, and binds, all Bond Holders.

23 Release Of OIML

- 23.1 Upon the Trustee receiving a certificate signed by the Auditor certifying that all the Moneys Owing have been paid or satisfied, and upon payment or retention of all costs, charges, moneys and expenses incurred by or payable to the Trustee, the Trustee, must at the request and cost of OIML execute a deed releasing OIML from the trusts, powers, authorities and provisions of the Transaction Documents.

24 Dealings By Trustee

Investments by Trustee

- 24.1 Subject to the Corporations Act, to the extent it applies, nothing in this Deed is deemed to prohibit the Trustee or where the Trustee is a corporation any Related Corporation of the Trustee (all in this clause where the context permits being included in the expression Trustee) from being a member of the Scheme or the Scheme's Related Corporations or from being a Bond Holder or from acting in any representative capacity for a Bond Holder and in particular and without prejudice to the generality of the foregoing it is expressly declared that the Trustee may so act on its own account or as executor, administrator, trustee, receiver, committee, guardian, attorney or agent or in any other fiduciary, vicarious or professional capacity; nor will the Trustee acting in any such capacity be deemed in breach of any of the obligations arising out of the fiduciary relationship between the Trustee and OIML as responsible entity of the Scheme or the Trustee and the Bond Holders hereby established or otherwise imposed or implied by law.

Transactions Entered into by the Trustee

- 24.2 The Trustee is not by reason of its fiduciary capacity in any way precluded from making any contracts or entering into any transactions with any person in OIML or its Controlled Entities (for the purposes of clauses 24.2 to 24.4 collectively called the *OIML Entities*) or with itself as Trustee in the ordinary course of business of the Trustee or from undertaking any assurance, insurance, financial or agency services for the OIML Entities or for itself as Trustee.
- 24.3 Without prejudice to the generality of these provisions, it is expressly declared that such contracts and transactions include any contracts or transactions in relation to the subscription or placing of or any other dealing with any stocks, shares, debenture, stock debentures or other security of the OIML Entities or any contract or loan or deposit or other contract or transaction which any assurance or insurance company not being a trustee of this Deed could or might

have entered into with the OIML Entities or with itself as trustee and the acceptance or holding of office of trustee for the holders of any debentures or debenture stock or other securities (whether secured or unsecured) issued by the OIML Entities.

- 24.4 The Trustee is not accountable either to the OIML Entities or the Bond Holders for any profits arising from any such contracts, transactions or offices.

25 Incorporation Of Schedules

- 25.1 The provisions contained in the Schedules have full effect in the like manner as if they had been incorporated in this Deed.

26 Meetings Of Bond Holders

- 26.1 Meetings of the Bond Holders must be held and be regulated in accordance with the Rules.

27 Stamp Duty

- 27.1 OIML covenants with the Trustee that it will indemnify the Trustee and the Bond Holders against any stamp duty (including penalty) in respect of this Deed and Transaction Documents or the creation or issue of or the subscription for Bonds and agrees that payment of any such duty by the Trustee or a Bond Holder is not a condition precedent to the enforcement of such indemnity.

28 Goods And Services Tax

- 28.1 If any supply made by a party (*Supplier*) to another party (*Recipient*) under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply is exclusive of GST (the *GST Exclusive Amount*) and not the Price for that taxable supply.
- 28.2 In addition to the GST Exclusive Amount for a taxable supply under this Deed, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.
- 28.3 GST payable under clause 28.2 must be paid by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
- 28.4 The right of a Supplier to payment under this clause 28 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- 28.5 Subject to clause 28.7, if a payment to satisfy a claim or a right to claim under or in connection with this Deed, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with clause 28.2.
- 28.6 If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the

parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.

- 28.7 If a party has a claim for, or a right to recover, under or in connection with this Deed, a cost or expense on which that party must pay GST, the claim is for the cost or expense plus all GST, except any GST for which that party is entitled to an input tax credit.
- 28.8 This clause 28 takes precedence over any other term or condition of this Deed to the extent of any inconsistency.

29 Confidentiality


- 29.1 A party must not disclose any information concerning the contents of, or the transactions contemplated by, this Deed or any Transaction Document to any person who is not a party, except to the extent that:
- (a) the disclosure is expressly permitted by a Transaction Document;
 - (b) the other party consents to the disclosure;
 - (c) the information is already in the public domain, unless it entered the public domain because of a breach of confidentiality by the party;
 - (d) the disclosure is made on a confidential basis to the party's officers, employees, agents, financiers or professional advisers, and is necessary for the party's business;
 - (e) the disclosure is necessary to comply with any applicable law, or an order of a court or tribunal;
 - (f) the disclosure is necessary to comply with a directive or request of any Government Body or stock exchange (whether or not having the force of law) so long as a responsible person in a similar position would comply;
 - (g) the disclosure is necessary or desirable to obtain an authorisation from any Government Body or stock exchange; or
 - (h) the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal, other Government Body or stock exchange.

30 Governing Law

- 30.1 This Deed is governed by and is to be construed in accordance with the laws of Victoria. OIML and the Trustee submit to the non-exclusive jurisdiction of the courts of Victoria and all courts of appeal from them.

31 Growers' Rights And Interests

- 31.1 The Trustee acknowledges that the Land and Improvements do not and will not include the Citrus Crops, Grape Crops or any Other Crops derived from the Projects as they remain the property of:

- 
- (a) the participants in the Projects;
 - (b) the responsible entities and managers of the Projects and their nominees;
 - (c) any lessee or licensee of a person specified in clause 31.1(b); or
 - (d) any other person who derives title to the Citrus Crops, Grape Crops or Other Crops derived from the Projects through any of the persons described in clauses 31.1(a) to (c).

31.2 The Trustee acknowledges and agrees that all rights and interests of:

- (a) the responsible entities and managers of the Projects and their nominees;
- (b) the participants in a Project; and
- (c) anyone claiming through the persons specified in clauses 31.2(a) to (b),

to use the Land and Improvements under the terms of any Occupancy Agreements, lease, sub-lease, licence and other rights of occupancy granted for the purpose of the Projects, whether those rights exist at the date of this Deed or the Fixed and Floating Charge or arise subsequently, have priority over the rights of the Trustee and consents to the rights of the persons described in clauses 31.2(a) to (c) having such priority.

31.3 The Trustee acknowledges the grant of:


- (a) the leases, sub-leases, licences and other rights of occupancy for the purpose of the Projects, of any Land and Improvements or part thereof to the persons described in clauses 31.2(a) to (c); and
- (b) the Occupancy Agreements for the purpose of the Projects,

whether those Occupancy Agreements, leases, sub-leases, licences and other rights of occupancy exist at the date of this Deed or the Fixed and Floating Charge or arise subsequently.

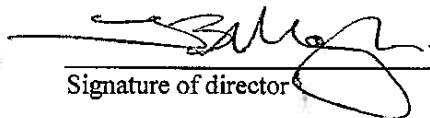
Execution

Executed as a deed.

Signed sealed and delivered
by Orchard Investments Management
Limited as responsible entity of the
Timbercorp Agribusiness Trust
by a director and secretary/director:

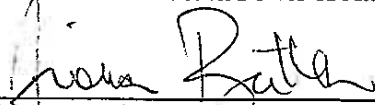

Signature of secretary/~~director~~

ANDREW ASHBOLT
Name of secretary/director (please print)

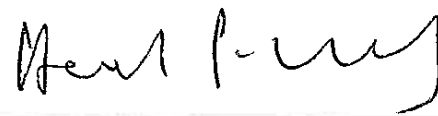

Signature of director

TREVOR MOTIE
Name of director (please print)

Signed sealed and delivered
for and on behalf of
Permanent Trustee Company Limited
its Attorney pursuant to a Power of Attorney
dated 30 SEPTEMBER 2005 and who
declares that he has not received any notice of
the revocation of such Power of Attorney.


Signature of witness

FIONA BATTEN
Name of witness (please print)


Signature of attorney

S. SILAVECKY
MANAGER
Permanent Trustee Co Ltd
Name of attorney (please print)

Schedule 1

Issue Conditions

Terms used in these Issue Conditions have the same meaning as those defined in the Trust Deed.

1 FORM, DEFINITION AND TITLE

Constitution under Trust Deed

- 1.1 The Bonds are debt obligations of OIML as responsible entity of the Scheme to the Trustee as trustee for the Bond Holders.

Denomination

- 1.2 Each Bond entitles a Bond Holder to receive from OIML the principal and interest moneys in respect of such Bond. Each Bond is a separate promise of OIML. OIML issues Bonds by entering those Bonds on the Register in the name of the Bond Holder. The number of Bonds at any time is the number of Bonds then entered on the Register.
-

2 ISSUE

Face Value

- 2.1 The Bonds will be issued with a principal amount of \$1.00 each (or such other amount determined by the directors under clause 3.3 for any issue after the First Issue) and must be paid for in full by the subscriber on application.

Issue Date

- 2.2 Bonds will be issued on the Issue Date. The First Issue will be issued on the First Issue Date.
-

3 STATUS

- 3.1 The Bonds constitute direct obligations of OIML ranking pari passu amongst themselves and ahead of all unsecured creditors.
-

4 PAYMENTS GENERALLY

Payments to Bond Holders

- 4.1 All payments in respect of the principal money and interest and other amounts payable to Bond Holders:
- (a) will be made to Bond Holders according to the particulars recorded in the Register on the relevant Record Date or Redemption Calculation Date, as the case requires immediately before the day on which the payment is due;
 - (b) are subject in all cases to the provisions of the Trust Deed and to any fiscal and all other applicable laws and regulations and normal banking practice; and

- (c) must be made free and clear of, and without deduction for, or by reference to, any present or future Taxes of Australia or any political subdivision or taxing authority of either of them, unless required by law, such as where a Bond Holder fails to provide its name, address and tax file number or any relevant tax exemption.

Particulars of Bond Holders

- 4.2 Changes in particulars of Bond Holders must be given in writing and duly signed and received by the Registrar within 14 days after such changes.

5 PAYMENT OF PRINCIPAL MONEYS AND INTEREST

Payment of Interest

- 5.1 The Bonds will bear interest accruing daily as follows:
- (a) Subject to paragraphs (b) and (c), from the Issue Date, interest at a fixed rate of 9.5% per annum for the First Issue, and for any subsequent issue, the rate determined by the directors under clause 3.3, (*Interest Rate*), payable on the Interest Payment Date;
 - (b) if any payment under this Deed is overdue, interest will be payable on that overdue amount at the Interest Rate plus 2% (*Penalty Rate*), payable at the same times and in the same manner as all other interest is payable under this Deed; and
 - (c) upon the occurrence of an Event of Default, interest at the Penalty Rate will be payable on all Monies Owing from time to time from the date which is 21 days after the date a notice is served on OIML by the Trustee notifying it that an Event of Default has occurred, and for the period of time that such default is subsisting.
- 5.2 Interest on Outstanding Bonds will be calculated as at each Interest Calculation Date and paid on or before the relevant Interest Payment Date in accordance with and subject to these Issue Conditions.
- 5.3 OIML will have no obligation to make any payments of interest in respect of any Bond beyond the Redemption Date provided that all Moneys Owing in respect of that Bond have been paid on the Redemption Date.

Payment of Principal

- 5.4 On a Redemption Date, OIML is obliged to redeem the relevant Bonds and pay to the relevant Bond Holders the principal moneys and all other amounts then outstanding in respect of those Bonds on that date. OIML will make such notation in the Register that reflects the redemption and payment of the Moneys Owing in respect of the Bonds.

Early Redemption by the Trustee

- 5.5 The Trustee may, if an Event of Default has occurred and is subsisting, require OIML:
- (a) to redeem the Bond Holders' Bonds; and
 - (b) immediately pay to the Bond Holders the Moneys Owing,
- on a day specified by the Trustee which allows adequate time for the calculation of the Moneys Owing on the Redemption Date of the Bonds.
- 5.6 OIML agrees to redeem the Bond Holders' Bonds immediately upon the request of the Trustee under Issue Condition 5.5.

Early Redemption by OIML

5.7 OIML may:

- (a) redeem the Bonds in whole or in part; and
- (b) immediately pay to the Bond Holders the Moneys Owning or part thereof (whichever applies);

where:

- (i) a Tax Event as set out in Issue Condition 5.8 occurs on giving the Trustee and the Bond Holders at least 20 Business Days' written notice of OIML's intention to redeem all the Bond Holder's Bonds; or
- (ii) at any time after 30 September 2010, subject to the provision of 30 days prior written notice to the Trustee, without any penalty or break cost being payable whatsoever.

Redemption for Regulatory or Tax Reasons

5.8 If a Tax Event has occurred in respect of OIML and/or the Group, and such Tax Event cannot be avoided by OIML and/or the Group taking reasonable measures available to them, other than the payment of money, then the Bonds may be redeemed at the option of OIML, in whole, but not in part, on giving not less than 20 Business Days' notice to the Bond Holders which notice is irrevocable, at the Redemption Amount.

No Early Redemption by Bond Holder or Trustee

5.9 Except as provided in Issue Conditions 5.5 and 5.6, the Trustee or a Bond Holder may not require OIML to redeem Bonds prior to its Maturity Date.

Cancellation of Bonds

5.10 All Bonds repaid in full, redeemed or satisfied will be cancelled and will not be re-issued.

6 REGISTRATION OF TRANSFERS

Transfers

6.1 Subject to Issue Condition 6.16 and the other Issue Conditions, a Bond Holder may transfer all or any of the Bonds that it holds by an instrument in writing in any usual form or in any other form that the directors of OIML approve.

Transfer Procedure

6.2 In relation to all transfers of Bonds, the transfer form must be:

- (a) lodged with the Registrar together with payment of any stamp duty, Taxes or other governmental charges payable on such a document; and
- (b) accompanied by such evidence as the Registrar may require to prove the title and identity of the transferor and the transferee, the right or entitlement of the transferee to receive a transfer of the relevant Bonds, the due execution of the transfer form and the due compliance and observance with all applicable laws and regulations of Australia and each State and Territory of Australia.

- 6.3 The Registrar must within 3 Business Days upon being satisfied with the transfer form, the information lodged with the transfer form, the identity of the transferor and the transferee and the due compliance with these Issue Conditions and such reasonable regulations as OIML and Trustee may determine from time to time, accept the application contained in the transfer form by making an inscription in the Register recording the transfer of the relevant Bonds.

Registration

- 6.4 On the inscription being made in the Register, OIML and the Trustee will recognise the transferee as the registered owner of the relevant Bonds and as being entitled to the payment from then on of the interest, principal and other Moneys Owning in respect of that Bonds and to all other rights vested in Bond Holders under the Trust Deed. The transferor will for all purposes be and be deemed to be the registered owner of the relevant Bonds until an inscription is made in the Register recording the transfer, the name and address of the transferee and the other matters required to be entered into the Register by OIML from time to time.

Administration

- 6.5 OIML must register the transfer of Bonds notwithstanding that the transfer form to which the transfer relates has not been marked by OIML or the Registrar.
- 6.6 OIML must procure that all transfer forms which are registered are retained by OIML for a period of seven years after receipt but any transfer form which OIML declines to register must (except in the case of fraud or suspected fraud) be returned on demand to the person depositing it.
- 6.7 OIML may not register the transfer of Bonds on or after its Maturity Date.

Transfer Forms

- 6.8 Transfer forms are available from the Registrar.

Directions

- 6.9 Subject to the Trust Deed, these Issue Conditions and any notations on the Register, OIML will comply with any payment or distribution direction made by the transferee:
- (a) in application for transfer of Bonds on and from the time of registration of that transfer; and
 - (b) at any subsequent time in such form as OIML from time to time determines.
- 6.10 A direction from any one or more joint holders of Bonds binds all the joint holders.

Transmission

- 6.11 A person becoming entitled to Bonds as a consequence of the death or bankruptcy of a Bond Holder or of a vesting order or a person administering the estate of a Bond Holder may, upon producing such evidence as to that entitlement or status as the Registrar considers sufficient, transfer the Bonds of that Bond Holder or, if so entitled, become registered as the holder of the Bonds.

No Registration Fee

- 6.12 Transfers will be inscribed in the Register without charge provided Taxes or other governmental charges (if any) imposed in relation to the transfer have been paid.

Non-registration of Third Party Interests

- 6.13 Bonds will be registered by name only without reference to any trusteeships or other beneficial interests in the Bonds. Any entry in the Register of the name and address of a Bond Holder and the amount owed to that Bond Holder is conclusive evidence of title subject to rectification for fraud or error.
- 6.14 The person registered in the Register as a Bond Holder of Bonds will be treated by OIML and the Registrar as the absolute owner of those Bonds. Neither OIML, the Trustee nor the Registrar may, except as ordered by a Court or as required by statute, be obliged to take notice of any claim to Bonds.

Suspension of Transfers

- 6.15 No transfer of Bonds will be registered, nor will any person be registered as a Bond Holder who is entitled to be registered as such in any period beginning on the Redemption Calculation Date and ending on the relevant Redemption Date.
- 6.16 Despite any other provision of these Issue Conditions, a Bond Holder must not transfer all or any of the Bonds that it holds if such transfer would amount to:
- (a) an indirect issue of Bonds which would require disclosure to investors under Chapter 6D of the Corporations Act; or
 - (b) an offer or sale to a *retail client* (as that term is defined in section 761A of the Corporations Act) before any *Retail Date* (as defined in clause 3.12).

7 LIQUIDATION OF OIML

Moneys Owing

- 7.1 All Moneys Owing to Bond Holders rank *pari passu* amongst themselves and ahead of all unsecured creditors.

Trustee may Wind Up OIML

- 7.2 The Trustee will be entitled if an Event of Default has occurred and is subsisting:
- (a) to commence proceedings for the winding up of the Scheme and, subject to clause 4.3 OIML as responsible entity of the Scheme, where Bond Holders that together hold not less than three-quarters of the amount of the Outstanding Bonds held by all the Bond Holders consent in writing;
 - (b) to take such other action relating to enforcement of payment of Moneys Owing (including without limitation requiring OIML to redeem the Bonds, requiring an immediate payment of all Moneys Owing and suing for or obtaining judgment for all Moneys Owing);
 - (c) to prove in any Liquidation of the Scheme and OIML as responsible entity of the Scheme (irrespective of when that Liquidation is commenced) subject to the Trust Deed, including clause 4.3(d); and
 - (d) to enforce the rights granted to the Trustee under the Fixed and Floating Charge.

8 PAYMENT TO BOND HOLDERS

Method of Payment

- 8.1 Any interest, principal and other Moneys Owning payable by OIML or, following an Event of Default, by the Trustee, on or in respect of any Bonds may be paid:
- (a) by non- negotiable cheque sent through the post to the registered address of the Bond Holder or in the case of joint Bond Holders to the registered address of that one of the joint Bond Holders who is first named in the Register in respect of such Bond. Every such cheque will be sent at the risk of the person entitled to the moneys represented thereby; or
 - (b) by deposit to such account with any bank, credit union or building society in Australia as the Bond Holder by written notice to OIML or the Trustee may direct.

Payment to Joint Holders

- 8.2 If several persons are entered in the Register as joint holders of any Bonds then without prejudice to the last preceding Issue Condition the receipt of any one of such persons for any interest, principal or other moneys payable on or in respect of such Bonds be as effective a discharge to OIML or as the case may be the Trustee as if the person's signing such receipt were the sole registered holder of such Bonds.

9 NOTICES

Reports

- 9.1 OIML must send to Bond Holders and the Trustee copies of OIML's annual reports, accounts and other information which is sent to its members.

Notices Must Be In Writing

- 9.2 A notice given to a Bond Holder pursuant to a provision of these Issue Conditions and the Trust Deed must be in writing and may be given to a Bond Holder by being delivered to it or posted in a pre-paid envelope at a post office or post office letter box and addressed to its address appearing in the Register or to such other address as they have notified OIML in writing.

Notices By Post

- 9.3 Where a notice is sent by post it is deemed to have been given on the third day following the day on which it was posted.
- 9.4 A post office receipt for the envelope containing a notice is to be taken as conclusive evidence of the date on which the notice was posted.

Notices to Joint Holders

- 9.5 A notice given to any one of joint Bond Holders is sufficient notice to all of those joint Bond Holders.

What is a Notice?

- 9.6 In this Issue Condition *notice* includes any communication to be given by OIML or the Trustee under or pursuant to a provision of these Issue Conditions or the Trust Deed.

Schedule 2

Rules of Meetings of Bond Holders

The following provisions apply to meetings of Bond Holders:

1. The Trustee or OIML may at any time convene a meeting of the Bond Holders. Whenever OIML or the Trustee is about to convene a meeting it must give notice in writing to the other of the nature of the business to be transacted at the meeting. The Trustee must convene such a meeting upon a requisition in writing so to do of a Bond Holder or Bond Holders holding not less than one-tenth of the amount of Outstanding Bonds. The requisition must state the nature of the business proposed to be dealt with at the meeting.
2. Ten Business Days' notice at least of any meeting must be given to the Bond Holders specifying the place day and hour of meeting and the general nature of the business. A copy of the notice must be sent by post to the Trustee unless the meeting is convened by the Trustee and to the Auditors and OIML unless the meeting is convened by OIML. Any accidental omission to give notice to or the non-receipt of notice by any of the Bond Holders will not invalidate the proceedings of any meeting.
3. A person nominated by the Trustee is entitled to take the Chair at every such meeting and if no such person is nominated or if at any meeting the person nominated is not present within fifteen minutes after the time appointed for holding the meeting the Bond Holders present may choose one of their number to be Chairman. The solicitors to the Trustee and the Directors and officers of the Trustee and the Directors and officers, solicitors and Auditors of OIML and any other person authorised by OIML may attend any meeting and have the right of audience.
4. If within half an hour from the time appointed for a meeting a quorum is not present, the meeting, if summoned upon the requisition of Bond Holders, will be dissolved. In any other case it will stand adjourned to such day and time not less than ten Business Days (and not more than twenty Business Days) after the appointed day and to such place as may be appointed by the Chairman. If at such adjourned meeting there is no quorum present the meeting will be dissolved.
5. A corporation which is a Bond Holder and entitled to vote may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative either at a particular meeting or at all meetings of Bond Holders. A person so appointed (in these Rules referred to as a corporate representative) may act in accordance with their authority until their authority is revoked by the corporation appointing them as the corporation could exercise if it were an individual Bond Holder.
6. The quorum for transaction of business comprises Bond Holders whether present in person or by proxy or corporate representative who together hold one-quarter of the amount of Outstanding Bonds. No business may be transacted at any meeting unless the requisite quorum is present at the commencement of business.
7. The Chairman may with the consent of any meeting adjourn the meeting from time to time and from place to place.
8. Every question submitted to a meeting is to be decided by a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman or by the Trustee or by any representative of the Trustee or by one or more Bond Holders present in person or by proxy or corporate representative. Unless a poll is so demanded a declaration by the Chairman that a resolution has been carried or carried unanimously or by a particular majority or lost will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

9. In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded is, provided the Chairman is a Bond Holder or proxy or representative for a Bond Holder or the nominee of the Trustee, entitled to a casting vote in addition to the votes (if any) to which the Chairman may be entitled as a Bond Holder proxy or representative.
10. A poll demanded on the election of a Chairman or on a question of adjournment must be taken immediately. A poll demanded on any other question must be taken either immediately or after an interval or adjournment as the Chairman directs. The result of such poll is deemed to be the resolution of the meeting at which the poll was demanded.
11. The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
12. On a show of hands every Bond Holder who is present in person or by proxy or corporate representative has one vote only; on a poll every Bond Holder whether voting in person or by proxy or be corporate representative has one vote for each dollar of the amount of Outstanding Bonds of which they are the holder.
13. On a poll any Bond Holder, proxy or corporate representative entitled to more than one vote need not use all their votes or cast all the votes they use in the same way.
14. In the case of joint registered holders of Bonds the vote of the senior Bond Holder who tenders a vote whether in person or by proxy will be accepted to the exclusion of the votes of the other Bond Holders and for this purpose seniority will be determined by the order in which the names stand in the Register of Bond Holders in respect of the joint holding.
15. The instrument appointing a corporate representative or a proxy and the power of attorney or other authority (if any) under which it is signed or a notarially certified copy of such power or authority must be deposited at such place as may be directed in the notice convening the meeting or adjourned meeting and in the absence of any such direction at the office of the Trustee not less than forty-eight hours before the time appointed for holding the meeting or adjourned meeting (or in the case of a poll before the time appointed for the taking of the poll) at which the person named in the instrument proposes to vote and in default the instrument of proxy may not be treated as valid. The instrument appointing a proxy may be either special or general.
16. (a) hidden text
- (a) Every instrument appointing a proxy must be in writing under the hand of the appointor or appointor's attorney duly authorised in writing. Unless the Directors otherwise approve every such instrument appointing a proxy or representative must be in the terms or to the effect following that is to say:

"I.....of a Bond Holder of [] hereby appoint of or failing him/her of to vote on my behalf at the meeting of the Bond Holders of OIML which is to be held on the.....day ofand at any adjournment thereof.

As witness my hand

Unless otherwise directed the proxy may vote or abstain from voting in their discretion."

- (b) A proxy appointed need not be a Bond Holder.
17. The persons registered as Bond Holders in the Register and no other person or persons may be recognised and treated as legal and beneficial owners of the Bonds registered in their name whether such persons are or are not in fact the beneficial owners of such Bonds and such person accordingly is exclusively entitled to vote in person or by proxy or representative in respect of such Bonds. Subject to the Corporations Act, OIML may for voting purposes specify a time being not more than 48 hours before any meeting of Bond Holders by reference to which the entitlement of Bond Holders to vote at that meeting is to be determined particulars of which must be sent with the notice of the meeting.
18. Without limiting the rights, authorities and discretions conferred on the Trustee by the Deed, a meeting of the Bond Holders has the following powers exercisable by Special Resolution only, namely:
- (a) power to sanction any compromise or arrangement proposed to be made between any of OIML and the Bond Holders;
 - (b) subject to any restrictions contained in the Deed or the Issue Conditions, power to sanction or assent to any modification of the provisions of the Deed, the Issue Conditions, the other Transaction Documents or the variation or abrogation of any rights conferred by the Deed, the Issue Conditions or the other Transaction Documents;
 - (c) power to give any sanction, authority, approval, direction or request which under any of the provisions of the Deed is required to be given by Special Resolution;
 - (d) power to give any sanction, asset, release or waiver in respect of any breach or default by OIML under any of the provisions of the Deed;
 - (e) power to give any release in respect of anything done or omitted by the Trustee;
 - (f) power to authorise or direct the Trustee to concur in and execute any supplemental deed or other document embodying any such sanction, assent, release, waiver, direction or request referred to in this Rule 18;
 - (g) power to remove the Trustee.
19. A Special Resolution or an Ordinary Resolution passed at a meeting of the Bond Holders duly convened and held in accordance with the provisions of this Schedule is binding upon all Bond Holders whether or not present at the meeting and each Bond Holders is bound to give effect to such resolution accordingly. The passing of any such resolution is conclusive evidence that the circumstances justify the passing of the resolution, the intention being that it will rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution.
20. Minutes of all resolutions and proceedings at every meeting must be made by the Trustee and duly entered in books to be from time to time provided by OIML. Any such minutes if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings had or by the Chairman of the next succeeding meeting of Bond Holders are conclusive evidence of the matters therein stated. Until the contrary is proved every such meeting in respect of the proceedings of which minutes have been made is deemed to have been duly held and convened and all resolutions passed or proceedings had thereat to have been duly passed.

21. (a) hidden text
- (a) Without prejudice to Rule 24, for the purposes of these Rules the expression "Special Resolution" means a resolution voted for (at a meeting of the Bond Holders duly convened and held in accordance with the provisions of these Issue Conditions) by a majority:
- (i) of such Bond Holders as being entitled so to vote in person or by proxy or by corporate representative at the meeting; and
 - (ii) that together hold not less than three-quarters of the votes held by all the Bond Holders entitled to vote in person or by proxy or by corporate representative at the meeting.
- (b) For the purposes of the definition of "Special Resolution" in Rule 21(a) in computing the majority on a poll or on any question as to whether a Special Resolution has been passed reference is to the number of votes to which each Bond Holder is entitled in terms of Rule 12.
22. (a) hidden text
- (a) Without prejudice to Rule 24, for the purposes of these Rules the expression "Ordinary Resolution" means a resolution voted for (at a meeting of the Bond Holders duly convened and held in accordance with the provisions of these Issue Conditions) by a majority:
- (i) of such Bond Holders as being entitled so to vote in person by proxy or by corporate representative at the meeting; and
 - (ii) that together hold more than one-half of the votes held by all the Bond Holders entitled to vote in person or by proxy or by corporate representative at the meeting.
- (b) For the purposes of the definition of Ordinary Resolution in Rule 22(a) in computing the majority on a poll or on any question as to whether an Ordinary Resolution has been passed reference is the number of votes to which each Bond Holder is entitled in terms of Rule 12.
23. (a) hidden text
- (a) For the purposes of these Rules the expression *Written Resolution* means a resolution passed by the Bond Holders without a meeting of Bond Holders being held if all the Bond Holders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by the Bond Holders if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Bond Holder signs.
24. Despite any provision to the contrary in this Deed, the Issue Conditions and these Rules, each reference to a matter that requires the direction, authority or agreement of, or waiver by, the Bond Holders by the passing of a Special Resolution or Ordinary Resolution, may at the sole discretion of the Bond Holders be directed, authorised or agreed upon or waived, as the case may be, by the passing of a Written Resolution.



Schedule 3

First PDS

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012

Filed on behalf of: The First and Second Defendants

Prepared by:

Maddocks

Lawyers

140 William Street

Melbourne VIC 3000

Solicitor's Code: 230

DX 259 Melbourne

Tel: (03) 9288 0555

Fax: (03) 9288 0666

Ref: 5885053.001

Attention: Philip Jones

Email: philip.jones@maddocks.com.au

This is the exhibit marked "ADF-5" now produced and shown to **Alan David Fisher** at the time of
swearing his affidavit on 20 September 2012.

Before me:



Signature of person taking affidavit

STEVEN MICHAEL TANG
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

Exhibit "ADF-5"
Copy of Notice of Crystallisation of Bondholders'
Charge

17 September 2009

By post and email

The Directors
Align Funds Management Limited
Level 33
360 Collins Street
MELBOURNE VICTORIA 3000

Attention: Mr. Trevor Moyle
Chief Executive Officer

Dear Trevor,

Re: Align Funds Management Limited ACN 105 684 231
("Align")
Matter: Fixed and Floating Charge over the Assets of
Timbercorp Primary Industry Fund ("Charge")
Trust Deed: Trust deed dated 30 September 2005
("Bond Trust Deed")
Events of Default: Appointment by ANZ Bank pursuant to the facility
agreement dated 12 April 2006 ("Facility
Agreement") of Receivers to OIM #5 Pty Ltd as
trustee of the Timbercorp Orchard Trust #5("TOT
#5") on 15 September 2009, to OIM #2 Pty Ltd as
trustee of the Timbercorp Orchard Trust #2("TOT
#2") on 16 September 2009 and to OIM #2 Pty Ltd
as trustee of the Timbercorp Orchard Trust
#3("TOT #3") on 16 September 2009

**NOTICE UNDER CLAUSE 4.7 OF THE BOND TRUST DEED DATED 30
SEPTEMBER 2005 FIXING THE CHARGE**

We refer to our letter to you dated 8 September 2009, which requested a
certificate in accordance with Clause 7.2(n) of the Bond Trust Deed.

We have received the following documents:

1. Notice to Company of Appointment of Receiver of 15 September 2009
over OIM #5 Pty Ltd as trustee of the Timbercorp Orchard Trust #5;
2. Notice to Company of Appointment of Receiver of 16 September 2009
over OIM #2 Pty Ltd as trustee of the Timbercorp Orchard Trust #2;
3. Notice to Company of Appointment of Receiver of 16 September 2009
over OIM #2 Pty Ltd as trustee of the Timbercorp Orchard Trust #3;
4. the certificate under clause 7.2(n) of the Bond Trust Deed signed by
two Directors of Align and dated 16 September 2009 in respect to the

- Events of Default resulting from the appointment of Receivers to TOT#5; and
5. the certificate under clause 7.2(n) of the Bond Trust Deed signed by two Directors of Align and dated 17 September 2009 in respect to the Events of Default resulting from the appointment of Receivers to TOT#2 and TOT#3.

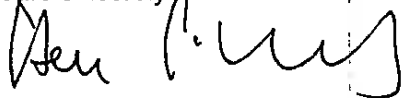
We note that the appointment of a Receiver over the Land as defined in the Bond Trust Deed is an Event of Default under clause 12.1 (e) (i) and clause 12.1(o) of the Bond Trust Deed. This is confirmed by the two above Directors' Certificates.

Each of the above subsisting Events of Default entitles the Trustee to give notice pursuant to clause 4.7 of the Bond Trust Deed to Align to convert the floating aspect of the Charge into a fixed charge.

Pursuant to Clause 4.7 of the Bond Trust Deed, the Trustee gives Align notice that the floating charge under the Charge created by clause 4.1 of the Bond Trust Deed is hereby fixed over all assets of Align as the responsible entity of the Timbercorp Primary Industry Fund (and formerly known as the Timbercorp Agribusiness Trust) including without any limitations all cash and other assets described in clause 4.2(a) of the Bond Trust Deed and in particular all proceeds from the sale of the Land receivable by the Timbercorp Primary Industry Fund from the sale of the Land by the receivers or the ANZ Bank under its securities over the Land, including the Facility Agreement.

We advise that the Trustee may at any time and without any further notice take any actions it is empowered to under the Charge and the Bond Trust Deed. The Trustee reserves all its rights under the Charge, the Bond Trust Deed and at law.

Yours sincerely



Sten Silavecky
Head of Structured Finance Services

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

LIST D
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012
Filed on behalf of: The First and Second Defendants
Prepared by:
Maddocks
Lawyers
140 William Street
Melbourne VIC 3000

Solicitor's Code: 230
DX 259 Melbourne
Tel: (03) 9288 0555
Fax: (03) 9288 0666
Ref: 5885053.001
Attention: Philip Jones
Email: philip.jones@maddocks.com.au

This is the exhibit marked "ADF-6" now produced and shown to **Alan David Fisher** at the time of
swearing his affidavit on 20 September 2012.

Before me:



Signature of person taking affidavit

STEVEN MICHAEL TANG
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

Exhibit "ADF-6"
Copy of TPIF 2011 Financial Report

TIMBERCORP PRIMARY INFRASTRUCTURE FUND

ARSN 116 024 830

Financial Statements for the year ended 30 June 2011

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Responsible Entity
Align Funds Management Limited
(AFSL No 234554 ABN 34 105 684 231)

Registered Office
Level 33, 360 Collins Street
Melbourne VIC 3000
Ph 03 9691 5414
Website www.TPIF.com.au

Directors

Alan Fisher (Chairman)
Sam Baillieu
Trevor Moyle

Company Secretary
Andrew Ashbolt

Registrar

Align Funds Management Limited
Level 33, 360 Collins Street
Melbourne VIC 3000
Ph 03 9636 4855
Website www.TPIF.com.au

Custodian

Trust Company Limited
(AFSL No 235148 ABN 59 004 027 749)
Level 3, 530 Collins Street
PO Box 361
Collins Street West
Victoria 8007

Auditor

Grant Thornton Audit Pty Ltd
Level 30, The Rialto
525 Collins Street
Melbourne VIC 3000
GPO Box 4736
Melbourne VIC 3001

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**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

DIRECTORS' REPORT

The directors of Align Funds Management Limited ('Align'), the Responsible Entity for Timbercorp Primary Infrastructure Fund ('the Fund') present their report for the Fund and its controlled entities ('the Group') for the year ended 30 June 2011.

Directors

The names of the directors in office during or since the end of the year are:

Alan Fisher
Trevor Moyle
Sam Baillieu

Principal Activity

The principal activity of the Group during the year was to monitor the holding of the proceeds from sale of the Group's properties, which are held by Receivers and Managers, and to act in relation to the action instituted by the secured lender, ANZ Banking Group Limited, to determine the respective rights to those sale proceeds as set out by the Supreme Court of Victoria.

Review of Operations

During the year ended 30 June 2011 the Group earned interest on the proceeds from the sale of the three properties which had been sold in the previous financial year by the Receivers & Managers, as follows:

Property	Settlement Date	Consideration
Yungera	19 February 2010	\$116.3 million
Liparoo	19 February 2010	\$43.6 million
Solara	9 April 2010	\$13.1 million

The Group continued to accrue interest on borrowings which remain due to the secured lender by the subsidiary trusts as the proceeds from the sale of the properties are not available to the secured lender until the above determination has been made by the Supreme Court. Interest is also continuing to accrue on the TPIF Bonds which remain as borrowings of the parent trust. Receivers and management fees are also continuing to be incurred.

Operating Results

The loss of the Group for the year was \$6,396,129. This loss is the result of the Group earning deposit rate interest on the proceeds from the sale of properties but continuing to incur ongoing finance costs and management costs as well as costs associated with the receivership of the sub-trusts.

The operating result for the year and the assets of the Group do not take into account future costs which may yet be deducted by the Receivers or as directed by the Supreme Court of Victoria.

The appointment of Receivers to the sub-trusts of the Fund has placed the Fund in technical breach of its obligations to the Trustee for the Bond Holders. The Trustee has given notice of the crystallisation of the charge to the Bond Holders, but has taken no further action to enhance such charge. The directors continue to be in regular communication with the Trustee and Bond Holders concerning developments with the legal proceedings and the eventual settlement of the liabilities of the sub-trusts.

It should be stressed that the directors do not have control of any assets of the sub-trusts or the legal proceedings but continue to monitor developments on a regular basis.

Net Asset Position of the Group

Unit holders should be aware that the financial statements of the Group as at 30 June 2011 have not been prepared on a liquidation basis and they do not take into account future costs relating to the Receivers, legal advisors, fund operation and management, interest costs on borrowings or potential claims against the proceeds from sale of the properties.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

DIRECTORS' REPORT

Significant Changes in State of Affairs

Other than as disclosed above, no significant changes in the Group's state of affairs occurred during the year.

After Reporting Period Events

(i) Rights of Growers' Schemes

On 15 June 2011, Justice Davies of the Supreme Court of Victoria handed down her decision in the test case of BOSI Security Services Limited v Australia and New Zealand Banking Group Limited & Ors. ('the Almond Land case'). That case determined some related/complimentary issues concerning the Timbercorp Almond Schemes. The decision has been appealed by lawyers representing the MIS Growers and a date for hearing that appeal has yet to be set.

The Supreme Court is also yet to determine the growers' rights and the value of those rights, if any, in relation to the almond and citrus schemes that were being conducted on the Group's properties. Various almond schemes were conducted on the Group's Liparoo and Yungera properties and a citrus scheme on the Group's Solora property.

In December 2011, the secured lender, ANZ Banking Group Limited, initiated proceedings in the Supreme Court of Victoria to pursue its interests in the proceeds from sale of the Liparoo, Yungera and Solora properties and to have the Growers' rights in relation to those property proceeds determined.

In July 2012 two separate Deeds of Compromise were entered into in relation to proceeds from the sale of the Solora citrus property and the Liparoo/Yungera almond properties. Those Deeds set out an agreed position between the secured lender, representative Growers from the Timbercorp Citrus Projects and Timbercorp Almond Projects, the Liquidator of Timbercorp Limited Group and the Trustees of the TPIF subsidiary trusts and detail the agreed amounts to be paid to the Responsible Entity of the Timbercorp Schemes for their Growers. Each Deed is conditional upon its approval by the Supreme Court of Victoria and also upon the approval by the Court of the other (four) Deeds of Compromise that the Court is considering in relation to other Timbercorp Schemes. The Supreme Court has set a hearing date of 5 October 2012 to consider these matters.

Until such time as these legal issues are determined there is no manner in which the directors can make a reasonable assessment of the residual value of the sale proceeds.

(ii) Professional Indemnity Insurance

Under its Australian Financial Services Licence, Align is required to maintain an insurance policy covering professional indemnity ('PI') and fraud by officers that is adequate, having regard to the nature of the activities carried out by the licensee under the licence, and which covers claims amounting in aggregate to a minimum of \$5 million.

There has been a significant tightening of the PI insurance market following the demise of major agricultural managed investment schemes and difficult conditions faced by the funds management industry. As a consequence, and despite the best efforts of the directors, Align has been unable to renew its PI insurance policy for the minimum amount of cover of \$5 million and has advised ASIC of the lesser cover of \$1 million that it has been able to obtain.

Likely Developments

Due to continuing borrowing costs being incurred by the Group, and irrespective of the outcome of the legal entitlement of Timbercorp Growers to the net proceeds from the sale of the Group's properties, there will be insufficient funds to pay the liabilities due to the secured TPIF bond holders. Accordingly, unit holders in the Fund will not receive any further distributions or any return of capital.

Other than the matters previously discussed, the directors are not aware of any likely developments that are outside the normal operation of the Group.

Environmental Issues

To the best of the directors' knowledge, all activities are performed in accordance with the requirements of relevant environmental regulations.

Distributions paid or recommended

The directors have not declared or paid a distribution for the year ended 30 June 2011.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

DIRECTORS' REPORT

Options

No options have been issued during or since the financial year and there were no options outstanding at the end of the financial year.

Indemnifying of Officers or Auditor

During the year, the Responsible Entity of the Fund has paid premiums in respect of an insurance contract to indemnify officers against liabilities that may arise from their position as officers of the Fund. Officers indemnified include all directors, the company secretary and all executive officers participating in the management of the Fund.

Further disclosure required under section 300(9) of the *Corporations Act 2001* is prohibited under the terms of the contract.

Proceedings on behalf of the Fund

No person has applied for leave of Court to bring proceedings on behalf of the Fund or intervene in any proceedings to which the Fund is party for the purposes of taking responsibility on behalf of the Fund for all or part of those proceedings.

The Fund was not a party to any such proceedings during the financial year.

Fees paid to and unit holdings of the Responsible Entity or related parties of the Responsible Entity

All fees paid and units held are disclosed in Note 12 "Related Party Transactions".

Units in the Fund issued during the year

The Fund did not issue any units during the year.

Value of Fund assets

The value of the group's total assets as at 30 June 2011 was \$173.6m. The value of the Group's assets is determined on the basis set out in note 1 of the financial statements.

Directors interest in the Fund

As at the date of this report:

- (a) there are no directors who have a relevant interest in units in the Fund;
- (b) no director has any rights or options over units in the Fund; and
- (c) there are no contracts to which a director is a party or under which a director is entitled to a benefit and that confer a right to call for or deliver interests in the Fund.

Auditor's Independence Declaration

A copy of the auditor's independence declaration as required under section 307C of the *Corporations Act 2001* is enclosed.

Signed in accordance with a resolution of the Board of Directors:



Alan Fisher
Chairman

Melbourne
5 September 2012

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME
FOR THE YEAR ENDED 30 JUNE 2011**

	Notes	Consolidated 2011 \$	2010 \$
Property income			
- rental revenue		-	300,000
- recovery of outgoings		-	14,994
- property expenses		(5,255)	(1,961,934)
Net property income		(5,255)	(1,646,940)
Interest income – other persons		9,313,865	3,126,135
Other income – reversal of GST provision		827,648	-
Responsible entity's fee		(826,278)	(837,880)
Receivers fees		(164,319)	(540,180)
Legal fees		(3,999)	(2,314,800)
Corporate finance consultants		-	(299,734)
Liquidator fees of related MIS projects		-	(373,200)
Other expenses		(239,920)	(546,524)
Finance costs	3	(15,297,871)	(15,292,916)
Changes in fair value of investment property – realisation basis		-	(727,648)
Loss for the year		(6,396,129)	(19,453,687)
Other comprehensive income		-	-
Total comprehensive loss for the year		(6,396,129)	(19,453,687)

The accompanying notes form part of these financial statements.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**CONSOLIDATED STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2011**

	Notes	Consolidated	
		2011	2010
		\$	\$
ASSETS			
Current assets			
Cash and cash equivalents	4	172,529,727	156,963,379
Trade and other receivables	5	1,078,292	8,509,637
Total current assets		173,608,019	165,473,016
Total assets		173,608,019	165,473,016
LIABILITIES			
Current liabilities			
Trade and other payables	6	3,846,352	4,568,216
Interest bearing liabilities	7	165,739,321	150,486,325
Total current liabilities		169,585,673	155,054,541
Total liabilities		169,585,673	155,054,541
Net assets		4,022,346	10,418,475
EQUITY			
Settlement capital	8	54,935,759	54,935,759
Accumulated losses	9	(50,913,413)	(44,517,284)
Total equity		4,022,346	10,418,475

The accompanying notes form part of these financial statements.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
FOR THE YEAR ENDED 30 JUNE 2011**

	Notes	Consolidated 2011 \$	2010 \$
Total equity at the beginning of the year		10,418,475	29,872,162
Loss for the year		(6,396,129)	(19,453,687)
Transactions with unit holders in their capacity as unit holders:			
- Distributions declared or paid		-	-
Total equity at the end of the year		4,022,346	10,418,475

The accompanying notes form part of these financial statements.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**CONSOLIDATED STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED 30 JUNE 2011**

	Notes	Consolidated 2011	2010
		\$	\$
Cash flows from operating activities			
Receipts from customers		6,650	308,343
Payments to suppliers		(1,153,984)	(5,305,599)
Interest received	f	9,202,385	2,159,324
Finance costs paid		-	(756,137)
Net cash provided by / (used in) operating activities	14 (b)	8,055,051	(3,594,069)
Cash flows from investing activities			
Net proceeds from the sale of investment properties		7,536,176	164,624,253
Net cash provided by investing activities		7,536,176	164,624,253
Cash flows from financing activities			
Repayment of bank loans		(24,879)	(8,336,907)
Net cash used in financing activities		(24,879)	(8,336,907)
Net increase in cash and cash equivalents held		15,566,348	154,560,497
Cash and cash equivalents at the beginning of the year		156,963,379	2,402,882
Cash and cash equivalents at year end	14 (a)	172,529,727	156,963,379

The accompanying notes form part of these financial statements.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

Reporting Entity

These financial statements are for the entity Timbercorp Primary Infrastructure Fund ('the Fund') and controlled entities ('the Group'). The Fund is a registered managed investment scheme (now delisted) established and domiciled in Australia. The Responsible Entity of the Fund is Align Funds Management Limited ('Align').

Basis of Preparation (Realisation)

The financial statements are general purpose financial statements that have been prepared in accordance with Australian Accounting Standards, other authoritative pronouncements of the Australian Accounting Standards Board and the *Corporations Act 2001*.

The following circumstances have caused the directors to conclude that the Fund will not continue as a going concern:

- The Group's sole tenant, Timbercorp, was placed into the voluntary administration on 23 April 2009, followed by liquidation on 29 June 2009. Accordingly, the Group has not received rental income beyond the quarter ended 30 June 2009, and subsequent receipt of any entitlement for rental income under the long-term lease agreements is considered doubtful;
- Since the administration of Timbercorp, the directors vigorously explored all available options that might ensure the continuation of the Group, however, on 15 September 2009, Receivers and Managers were appointed to each of the Fund's subsidiaries, which represent substantially all of the Group's assets.
- Due to continuing borrowing costs being incurred by the Group, and irrespective of the outcome of the legal entitlement of Timbercorp Growers to the net proceeds from the sale of the Group's properties, there will be insufficient funds to pay the liabilities due to the secured TPIF bond holders.

Accordingly, the financial statements have not been prepared on a going concern basis, but rather have been prepared on a realisation basis.

The financial statements therefore includes necessary adjustments relating to the recoverability and classification of recorded asset amounts and the amounts and classification of the liabilities on the basis the Fund will not continue as a going concern.

Compliance with IFRSs

The financial statements comply with International Financial Reporting Standards ('IFRS') as issued by the International Accounting Standards Board.

Significant Accounting Policies

The accounting policies set out below have been applied consistently to all periods presented in this financial report.

(a) Principles of Consolidation

The consolidated financial statements incorporate the assets and liabilities of all subsidiaries of the Fund as at 30 June 2011 and the results of its subsidiaries for the year then ended.

A subsidiary is any entity over which the Fund has the power to control the financial and operating policies so as to obtain benefits from its activities.

All inter-entity balances and transactions between entities in the Group, including any unrealised profits or losses, have been eliminated on consolidation. Details of the controlled entities are contained in Note 10.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)

(b) Revenue

Rental income from operating leases is recognised as income on a straight-line basis over the lease term.

Rental income received in advance is brought to account as unearned income.

Interest income is recognised in the income statement on a time basis using the effective interest rate method.

Distribution income is recognised when the right to receive a distribution has been established.

Other income is recognised when the right to receive the revenue has been established.

All income is stated net of the amount of goods and services tax.

(c) Financial instruments

Financial assets and financial liabilities are recognised on the balance sheet when the Fund becomes a party to the contractual provisions of the instrument.

Cash and cash equivalents

Cash and cash equivalents comprise cash on hand and demand deposits and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value.

Trade and other payables

Trade and other payables represent liabilities for goods and services provided to the Fund prior to the end of the financial year which are unpaid at year end. Trade and other payables are recognised initially at fair value and subsequently measured at amortised cost.

A liability is recognised for distributions declared or committed to which are unpaid at year end.

Financial liabilities and equity

Financial liabilities and equity instruments issued by the Group are classified according to the substance of the contractual arrangements entered into and the definitions of a financial liability and an equity instrument. The accounting policies adopted for specific financial liabilities and equity instruments are set out below.

Borrowings

Interest-bearing loans and overdrafts are initially measured at fair value, net of unamortised transaction costs, and are subsequently measured at amortised cost. Any difference between the proceeds (net of transaction costs) and the redemption amount is recognised in the income statement over the period of the borrowings using the effective interest rate method.

Borrowings are classified as current liabilities unless the Group has an unconditional right to defer settlement of the liability for at least 12 months after the balance sheet date.

Investments in controlled entities

Investments in controlled entities in the parent entity are measured at cost less any impairment losses. The underlying net asset position of each controlled entity is considered when determining the recoverable amount of investments in controlled entities. The net asset position of each controlled entity is based on the fair values of underlying assets held by each controlled entity, and therefore does not include any costs to sell which may be incurred upon subsequent disposal of these assets.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

NOTE 1: STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES (continued)

(d) Financing Costs

Financing costs are recognised using the effective interest rate applicable to the financial liability.

(e) Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Australian Taxation Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of expense. Receivables and payables in the statement of financial position are shown inclusive of GST.

(f) Income tax

Under current income tax legislation, the Group is not liable for income tax provided its taxable income is fully distributed to unit holders.

(g) Critical judgments and significant accounting estimates

The preparation of financial statements requires the directors to make judgments, estimates and assumptions that affect the application of accounting policies and the reported amounts of assets, liabilities, income and expenses. Actual results may differ from these estimates.

Estimates and assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised and in any future periods affected.

Critical judgments – fixed price contracts

As outlined in Note 15 Contingent Liabilities, capital works have been performed (by Timbercorp Asset Management Pty Ltd) on the Yungera and Solara South properties up to 30 June 2009 in accordance with fixed priced contracts. The directors, after giving due consideration to this matter, have concluded persuasive evidence exists that these capital works appropriately represent only a contingent liability to the Fund.

Critical judgments – classification of sale proceeds (2010)

The property sale proceeds of \$173 million (before related selling costs) are inclusive of \$9.3 million attributed to the sale of an interest in the 2010 crop, which is in lieu of rental income not received during the period of sale. Having regard to the substance of the transaction, the directors have determined that the \$173 million should be accounted for as the sale of the property in its entirety, notwithstanding various agreements attribute values to various categories for legal and other commercial reasons. This judgment only impacts the classification of sale proceeds, and has no bearing on the reported loss for the year, or net asset position at 30 June 2011.

(h) Accounting standards applicable but not yet adopted

No new standards, amendments or interpretations issued are expected to affect the Group.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

NOTE 2: FINANCIAL RISK MANAGEMENT

The Group's investing activities expose it to various types of risk that are associated with the financial instruments and markets in which it invests. The most important types of financial risk to which the Group is exposed to is market risk, credit risk and liquidity risk. The Responsible Entity is responsible for determining objectives and risk policies. The exposure to each of these risks, as well as the Group's policies and processes for managing these risks are described below.

(a) Market Risk

Market risk embodies the potential for both loss and gains and would normally include currency risk, interest rate risk and other price risk.

The Group has no exposure in relation to currency risk as it does not trade in foreign currencies.

The Group has limited short-term exposure to interest rate risk. Interest-bearing financial assets are limited to cash and cash equivalents which have variable interest rate terms. Interest-bearing financial liabilities include bonds and bank loans which have fixed interest rate terms as detailed in Note 13. These financial liabilities will be subject to interest rate risk at their various maturity dates in future financial years.

The Group has no exposure in relation to other price risk.

(b) Credit risk

Credit risk is the risk that a party to the financial instrument will cause a financial loss to the Group by failing to discharge an obligation. The Group is exposed to credit risk through the financial assets listed below. The table also details the maximum exposure to credit risk for each of the classes of financial instrument.

	Consolidated	
	2011	2010
	\$	\$
Cash at bank	172,529,727	156,963,379
Trade and other receivables	1,078,292	8,509,637
Maximum exposure to credit risk	173,608,019	165,473,016

The Group manages credit risk and the losses which could arise from default by ensuring that parties to contractual arrangements are of an appropriate rating.

Cash at bank is held with reputable organisations.

(c) Liquidity risk

Liquidity risk is the risk that an entity will encounter difficulties in meeting obligations associated with financial liabilities. The Group monitors its exposure to liquidity risk by ensuring that on a daily basis there is sufficient cash on hand to meet the contractual obligations of financial liabilities as they fall due, including redemptions to unitholders. The Group manages liquidity risk by maintaining adequate cash reserves and by continuously monitoring forecasts and actual cash flows. This can involve adjusting the timing and amount of distributions paid, and consideration to the required levels of long-term capital.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

NOTE 2: FINANCIAL RISK MANAGEMENT (continued)

(c) Liquidity risk (continued)

The maturity of financial liabilities at reporting date are shown below, based on the contractual terms of each liability in place at reporting date. The amounts disclosed are based on undiscounted cash flows.

	Less than 1 year	1 – 2 years	2 – 5 years	More than 5 years	Total contractual cash flows	Carrying Amount liabilities
	\$	\$	\$	\$	\$	\$
Group: 2011						
Trade and other payables						
Non-interest bearing	<u>3,846,352</u>	-	-	-	<u>3,846,352</u>	<u>3,846,352</u>
Interest-bearing liabilities						
Fixed interest rate	<u>165,739,321</u>	-	-	-	<u>165,739,321</u>	<u>165,739,321</u>
Group: 2010						
Trade and other payables						
Non-interest bearing	<u>4,568,216</u>	-	-	-	<u>4,568,216</u>	<u>4,568,216</u>
Interest-bearing liabilities						
Fixed interest rate	<u>150,486,325</u>	-	-	-	<u>150,486,325</u>	<u>150,486,325</u>

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

	Note	Consolidated 2011 \$	2010 \$
NOTE 3: EXPENSES			
Loss for the year includes the following specific expenses:			
Finance costs:			
- interest paid		15,297,871	14,610,257
- amortisation of capitalised borrowing costs		-	682,659
		<u>15,297,871</u>	<u>15,292,916</u>
Remuneration of the auditors for:			
- audit of the financial report		37,000	37,000
- review of the half-year financial report		18,000	18,000
- compliance plan audit		4,000	4,000
		<u>59,000</u>	<u>59,000</u>

NOTE 4: CASH AND CASH EQUIVALENTS

Cash at bank	<u>172,529,727</u>	<u>156,963,379</u>
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The effective weighted average interest rate on cash is 5.68% (2010: 5.50%).

Substantially all of the cash at bank is held in trust accounts and cannot be used to settle liabilities of the Group until such time as the Supreme Court has made a determination in respect of grower rights.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

	Note	Consolidated 2011 \$	2010 \$
NOTE 5: RECEIVABLES			
CURRENT			
Trade receivables		493,379	500,029
Less impairment provision		(493,379)	(493,379)
Net trade receivables		-	6,650
Accrued interest income		1,078,292	966,811
Property sale proceeds receivable		-	7,536,176
		1,078,292	8,509,637

Trade and other receivables are non-interest bearing. The fair value of all receivables is not materially different from the carrying amount.

a) Ageing and impairment losses

The ageing of trade receivables for the group at the reporting date was:

	Gross 2011 \$	Group Impairment 2011 \$	Gross 2010 \$	Impairment 2010 \$
Not past due	-	-	-	-
Past due 0 – 30 days	-	-	-	-
Past due 31 – 60 days	-	-	-	-
Over 60 days	493,379	(493,379)	500,029	(493,379)
	493,379	(493,379)	500,029	(493,379)

The directors establish specific allowances for impairment when the recoverability of any receivable is doubtful. The allowance account for receivables is used to record impairment losses unless the entity is satisfied that there is no recovery of the amount possible, at which point it is written off directly against the amount owing.

b) Credit risk

The maximum credit exposure to credit risk for both the Group is the gross amount of all receivables.

NOTE 6: PAYABLES

CURRENT

Amounts payable to:

- the Responsible Entity	1,660,323	834,045
- the Property Manager	644,597	644,597
Sundry creditors and accruals	1,541,432	3,089,574
	3,846,352	4,568,216

Trade and other payables are non-interest bearing.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

		Consolidated	
		2011	2010
		\$	\$
<hr/>			
NOTE 7:	INTEREST-BEARING LIABILITIES		
CURRENT			
Secured liabilities			
Bonds	(a)	31,850,000	31,850,000
Bank loans	(b)	102,436,214	102,461,093
Accrued interest		31,153,107	15,875,232
Other loans		300,000	300,000
		<u>165,739,321</u>	<u>150,486,325</u>

The investment property (up to the date of sale), with a carrying value of \$173 million, was pledged as security.

(a) Bonds

The following TPIF Bonds were on issue during the financial year:

Bonds	Issue date	Face Value (\$)	Fixed Interest rate	Maturity date
Series 1	30 September 2005	10,100,000	9.50%	30 September 2012
Series 2	26 May 2006	11,750,000	9.00%	31 March 2013
Series 3	26 May 2006	10,000,000	8.65%	31 March 2013
		<u>31,850,000</u>		

The TPIF Bonds are secured by a fixed and floating charge over the assets of the Group.

The covenants within the TPIF Bond Trust Deed require liabilities, adjusted for cash, not to exceed 80% of all assets, adjusted for cash, calculated on a consolidated basis. The Group was in breach of this covenant at reporting date.

(b) Bank loans

The Group was in breach of covenants and previous negotiations with ANZ in respect of maintaining the finance facility were unsuccessful. Consequently, Receivers and Managers were appointed to the each of the subsidiaries on 16 September 2009.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

	Consolidated	
	2011	2010
	\$	\$
NOTE 8: SETTLEMENT CAPITAL		
53,303,134 (2009: 53,303,134) fully paid ordinary units	<u>54,935,759</u>	<u>54,935,759</u>
Represented by:		
Fully paid ordinary units	56,472,418	56,472,418
Issue costs incurred	(1,483,832)	(1,483,832)
Equity buy-back costs	<u>(52,827)</u>	<u>(52,827)</u>
	<u>54,935,759</u>	<u>54,935,759</u>

Each unit represents a right to an individual share in the Fund and does not extend to a right to the underlying assets of the Fund. There are no separate classes of units and each unit has the same rights attaching to it as all other units in the Fund. Units will not be redeemable, unless the Responsible Entity makes a redemption facility available or a withdrawal offer in the future, in accordance with the constitution.

Capital risk management

The Fund regards total equity as its capital. The objective of the Fund is to provide unit-holders with regular tax-advantaged income distributions over the life of the Fund through the acquisition, development and management of agricultural investment properties, whilst maintaining sufficient liquidity to safeguard their ability to continue as a going concern.

NOTE 9: ACCUMULATED LOSSES

Accumulated losses at the beginning of the financial year	(44,517,284)	(25,063,597)
Net loss for the year	<u>(6,396,129)</u>	<u>(19,453,687)</u>
Accumulated losses at the end of the financial year	<u>(50,913,413)</u>	<u>(44,517,284)</u>

NOTE 10: OTHER FINANCIAL ASSETS

The consolidated financial statements incorporate the assets, liabilities and results of the following controlled entities in accordance with the accounting policy note described in note 1(a).

Name of entity	Entity Type	Country of Incorporation	Equity Holding
Timbercorp Orchard Trust #2	Unit Trust	Australia	100%
Timbercorp Orchard Trust #3	Unit Trust	Australia	100%
Timbercorp Orchard Trust #5	Unit Trust	Australia	100%

NOTE 11: CAPITAL AND LEASING COMMITMENTS

Details of the Group's capital commitments are contained in Note 15 Contingent Liabilities.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

	Consolidated	
	2011	2010
	\$	\$

NOTE 12: RELATED PARTY TRANSACTIONS

Responsible Entity

The Responsible Entity of Timbercorp Primary Infrastructure Fund is Align Funds Management Limited.

Align receives a fee of 0.50% of the market value of the Group's assets per annum, calculated monthly at the end of each month and payable at the end of each half-year, subject to it receiving a minimum fee of \$155,837 each half year.

The Responsible Entity will, in addition to its remuneration, be reimbursed out of the Group for all out-of-pocket charges, expenses and outgoings reasonably and properly incurred by or on behalf of the Group in accordance with the constitution.

Property Manager

Timbercorp Asset Management Pty Limited ("TAM"), a wholly owned subsidiary of Timbercorp, was previously engaged to acquire, develop, lease, manage and dispose of the Group assets. TAM received a fee of 0.75% of the market value of the Group's assets per annum, at the end of each half-year, subject to it receiving a minimum fee of \$233,756.

When Timbercorp (and its wholly owned entities including TAM) was placed into voluntary administration, the role of Property Manager was performed by Align Asset Management Pty Ltd. Fees payable were consistent with fees previously paid to TAM and that role ceased following appointment of the Receivers and Managers in September 2009.

Align Asset Management Pty Ltd is a wholly owned subsidiary of Align Funds Management Limited.

Align Funds Management Ltd (Responsible Entity)

Management fees for the year incurred by the Group to the Responsible Entity

826,278	837,880
---------	---------

Aggregate amount payable to the Responsible Entity at reporting date

1,660,334	834,045
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Align Asset Management Pty Ltd (Property Manager)

Management fees for the year incurred by the Group to the Property Manager

-	237,937
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Aggregate amount payable to the Property Manager at reporting date

237,937	237,937
---------	---------

Timbercorp Asset Management Pty Ltd (former Property Manager)

Management fees for the year incurred by the Group to the Property Manager

-	-
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Aggregate amount payable to the Property Manager at reporting date

406,660	406,660
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**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

	Consolidated	
	2011	2010
	\$	\$

NOTE 12: RELATED PARTY TRANSACTIONS (continued)

Key Management Personnel Disclosures

The names and positions held of key management personnel in office at any time during the financial year are:

Key Management Personnel	Position
Alan Fisher	Chairman
Sam Baillieu	Non-Executive Director
Trevor Moyle	Non-Executive Director
Andrew Ashbolt	Company Secretary

Key Management Personnel Compensation

The Responsible Entity and other related entities remunerate key management personnel. Payments made from the Group to the Responsible Entity and other related entities do not include any amounts attributable to the compensation of key management personnel.

Key Management Unit holdings

The number of units in the Fund held during the financial year by key management personnel are set out below.

Andrew Ashbolt		
- Balance at the beginning of the year	38,605	38,605
- Additions	-	-
- Balance at the end of the year	38,605	38,605
% of units held	0.1%	0.1%

NOTE 13: SEGMENT REPORTING

The Group operates solely in the business of investment property management within Australia.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

	Consolidated	
	2011	2010
	\$	\$
<hr/>		
NOTE 14: CASH FLOW INFORMATION		
(a) Reconciliation of cash and cash equivalents		
Cash and cash equivalents at the end of the financial year as shown in the Statement of Cash Flows is reconciled to the related items in the Statement of Financial Position as follows:		
Cash at bank	<u>172,529,727</u>	<u>156,963,379</u>
 (b) Reconciliation of cash flow from operating activities with loss for the year		
Loss for the year	(6,396,129)	(19,453,687)
Non-cash flows in loss for the year		
Amortisation	-	682,659
Changes in fair value of investment property	-	727,648
Changes in assets and liabilities		
Increase in receivables	(104,830)	(6,650)
Increase in payables and accrued interest	<u>14,688,581</u>	<u>14,455,961</u>
Cash flows from operations	<u>8,055,051</u>	<u>(3,594,069)</u>

NOTE 15: CONTINGENT LIABILITIES

(a) Grower rights

The Supreme Court of Victoria ('Court') is yet to make a determination on what rights the growers have in relation to the proceeds of sale of the properties, and what value, if any, should be attributed to growers' rights to such proceeds.

The directors believe that the outcome of the legal proceedings could have major significance on the reported net asset position of the Group as at 30 June 2011. A liability for the growers' claim has not been recognised on the basis this represents a possible, rather than actual, obligation at the time of this report, whose outcome is dependent on a subsequent determination by the Court.

(b) Capital expenditure

The Group has \$5.6m remaining of a possible obligation relating to a fixed price development contract with Timbercorp Asset Management Pty Ltd ('TAM') for capital expenditure on the Yungera and Solora South properties. As at 30 June 2011, the directors estimate unclaimed capital works are to the value of \$5.0m. The directors believe it is unlikely TAM will complete the remaining \$0.6m of capital works under the contracts.

The specific terms of the fixed price contracts are such that payment is only required for capital works in the event the Fund is able to procure funds for the purpose of paying for these capital works. The directors believe the subsequent procurement of funds for the purpose of paying for these capital works is presently unlikely. The directors have also taken legal advice on this matter, and have concluded the Fund does not presently have a liability for the \$5.0m of capital works.

A liability could possibly exist in the future in the unlikely event the Fund is able to subsequently procure funds for the purpose of paying for these capital works or a compromise position is agreed with the TAM Liquidators, but this issue has not been finally determined.

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

	Consolidated	
	2011	2010
	\$	\$

NOTE 16: FUND DETAILS

The principal place of business of the Responsible Entity is

Level 33, 360 Collins Street
MELBOURNE VIC 3004

NOTE 17: EVENTS SUBSEQUENT TO REPORTING DATE

Other than matters outlined in the directors' report, there are no further matters requiring disclosure.

NOTE 18: EARNINGS PER UNIT (EPU)

Earnings per unit for (loss) / profit attributable to the unit holders of the Fund	2011 cents	2010 cents
Basic EPU	(11.98)	(36.44)
Diluted EPU	(11.98)	(36.44)

The following information reflects the income and securities numbers used in the calculations of the basic and diluted EPU:

	2011 Number of units	2010 Number of units
Weighted average number of units used in calculating basic and diluted EPU	<u>53,386,865</u>	<u>53,386,865</u>
Earnings used in calculating basic and diluted EPU	(6,396,129)	(19,453,687)

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

**NOTES TO THE FINANCIAL STATEMENTS
FOR THE YEAR ENDED 30 JUNE 2011**

NOTE 19: PARENT ENTITY DISCLOSURE

The following details information related to the parent entity at 30 June 2011. The information presented here has been prepared using the consistent accounting policies as set out in Note 1.

	Parent Entity	
	2011	2010
	\$	\$
Current assets	204,532	196,660
Non-current assets	43,766,697	46,609,027
Total assets	43,971,229	46,805,687
Current liabilities	39,948,883	36,387,212
Non-current liabilities	-	-
Total liabilities	39,948,883	36,387,212
Net assets	4,022,346	10,418,475
Issued capital	54,935,759	54,935,759
Retained losses	(50,913,413)	(44,517,284)
Total equity	4,022,346	10,418,475
Loss for the year	6,396,129	19,453,687
Total comprehensive loss for the year	6,396,129	19,453,687

**TIMBERCORP PRIMARY INFRASTRUCTURE FUND
AND CONTROLLED ENTITIES
ARSN 116 024 830**

DIRECTORS' DECLARATION

The directors of the Responsible Entity, Align Funds Management Limited, declare that:

- (a) the financial statements, comprising the statement of comprehensive income, statement of financial position, statement of changes in equity, statement of cash flows, and notes for the financial year ended 30 June 2010 are in accordance with the *Corporations Act 2001* including:
 - (i) complying with Accounting Standards and the *Corporations Regulations 2001*; and
 - (ii) giving a true and fair view of the Group's financial position as at 30 June 2011 and of its performance for the year ended on that date;
- (b) in the directors' opinion, the Fund is not a going concern and the financial statements have therefore been prepared on a realisation basis; and
- (c) the directors have been given the declarations required by section 295A of the *Corporations Act 2001*.

This declaration is made in accordance with a resolution of the Board of Directors and is signed for and on behalf of the directors of the Responsible Entity by:



Alan Fisher
Chairman

Melbourne

5 September 2012



Grant Thornton

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Auditor's Independence Declaration

To the Directors of Timbercorp Primary Infrastructure Fund as Responsible Entity for Timbercorp Primary Infrastructure Fund

In accordance with the requirements of section 307C of the Corporations Act 2001, as lead auditor for the audit of Timbercorp Primary Infrastructure Fund for the year ended 30 June 2011, I declare that, to the best of my knowledge and belief, there have been:

- a no contraventions of the auditor independence requirements of the Corporations Act 2001 in relation to the audit; and
- b no contraventions of any applicable code of professional conduct in relation to the audit.

Grant Thornton

GRANT THORNTON AUDIT PTY LTD
Chartered Accountants

Michael Climpson

Michael Climpson
Partner - Audit & Assurance

Melbourne, 5 September 2012

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Independent Auditor's Report

To the Unitholders of Timbercorp Primary Infrastructure Fund

We have audited the accompanying financial report of Timbercorp Primary Infrastructure Fund (the "Fund"), which comprises the consolidated statement of financial position as at 30 June 2011, the consolidated statement of comprehensive income, consolidated statement of changes in equity and consolidated statement of cash flows for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information and the directors' declaration of the consolidated entity comprising the Fund and the entities it controlled at the year's end or from time to time during the financial year.

Directors responsibility for the financial report

The Directors of the Align Funds Management Limited, the Responsible Entity, are responsible for the preparation of the financial report that gives a true and fair view of the financial report in accordance with Australian Accounting Standards and the Corporations Act 2001. This responsibility includes such internal controls as the Directors determine are necessary to enable the preparation of the financial report to be free from material misstatement, whether due to fraud or error. The Directors also state, in the notes to the financial report, in accordance with Accounting Standard AASB 101 Presentation of Financial Statements, that compliance with the Australian equivalents to International Financial Reporting Standards ensures that the financial report, comprising the financial statements and notes, complies with International Financial Reporting Standards.

Auditor's responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards which require us to comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error.

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In making those risk assessments, the auditor considers internal control relevant to the Entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Directors, as well as evaluating the overall presentation of the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independence

In conducting our audit, we have complied with the independence requirements of the Corporations Act 2001.

Auditor's opinion

In our opinion:

- a the financial report of Timbercorp Primary Infrastructure Fund is in accordance with the Corporations Act 2001, including:
 - i giving a true and fair view of the consolidated entity's financial position as at 30 June 2011 and of its performance for the year ended on that date; and
 - ii complying with Australian Accounting Standards and the Corporations Regulations 2001; and
- b the financial report also complies with International Financial Reporting Standards as disclosed in the notes to the financial statements.

Significant contingent Liabilities

Without qualification to our opinion, we draw attention to Note 15 of the financial statements, 'Contingent Liabilities'. Legal proceedings pertaining to growers' rights represent a significant contingent liability which could have a material negative impact on the net position reported at 30 June 2011.



GRANT THORNTON AUDIT PTY LTD
Chartered Accountants



Michael Climpson
Partner - Audit & Assurance

Melbourne, 5 September 2012