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Deed of Compromise for the Liparoo and Yungera Rights Proceeding

Australia and New Zealand Banking Group Limited (ACN 005 357 522)

OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) as
trustee for Timbercorp Orchard Trust #3

OIM#5 Pty Ltd (Receivers and Managers Appointed) (ACN 118 204 701) as
trustee for Timbercorp Orchard Trust #5

Michael Fung (in his capacity as receiver and manager of OIM#2 Pty Ltd
(Receivers and Managers Appointed) as trustee for Timbercorp Orchard
Trust #3 and receiver and manager of OIM#5 Pty Ltd (Receivers and
Managers Appointed) as trustee for Timbercorp Orchard Trust #5)

Paul William Kirk (in his capacity as receiver and manager of OIM#2 Pty Ltd
(Receivers and Managers Appointed) as trustee for Timbercorp Orchard
Trust #3 and receiver and manager of OIM#5 Pty Ltd (Receivers and
Managers Appointed) as trustee for Timbercorp Orchard Trust #5)

Graham Dace (in his capacity as representative
of the Participant Growers in the
2001 Timbercorp Almond Project (ARSN 095 649 746))

Graham Goldenberg (in his capacity as representative
of the Participant Growers in the
2002 Timbercorp Almond Project (ARSN 099 611 935))

Goran Runje (in his capacity as representative
of the Participant Growers in the
2003 Timbercorp Almond Project (ARSN 103 197 299))

Graeme Phillip Cole (in his capacity as representative of the Participant
Growers in the 2004 Timbercorp Almond Project (ARSN 108 336 670))

Christopher Mark Littlely (in his capacity as representative
of the Participant Growers in the
2005 Timbercorp Almond Project (ARSN 112 935 092))

David Butterfield (in his capacity as representative
of the Participant Growers in the
2002 Timbercorp Almond Project (Private Offer No 1))

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

Allens
Level 37
101 Collins Street
Melbourne VIC 3000
Tel +61 3 9614 1011
Fax +61 3 9614 4661
www.allens.com.au

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Date	25 July 2012
Parties	
1.	Australia and New Zealand Banking Group Limited (ACN 005 357 522) c/- Allens, 101 Collins Street, Melbourne, Victoria, 3000 (ANZ)
2.	OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) as trustee for Timbercorp Orchard Trust #3 c/- Maddocks, 140 William Street, Melbourne, Victoria, 3000 (OIM#2)
3.	OIM#5 Pty Ltd (Receivers and Managers Appointed) (ACN 118 204 701) as trustee for Timbercorp Orchard Trust #5 c/- Maddocks, 140 William Street, Melbourne, Victoria, 3000 (OIM#5)
4.	Michael Fung (in his capacity as receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #3 and receiver and manager of OIM#5 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #5) c/- Norton Rose, Level 15, RACV Tower, 485 Bourke St, Melbourne VIC 3000 (Fung)
5.	Paul William Kirk (in his capacity as receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #3 and receiver and manager of OIM#5 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #5) c/- Norton Rose, Level 15, RACV Tower, 485 Bourke St, Melbourne VIC 3000 (Kirk)
6.	Graham Dace (in his capacity as representative of the Participant Growers in the 2001 Timbercorp Almond Project (ARSN 095 649 746)) c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Dace)
7.	Graham Goldenberg (in his capacity as representative of the Participant Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935)) c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Goldenberg)
8.	Goran Runje (in his capacity as representative of the Participant Growers in the 2003 Timbercorp Almond Project (ARSN 103 197 299)) c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Runje)
9.	Graeme Phillip Cole (in his capacity as representative of the Participant Growers in the 2004 Timbercorp Almond Project (ARSN 108 336 670)) c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Cole)
10.	Christopher Mark Littley (in his capacity as representative of the Participant Growers in the 2005 Timbercorp Almond Project (ARSN 112 935 092)) c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Littley)
11.	David Butterfield (in his capacity as representative of the Participant Growers in the 2002 Timbercorp Almond Project (Private Offer No 1)) c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Butterfield)

12.	Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 (TSL)
Recitals	
A	Timbercorp Limited (In Liquidation) (Timbercorp) and its subsidiary entities (together, the Timbercorp Group) conducted various agribusiness projects involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus, including the Almond Projects.
B	Each entity in the Timbercorp Group is currently in liquidation.
C	Both OIM#2 and OIM#5 are currently in receivership.
D	The Participant Growers are investors in the Almond Projects which were conducted on the Liparoo Property and Yungera Property.
E	TSL is the responsible entity for the Almond Projects other than the 2002 Timbercorp Almond Project (Private Offer No 1) for which Almond Management Pty Ltd (In Liquidation) (AMPL) is the project manager.
F	ANZ provided financial accommodation to OIM#2 and OIM#5 and obtained the Liparoo Security and the Yungera Security over the assets of OIM#2 and OIM#5 used in the Almond Projects, including the Liparoo Property and the Yungera Property (Almond Assets).
G	By the terms of the Liparoo Security (among other things): <ul style="list-style-type: none"> (a) OIM#2 guaranteed that ANZ will be paid all money which OIM#2 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #2 owes to ANZ at any time for any reason in relation to, among other things, the Solara Facility (Guaranteed TOT#2 Moneys); and (b) OIM#2 charged to ANZ all rights, property and undertaking of OIM#2 as security for the due and punctual payment and satisfaction of, among other things, the Guaranteed TOT#2 Moneys.
H	In the course of the respective receiverships of OIM#2 and OIM#5, and with Court approval, the Almond Assets were sold (Almond Sale) and the Fund constituted.
I	A dispute exists between, ANZ, OIM#2 and OIM#5 and the Participant Growers regarding the allocation amongst them of the Fund.
J	The Receivers are, jointly and severally, the stakeholders of the Fund and await the orders of the Court regarding disbursement of the Fund.
K	TFL claims that a number of the Participant Growers are TFL Debtors.
L	TSL claims that a number of the Participant Growers are Timbercorp Debtors.
M	On 6 December 2011, ANZ commenced Supreme Court of Victoria Proceeding No. S CI 2011 6604, seeking, among other things, declarations as to its, and other relevant parties', rights, if any, to the Fund (Liparoo and Yungera Rights Proceeding).

- N The interests of OIM#2 and OIM#5 in the Liparoo and Yungera Rights Proceeding are represented respectively by the directors of those companies.
- O By order made on 16 December 2011 in the Liparoo and Yungera Rights Proceeding, pursuant to rule 16.01(2) of the Rules:
- (a) Dace was appointed as representative of the Participant Growers in the 2001 Timbercorp Almond Project;
 - (b) Goldenberg was appointed as representative of the Participant Growers in the 2002 Timbercorp Almond Project;
 - (c) Runje was appointed as representative of the Participant Growers in the 2003 Timbercorp Almond Project;
 - (d) Cole was appointed as representative of the Participant Growers in the 2004 Timbercorp Almond Project;
 - (e) Littley was appointed as representative of the Participant Growers in the 2005 Timbercorp Almond Project; and
 - (f) Butterfield was appointed as representative of the Participant Growers in the 2002 Timbercorp Almond Project (Private Offer No 1),
- (collectively, the **Representative Growers**).
- P The Parties have agreed to compromise the Liparoo and Yungera Rights Proceeding on the terms set out in this Deed.
- Q The Representative Growers consider that it is for the benefit of the class of persons whom they respectively represent that the Liparoo and Yungera Rights Proceeding be compromised on the terms set out in this Deed.
- R ANZ, OIM#2 and OIM#5 each supports the Liparoo and Yungera Rights Proceeding being compromised on the terms set out in this Deed and, together with the Representative Growers, will seek the Court's approval of the Compromise.

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) **Almond Projects** means each of the almond projects listed in Schedule 1;
- (b) **Almond Land Appeal Deed of Compromise** means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Almond Land Rights Appeal Proceeding;
- (c) **Almond Land Rights Appeal Proceeding** means Supreme Court of Victoria Proceeding No. APCI 2011 0103;
- (d) **Approval Application** means the application or applications to the Court for the orders referred to in clause 3.1(a);

- (e) **BB Olives Deed of Compromise** means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the BB Olives Rights Proceeding;
- (f) **BB Olives Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2010 1354;
- (g) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Victoria;
- (h) **Claim** includes any claim or liability of any kind (including one which is prospective or contingent and the amount of which is not ascertained) and costs (whether or not the subject of a court order);
- (i) **Compromise** means the compromise set out in clause 2;
- (j) **Court** means the Supreme Court of Victoria;
- (k) **Costs** includes legal fees and disbursements;
- (l) **Deed** means this document, including any schedule or annexure to it;
- (m) **Draft Orders** means the draft orders set out in schedule 4 to this Deed;
- (n) **Fenceport Deed of Compromise** means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Fenceport Rights Proceeding;
- (o) **Fenceport Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2011 6777;
- (p) **First Notice to Participant Growers** has the meaning set out at clause 6.1(b);
- (q) **Fund** means the net sale proceeds of the Almond Sale (including, for the avoidance of doubt, inclusive of all interest) held on trust by the Receivers, from time to time, in the Liparoo Accounts and the Yungera Accounts pursuant to orders of Justice Davies made on 11 December 2009 and taking into account any other amount which may be deducted pursuant to any subsequent order of the Court including, for the avoidance of doubt, the Receivers' Unpaid Costs;
- (r) **Gross Sale Proceeds** means \$160,000,000, being the agreed consideration for the Almond Sale;
- (s) **Liparoo Accounts** means the interest bearing accounts styled as:
 - (i) OIM NO 2 Pty Ltd As Trustee for the Timbercorp Orchard Trust #3 (Liparoo) NAB Terms Deposit (BSB: 083-004; Account number 16-947-4228); and
 - (ii) OIM NO 2 Pty Ltd As Trustee for the Timbercorp Orchard Trust #3 (Liparoo) NAB Terms Deposit (BSB: 083-004; Account number 17-026-6610);
- (t) **Liparoo Extinguishment Date** means 10 February 2010, being the date on which:
 - (i) the liquidators of TSL extinguished all of the rights of the Participant Growers in respect of the 2001 Timbercorp Almond Project and the 2002 Timbercorp Almond Project conducted on the Liparoo Property; and
 - (ii) the liquidators of AMPL extinguished all of the rights of the Participant Growers in respect of the 2002 Timbercorp Almond Project (Private Offer No 1) conducted on the Liparoo Property;
- (u) **Liparoo Facility** means a \$27.6 Million loan facility provided by ANZ to OIM#2 on or about 30 September 2005;
- (v) **Liparoo Property** means the land the subject of the Liparoo and Yungera Rights Proceeding which was owned by OIM#2 and on which the 2001 Timbercorp Almond Project,

the 2002 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No 1) were conducted;

- (w) **Liparoo Secured Debt** means the sum of:
- (i) the total amount owed to ANZ in respect of:
 - (A) the Liparoo Facility; and
 - (B) the Solara Facility to the extent of the Solara Secured Debt Shortfall (if any),

secured by the Liparoo Security as at 31 October 2011, including one-half of ANZ's costs in preparation for the Liparoo and Yungera Rights Proceeding to that date;
 - (ii) interest accruing on the amount referred to in item (i) above from 1 April 2012 until the date the payment referred to in clause 4(d) is made to ANZ;
 - (iii) one-half of ANZ's costs in preparation for, and of, the Liparoo and Yungera Rights Proceeding including the Approval Application after 31 October 2011; and
 - (iv) after deduction of the costs referred to in (iii) above, one-half of the interest accruing on the Liparoo Accounts after 31 October 2011;
- (x) **Liparoo Security** means the security set out in schedule 2 to this Deed;
- (y) **Liparoo Settlement Amount** means \$2,094,096.18 of the Gross Sale Proceeds referable to the Liparoo Property (being \$41,881,923.63) based on a rateable distribution of the Gross Sale Proceeds in accordance with the number of Lots in each Almond Project;
- (z) **Liparoo Settlement Entitlement** means, in respect of a Participant Grower, its entitlement, from time to time, to:
- (i) the Liparoo Settlement Amount (together with any applicable interest on that amount from the date on which the payment provided by clause 4(b)(i) is made by the Receivers to TSL) on the basis of a rateable distribution of that amount between the Participant Growers in the 2001 Timbercorp Almond Project, the 2002 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No 1) in accordance with the number of Lots they held in those projects as at the Liparoo Extinguishment Date; and
 - (ii) the 2001 Timbercorp Almond Project Grower Tree Payment (together with any applicable interest on that amount from the date on which the payment provided by clause 4(b)(i) is made by the Receivers to TSL) on the basis of a rateable distribution of that amount between the Participant Growers in the 2001 Timbercorp Almond Project in accordance with the number of Lots each such Participant Grower held in that project as at the Liparoo Extinguishment Date;
- (aa) **Lot** means an Almondlot as that term is defined in the constituent documents of each Almond Project;
- (bb) **Participant Growers** means:
- (i) each "Grower" as that term is defined in the constituent document of 2001 Timbercorp Almond Project, 2002 Timbercorp Almond Project, 2003 Timbercorp Almond Project and 2002 Timbercorp Almond Project (Private Offer No 1); and
 - (ii) each "Participant Grower" as that term is defined in the constituent documents of 2004 Timbercorp Almond Project and 2005 Timbercorp Almond Project,

or, where indicated, such Growers or Participant Growers (as the case may be) in certain of those projects including, for the avoidance of doubt, where applicable (and as the case may be), the Grower or Participant Grower's legal personal representatives;

- (cc) **Party** means a party to this Deed;
- (dd) **Receivers** means Fung and Kirk;
- (ee) **Receivers' Account** means the following bank account:
 Account name: PricewaterhouseCoopers
 Bank: ANZ Banking Group Limited
 BSB: 014002
 Account number: 833468126
- (ff) **Receivers' Unpaid Costs** means, to the extent approved by the Court for deduction from the Fund, up to and including the date on which the payments provided by clause 4 are made, the amount of unpaid costs incurred by the Receivers in connection with and arising from:
 - (i) their appointment as receivers and managers of OIM#2 and OIM#5;
 - (ii) their management, maintenance and, in accordance with this deed, disbursement of the Fund; and
 - (iii) their costs of and incidental to the Approval Application and the Liparoo and Yungera Rights Proceeding,
 excluding any such costs to which paragraphs 6 and 7 of the orders of Justice Davies made on 11 December 2009 apply;
- (gg) **Representative Growers' Costs Correspondence** means:
 - (i) the letter from Clarendon Lawyers (solicitors for the Representative Growers) to Arnold Bloch Leibler dated 18 January 2012, including the Framework as referred to and defined in that letter; and
 - (ii) the letter from Arnold Bloch Leibler to Clarendon Lawyers dated 3 February 2012;
- (hh) **Rules** means the *Supreme Court (General Civil Procedure) Rules 2005* (Vic);
- (ii) **Second Notice to Participant Growers** has the meaning set out at clause 6.3(b);
- (jj) **Solara Deed of Compromise** means the deed the compromise dated on or about the date of this Deed to give effect to the compromise of the Solara Rights Proceeding;
- (kk) **Solara Facility** means a \$9.398 million loan facility provided by ANZ to OIM#2 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #2;
- (ll) **Solara Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2011 6606;
- (mm) **Solara Secured Debt Shortfall** means any amount owing to ANZ in respect of the Solara Secured Debt (as that term is defined in the Solara Deed of Compromise) after payment of the amounts referred to in clauses 4(a), (b) and (d) of the Solara Deed of Compromise;
- (nn) **TFL** means Timbercorp Finance Pty Ltd (in Liquidation) (ACN 054 581 190);
- (oo) **TFL Debtor** means a Participant Grower who entered into a loan agreement with TFL:
 - (i) pursuant to which TFL agreed to lend a specified amount or amounts to that Participant Grower to be used by that Participant Grower to pay liability owed to TFL relating to that Participant Grower's investments in the Almond Projects; and
 - (ii) under which TFL claims that indebtedness to TFL remains outstanding;

- (pp) **TFL Indebtedness** means, in respect of a TFL Debtor, its indebtedness to TFL from time to time according to the books and records of TFL;
- (qq) **Timbercorp Debtor** means a Participant Grower who TSL claims is indebted to TSL;
- (rr) **Timbercorp Indebtedness** means, in respect of a Timbercorp Debtor, its indebtedness, from time to time, to TSL according to the books and records of TSL;
- (ss) **Yungera Accounts** means the interest bearing accounts styled as:
- (i) OIM NO 5 Pty Ltd As Trustee for the Timbercorp Orchard Trust #5 (Yungera) NAB Terms Deposit (BSB: 083-004; Account number 16-947-4375); and
 - (ii) OIM NO 5 Pty Ltd As Trustee for the Timbercorp Orchard Trust #5 (Yungera) NAB Terms Deposit (BSB: 083-004; Account number 17-026-9782);
- (tt) **Yungera Extinguishment Date** means 10 February 2010, being the date on which the liquidators of TSL extinguished all of the rights of the Participant Growers in respect of the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project conducted on the Yungera Property;
- (uu) **Yungera Facility** means a \$72.9 million loan facility provided by ANZ to OIM#5 on or about 12 April 2006;
- (vv) **Yungera Property** means the land the subject of the Liparoo and Yungera Rights Proceeding which was owned by OIM#5 and on which the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project were conducted;
- (ww) **Yungera Secured Debt** means the sum of:
- (i) the total amount owed to ANZ in respect of the Yungera Facility secured by the Yungera Security as at 31 October 2011, including one-half of ANZ's costs in preparation for the Liparoo and Yungera Rights Proceeding to that date;
 - (ii) interest accruing on the amount referred to in item (i) above from 1 April 2012 until the date the payment referred to in clause 4(e) is made to ANZ;
 - (iii) one-half of ANZ's costs in preparation for, and of, the Liparoo and Yungera Rights Proceeding including the Approval Application after 31 October 2011; and
 - (iv) after deduction of the costs referred to in (iii) above, one-half of the interest accruing on the Yungera Accounts after 31 October 2011;
- (xx) **Yungera Security** means the security set out in schedule 3 to this Deed;
- (yy) **Yungera Settlement Amount** means \$5,905,903.82 of the Gross Sale Proceeds referable to the Yungera Property (being \$118,118,076.37) based on a rateable distribution of these Gross Sale Proceeds in accordance with the number of Lots in each Almond Project;
- (zz) **Yungera Settlement Entitlement** means, in respect of a Participant Grower, its entitlement, from time to time, to the Yungera Settlement Amount (together with any applicable interest on that amount from the date on which the payment provided by clause 4(a)(ii) is made by the Receivers to TSL) on the basis of a rateable distribution of that amount between the Participant Growers in the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project in accordance with the number of Lots they held in those projects as at the Yungera Extinguishment Date; and
- (aaa) **2001 Timbercorp Almond Project Grower Tree Payment** means \$1,796,000, calculated as \$2,000 for each of the 898 Lots in the 2001 Timbercorp Almond Project by way of

consideration for the extinguishment of the right, title and interest held by Participant Growers in the almond trees on each such lot.

1.2 Interpretation

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

1.3 Parties

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

2. Compromise

Subject to the condition precedent set out in clause 3 being satisfied, the Parties agree to compromise the Liparoo and Yungera Rights Proceeding by:

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

3. Condition Precedent

3.1 Court Orders

It is a condition precedent to the Compromise that, on or before 31 December 2012:

- (a) the Court in the Liparoo and Yungera Rights Proceeding:
 - (i) pursuant to rule 16.01(4) of the Rules, approves the Compromise and orders that the Compromise shall be binding on the absent persons who are represented respectively by the Representative Growers, in the form of, or substantially to the effect of, paragraph 1 of the Draft Orders;

- (ii) pursuant to rule 54.02 of the Rules, approves each of OIM#2 and OIM#5 agreeing to the Compromise, in the form of, or substantially to the effect of, paragraph 2 of the Draft Orders; and
 - (iii) makes orders in the form of, or substantially to the effect of, paragraphs 3 and 4 of the Draft Orders;
- (b) the Court makes orders in the Solara Rights Proceeding in accordance with clause 3.1(a) of the Solara Deed of Compromise;
- (c) the Court makes orders in the BB Olives Rights Proceeding in accordance with clause 3.1(a) of the BB Olives Deed of Compromise;
- (d) the Court makes orders in the Fenceport Rights Proceeding in accordance with clause 3.1(a) of the Fenceport Deed of Compromise; and
- (e) the Court makes orders in the Almond Land Rights Appeal Proceeding in accordance with clause 3.1(a) of the Almond Land Appeal Deed of Compromise.

3.2 Procuring Court Orders

The parties will do all things reasonably necessary to procure the Court to make orders in the terms referred to in clause 3.1.

4. Payments

- (a) As soon as practicable after the condition precedent set out in clause 3.1 is satisfied, the Receivers will pay by direct deposit into the Receivers' Account:
 - (i) from the Liparoo Accounts, one-half of the Receivers' Unpaid Costs; and
 - (ii) from the Yungera Accounts, one-half of the Receivers' Unpaid Costs.
- (b) On the same date as the payment under clause 4(a) is made to the Receivers Account, the Receivers will pay to TSL:
 - (i) from the Liparoo Accounts, the Liparoo Settlement Amount and the 2001 Timbercorp Almond Project Grower Tree Payment by direct deposit into the following interest bearing bank account:

Account name: Mark Korda and Leanne Chesser as Liquidators of Timbercorp Securities Limited (in Liquidation)
TSL – Almonds (TPIF)

Bank: Macquarie Bank Limited

BSB: 183334

Account number: 301881637; and
 - (ii) from the Yungera Accounts, the Yungera Settlement Amount by direct deposit into the following interest bearing bank account:

Account name: Mark Korda and Leanne Chesser as Liquidators of Timbercorp Securities Limited (in Liquidation)
TSL – Almonds (TPIF)

Bank: Macquarie Bank Limited

BSB: 183334

Account number: 301881637.
- (c) TSL will hold the Liparoo Settlement Amount and the 2001 Timbercorp Almond Project Grower Tree Payment on trust (as applicable) for the Participant Growers in the 2001

Timbercorp Almond Project, the 2002 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No 1) for distribution to, or on behalf of, those Participant Growers in accordance with their respective Liparoo Settlement Entitlements on the following basis.

(i) In respect of each Participant Grower in the 2001 Timbercorp Almond Project, the 2002 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No 1) who is not a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause, TSL will pay its Liparoo Settlement Entitlement as soon as practicable to or at the direction of that Participant Grower (in each case, into a bank account nominated by each such Participant Grower).

(ii) In respect of each Participant Grower in the 2001 Timbercorp Almond Project, the 2002 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No 1) who:

- (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
- (B) directs and authorises TSL by notice in writing to pay its TFL Indebtedness to the extent possible out of its Liparoo Settlement Entitlement,

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

(iii) In respect of each Participant Grower in the 2001 Timbercorp Almond Project, the 2002 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No 1) who:

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

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

(iv) In respect of each Participant Grower in the 2001 Timbercorp Almond Project, the 2002 Timbercorp Almond Project and the 2002 Timbercorp Almond Project (Private Offer No 1) who:

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

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

- (d) TSL will hold the Yungera Settlement Amount on trust for the Participant Growers in the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project for distribution to, or on behalf of, those Participant Growers in accordance with their respective Yungera Settlement Entitlements on the following basis.
- (i) In respect of each Participant Grower in the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project who is not a TFL Debtor immediately prior to the time of distribution in accordance with this clause, TSL will pay its Yungera Settlement Entitlement as soon as practicable to or at the direction of that Participant Grower (in each case, into a bank account nominated by each such Participant Grower).
- (ii) In respect of each Participant Grower in the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project who:
- (A) is a TFL Debtor immediately prior to the time of distribution in accordance with this clause; and
- (B) directs and authorises TSL by notice in writing to pay its TFL Indebtedness to the extent possible out of its Yungera Settlement Entitlement,
- TSL will, as soon as practicable, pay to TFL that Participant Grower's TFL Indebtedness (to the extent possible) out of the Participant Grower's Yungera Settlement Entitlement and remit the balance of the Participant Grower's Yungera Settlement Entitlement (if any) to the Participant Grower.
- (iii) In respect of each Participant Grower in the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project who:
- (A) is a TFL Debtor immediately prior to the time of distribution in accordance with this clause; and
- (B) has a Yungera Settlement Entitlement for a sum greater than its TFL Indebtedness and directs and authorises TSL by notice in writing to pay only part of its TFL Indebtedness out of its Yungera Settlement Entitlement,
- TSL will, as soon as practicable, pay to TFL that part of that Participant Grower's TFL Indebtedness out of the Participant Grower's Yungera Settlement Entitlement and retain the balance of that Participant Grower's Yungera Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.
- (iv) In respect of each Participant Grower in the 2003 Timbercorp Almond Project, the 2004 Timbercorp Almond Project and the 2005 Timbercorp Almond Project who:
- (A) is a TFL Debtor immediately prior to the time of distribution in accordance with this clause; and
- (B) does not give a direction or authorisation to TSL in relation to payment of its TFL Indebtedness,
- TSL will continue to hold that Participant Grower's Yungera Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.
- (e) On the same date as the payments under clauses 4(a) and 4(b) are made to the Receivers' Account and TSL respectively, the Receivers will pay to ANZ:

- (i) from the balance of the Liparoo Accounts after the payments referred to in clauses 4(a) and 4(b) have been made, the Liparoo Secured Debt and (if applicable) the Solara Secured Debt Shortfall; and
- (ii) from the balance of the Yungera Accounts after the payments referred to in clauses 4(a) and 4(b) have been made, the Yungera Secured Debt,

into the following bank account:

Account name: Lending Services Manager Account

Bank: ANZ Banking Group Limited

BSB: 013089

Account number: 832959222.

- (f) On the same date as the payments under clauses 4(a), (b) and 4(e) are made to the Receivers' Account, TSL and ANZ respectively, the Receivers will pay:
 - (i) to Maddocks on behalf of OIM#2, any amounts remaining in the Liparoo Accounts after the payments referred to in clauses 4(a), 4(b) and 4(e) have been made, into the following bank account:

Account name: Maddocks Trust Account

Bank: Commonwealth Bank

BSB: 063010

Account number: 10476466; and
 - (ii) to Maddocks on behalf of OIM#5, any amounts remaining in the Yungera Accounts after the payments referred to in clauses 4(a), 4(b) and 4(e) have been made, into the following bank account:

Account name: Maddocks Trust Account

Bank: Commonwealth Bank

BSB: 063010

Account number: 10476466.
- (g) For the purposes of clauses 4(c)(i) and 4(d)(i):
 - (i) if a Participant Grower:
 - (A) is a Timbercorp Debtor and not a TFL Debtor; and
 - (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clauses 4(c)(i) or 4(d)(i),

TSL will:

 - (C) deduct from the payment due to that Participant Grower under clauses 4(c)(i) or 4(d)(i) (as the case may be) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clauses 4(c)(i) and 4(d)(i) out of the Participant Grower's Liparoo Settlement Entitlement or Yungera Settlement Entitlement (as the case may be) to the Participant Grower's nominated bank account; and
 - (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(g), TSL will have discharged its

obligations to that Participant Grower under clauses 4(c)(i) and 4(d)(i) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.

- (h) For the purposes of clauses 4(c)(ii) and 4(d)(ii):
 - (i) if a Participant Grower:
 - (A) is a Timbercorp Debtor and a TFL Debtor; and
 - (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clauses 4(c)(ii) or 4(d)(ii),

TSL will:
 - (C) deduct from the payment due to that Participant Grower under clauses 4(c)(ii) or 4(d)(ii) (as the case may be) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clauses 4(c)(ii) and 4(d)(ii) out of the Participant Grower's Liparoo Settlement Entitlement or Yungera Settlement Entitlement (as the case may be) to the Participant Grower's nominated bank account; and
 - (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(h), TSL will have discharged its obligations to that Participant Grower under clauses 4(c)(ii) and 4(d)(ii) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.
- (i) For the purposes of clauses 4(c)(iii) and (iv) and 4(d)(iii) and (iv), if a Participant Grower is a Timbercorp Debtor and a TFL Debtor, the Participant Grower will not give any direction or authorisation to TSL to pay any part of that Participant Grower's Timbercorp Indebtedness out of its Liparoo Settlement Entitlement or Yungera Settlement Entitlement (as the case may be) pending agreement in writing between TFL and the relevant Participant Grower, or relevant Court Order, as to the manner in which that entitlement is to be disbursed.
- (j) The giving of any authorisation or direction by a Participant Grower to TSL under clauses 4(c) or 4(d):
 - (i) does not constitute an admission of liability by the Participant Grower to TFL in respect of the Participant Grower's TFL Indebtedness; and
 - (ii) is without prejudice to the Participant Grower's rights (if any) against TFL in relation to the Participant Grower's TFL Indebtedness.
- (k) Nothing in the receipt by TFL of any payment from TSL in accordance with clauses 4(c) or 4(d) constitutes a waiver of any rights which TFL may have against a Participant Grower in respect of that Participant Grower's remaining TFL Indebtedness. The benefit of this clause is held by TSL on trust for TFL.
- (l) TSL (in its personal capacity) will pay the Representative Growers' costs:
 - (i) of and incidental to the Approval Application; and
 - (ii) of and incidental to the directions hearing before the Honourable Justice Davies on 16 December 2011 in the Liparoo and Yungera Rights Proceeding,

in accordance with the terms agreed in the Representative Growers' Costs Correspondence. For the avoidance of doubt, payment of the Representative Growers' costs in accordance with this clause is not to be made out of the Fund or any of the funds received by TSL and held on trust for the Participant Growers in accordance with clauses 4(b), (c) and (d).

5. Releases

5.1 Representative Growers, ANZ, OIM#2, OIM#5 and the Receivers

Upon satisfaction of the condition precedent in clause 3.1, and the making of the payments in clauses 4(a), (b), (e) and (f), the Representative Growers on behalf of the Participant Growers, ANZ, OIM#2, OIM#5 and the Receivers release and discharge each other from all Claims in relation to:

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

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

5.2 TSL

Upon:

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

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

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

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

6. Notices to Participant Growers

6.1 First Notice to Participant Growers

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

- (c) The First Notice to Participant Growers will, among other things:
- (i) provide information about the Liparoo and Yungera Rights Proceeding;
 - (ii) explain that the interests of the Participant Growers are represented in the Liparoo and Yungera Rights Proceeding by the Representative Growers;
 - (iii) refer to the Compromise reached between the Parties and explain the key features of this Deed including the various payments contemplated under the Deed;
 - (iv) explain that the Compromise is considered by the Representative Growers as being in the best interests of the Participant Growers;
 - (v) alert the Participant Growers to consider any potential tax consequences of the Compromise;
 - (vi) explain that if the Court approves the Compromise the Participant Growers will be bound by the Compromise in respect of their individual entitlements (if any) out of the Fund;
 - (vii) explain the various roles being undertaken by TSL at the request of, and on the instruction of, the Representative Growers in connection with the Approval Application and under this Deed;
 - (viii) explain when the Participant Growers may expect to receive a payment under the Compromise from TSL;
 - (ix) explain the mechanism by which each Participant Grower is to provide their individual bank account details to TSL for the purposes of receipt of a payment under the Compromise;
 - (x) explain that some Participant Growers are TFL Debtors and Timbercorp Debtors and how the Compromise will apply to the individual circumstances of the Participant Growers (having regard, amongst other things, to the offer of settlement made by TFL to TFL Debtors (amongst others) by letter dated 8 February 2012);
 - (xi) explain how each Participant Grower can access private information in relation to their individual circumstances in respect of the Compromise including the number of Lots they held in the Almond Projects as at the Liparoo Extinguishment Date and the Yungera Extinguishment Date (as the case may be) and, where applicable, their TFL Indebtedness and Timbercorp Indebtedness (as the case may be);
 - (xii) explain, in respect of any payment due to the Participant Growers under the Compromise:
 - (A) the right of each Participant Grower to make a direction and authorisation to TSL in accordance with clauses 4(c), 4(d), 4(g) and 4(h); and
 - (B) the consequences, where applicable, of making or not making such a direction or authorisation;
 - (xiii) explain the consequences if the Court does not approve the Compromise;
 - (xiv) explain to the Participant Growers what their options are in connection with the Approval Application;
 - (xv) inform the Participant Growers that, without prejudice to any other course they may be advised to take, they may:
 - (A) address any comments or questions in relation to the Compromise, the Approval Application, or their individual circumstances;

- (B) raise any objection to the Compromise, to the Representative Growers through TSL using either a specified telephone hotline facility or by a specified email address, and that a reply will be provided to their comments or questions and, as appropriate, their comments and objections will be noted for the purposes of the hearing of the Approval Application;
- (xvi) refer the Participant Growers to a set of 'frequently asked questions' and related answers which they should review before considering whether it is necessary to ask any questions of the Representative Growers through TSL relating to the Compromise or in connection with the Approval Application; and
- (xvii) inform the Participant Growers that a further notice will be provided to them as soon as practicable after it becomes known whether or not the condition precedent to the Compromise has been satisfied.

6.2 Provision of the First Notice to Participant Growers

As soon as practicable after it has been finalised in accordance with clause 6.1(b), the Representative Growers will provide to TSL the First Notice to Participant Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the First Notice to Participant Growers to be uploaded to the pre-existing Timbercorp section of the Clarendon Lawyers website <http://www.clarendonlawyers.com.au/timbercorp.php>; and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers):
 - (i) cause the First Notice to Participant Growers to be uploaded to:
 - (A) a new section within the Timbercorp section of the KordaMentha website <<http://www.kordamentha.com/creditor-information/australia/51>> which will address the Compromise;
 - (B) the pre-existing "Timbercorp Almond Schemes" section of the KordaMentha website <<http://www.kordamentha.com/creditor-information/australia/51/03>>; and
 - (C) a new section within the Timbercorp section of the Arnold Bloch Leibler website <<http://www.abl.com.au/timbercorp/timbercorp.htm>> which will address the Compromise;
 - (ii) send to the Participant Growers, by post and by email to their last known postal and email addresses most recently communicated to TSL and recorded in its books and records, a short letter bringing to their attention that the First Notice to Participant Growers has been uploaded to the websites referred to in clauses 6.2(a) and 6.2(b) and specifying the relevant links to those websites; and
 - (iii) cause to be published an advertisement on a business day in 'The Australian' newspaper containing information similar to that to be set out in the letter referred to in clause 6.2(b)(ii).

6.3 Second Notice to Participant Growers

- (a) As soon as practicable after it becomes known whether the condition precedent in clause 3 has been satisfied, the Representative Growers will seek the other Parties' comments on the terms of a second notice, and to this end:

- (i) the Representative Growers will prepare and circulate among the other Parties a draft of the second notice; and
 - (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the second notice.
- (b) The Parties will confer in good faith in relation to any necessary further comments on the draft of the second notice and the Representative Growers will finalise the form of the second notice (the finalised form being the **Second Notice to Participant Growers**).
- (c) The Second Notice to Participant Growers will, among other things:
 - (i) explain whether the condition precedent to the Compromise set out in clause 3 has been satisfied; and
 - (ii) if the condition precedent to the Compromise set out in clause 3:
 - (A) has been satisfied, confirm when the Participant Growers may expect to receive a payment under the Compromise; and
 - (B) has not been satisfied, confirm the consequences.

6.4 Provision of the Second Notice to Participant Growers

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

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

7. Application for Court approval

- (a) Each of the Parties (as applicable) will use their best endeavours to do all things necessary, including steps contemplated by this Deed, to make the Approval Application and to enable the Court to hear the Approval Application at the earliest opportunity convenient to the Court, including, for the avoidance of doubt, seeking the orders set out in the Draft Orders (or orders substantially to the same effect).
- (b) On the hearing of the Approval Application, subject to the Court making the orders in paragraphs 1 and 2 of the Draft Orders (or orders substantially to the same effect), the Parties will consent to the Court making each of the other orders set out in paragraphs 3 and 4 of the Draft Orders (or orders substantially to the same effect).
- (c) Nothing in clause 7(b) will preclude:
 - (i) the Representative Growers from informing the Court of any matter which they, or any of them, consider appropriate to disclose to the Court in connection with the Approval Application in their role as representative parties;
 - (ii) OIM#2 from informing the Court of any matter which it considers appropriate to disclose to the Court in connection with the Approval Application in its role as trustee; or

- (iii) OIM#5 from informing the Court of any matter which it considers appropriate to disclose to the Court in connection with the Approval Application in its role as trustee.

8. Failure to satisfy condition precedent

If the condition precedent in clause 3.1 is not satisfied by 31 December 2012 then this Deed ceases to have any effect. In that event:

- (a) no Party will have any right or entitlement as a result of or by reason of the Parties having entered into this Deed or having conditionally agreed to the Compromise; and
- (b) this Deed, any documents prepared or circulated pursuant to this Deed, and any other documents prepared or circulated in anticipation of, or for the purpose of, the Approval Application may not be referred to or tendered in evidence in the Liparoo and Yungera Rights Proceeding, the Solara Rights Proceeding, the BB Olives Rights Proceeding, the Fenceport Rights Proceeding or the Almond Land Rights Appeal Proceeding.

9. Role of TSL

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

- (a) to distribute the First Notice to Participant Growers in accordance with clause 6;
- (b) to establish and operate effectively an appropriate telephone hotline facility and email facility to:
 - (i) receive and, in accordance with instructions from the Representative Growers, address comments and questions from the Participant Growers in connection with the Compromise and the Approval Application; and
 - (ii) receive any objections to the Compromise made by the Participant Growers;
- (c) in respect of the Participant Growers who have raised comments, questions or made objections, to record with appropriate detail:
 - (i) the identity of those Participant Growers;
 - (ii) the comments and questions raised by those Participant Growers and the responses provided to those Participant Growers; and
 - (iii) any objections made by those Participant Growers and any response provided in relation to those objections;
- (d) to act in accordance with a protocol agreed with the Representative Growers regarding:
 - (i) the comments and questions which:
 - (A) may be answered by TSL without further reference to the Representative Growers;
 - (B) will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (ii) the objections:
 - (A) to which TSL may respond without further reference to the Representative Growers;

- (B) which will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
- (iii) the confidentiality of communications between TSL, the Participant Growers and the Representative Growers in relation to comments, questions and any objections raised by any Participant Growers;
- (e) to provide to the Representative Growers, on a timely basis, a record, with appropriate detail, of:
 - (i) all comments, questions and answers given by TSL in accordance with the protocol which do not require preparation of a response by the Representative Growers;
 - (ii) all comments and questions requiring preparation of a response from the Representative Growers;
 - (iii) any objections by the Participant Growers to which TSL has provided a response in accordance with the agreed protocol; and
 - (iv) any objections requiring the preparation of a response by the Representative Growers;
- (f) to provide on a timely basis to relevant Participant Growers any responses to comments, questions or objections settled by the Representative Growers;
- (g) to record, with appropriate detail, in an affidavit to be filed on behalf of the Representative Growers in connection with the Approval Application:
 - (i) the tasks which TSL has undertaken at the request and on the instruction of the Representative Growers;
 - (ii) the substance of all comments and questions raised to TSL by the Participant Growers and the responses provided by TSL to those Participant Growers; and
 - (iii) the nature of any objections made to TSL by Participant Growers and the responses provided by TSL to those Participant Growers;
- (h) to provide the Second Notice to Participant Growers in accordance with clause 6;
- (i) to make the payments referred to in clauses 4(c) or 4(d);
- (j) to act in accordance with any direction or authorisation given by Participant Growers in accordance with clauses 4(c) and 4(d);
- (k) to perform such other administrative roles as agreed with the Representative Growers or the other parties in connection with the Compromise and the Approval Application; and
- (l) to provide appropriately qualified personnel to undertake the foregoing.

10. No Waiver

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

11. Execution of counterparts

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

12. Electronic delivery of document

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

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

13. Entire Agreement

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

14. Further Assurances

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

15. Stamp Duty

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

16. Goods and Services Tax

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

17. Execution by Attorney or Agent

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

18. Governing law and exclusive jurisdiction

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

Schedule 1

Almond Projects

1. 2001 Timbercorp Almond Project ARSN 095 649 746
2. 2002 Timbercorp Almond Project ARSN 099 611 935
3. 2003 Timbercorp Almond Project ARSN 103 197 299
4. 2004 Timbercorp Almond Project ARSN 108 336 670
5. 2005 Timbercorp Almond Project ARSN 112 935 092
6. 2002 Timbercorp Almond Project (Private Offer No 1)

Schedule 2

Liparoo Security

1. First ranking fixed and floating charge dated 30 September 2005 from OIM#2 over all rights, property and undertaking of OIM#2 which relate to Timbercorp Orchard Trust #3.
2. Real property mortgage dated 30 September 2005 from OIM#2 over the Liparoo Property.
3. Deed of Guarantee dated on or around 30 September 2005 between OIM#2 and ANZ.

Schedule 3

Yungera Security

1. First ranking fixed and floating charges dated 26 May 2006 from OIM#5 over all rights, property and undertaking of OIM#5 which relate to Timbercorp Orchard Trust #5.
2. Fixed and floating charges dated 26 May 2006 from Trust Company Limited (as the custodian for Timbercorp Orchard Trust #5) (**Trust Company**) over all rights, property and undertaking of Trust Company which relate to Timbercorp Orchard Trust #5.
3. Real property mortgage dated 26 May 2006 from Trust Company over the Yungera Property.

Schedule 4

Draft Orders

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

LIST D
SCI 2011 6604

B E T W E E N

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 ORS ACCORDING TO THE SCHEDULE ATTACHED

Defendants

DRAFT MINUTE OF ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

By a deed of compromise, a copy of which is annexed to this Order (*Deed of Compromise*), the parties have agreed to compromise the proceeding (the *Compromise*) conditional upon, among other things, the Court making orders satisfying the condition precedent set out in clause 3 of the Deed of Compromise (including ordering that the Compromise shall be binding on the absent persons represented respectively by the Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defendants pursuant to rule 16.01(4) of Chapter 1 of the *Supreme Court (General Civil Procedure) Rules 2005* (the *Rules*)).

THE COURT ORDERS THAT:

1. Pursuant to rule 16.01(4) of Chapter 1 of the Rules, the Court approves the Compromise and orders that it shall be binding on the absent persons who are represented respectively by the Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defendants.
2. Pursuant to Order 54.02 of the Rules, the Court approves the First and Second Defendants agreeing to the Compromise.

THE COURT ORDERS FURTHER BY CONSENT THAT:

3. The proceeding is dismissed.
4. There be no order as to costs.

DATE: 2012

Allens
Solicitors for the plaintiff

Maddocks
Solicitors for the first and second defendants

Norton Rose
Solicitors for the third and fourth defendants

Clarendon Lawyers
Solicitors for the fifth to tenth defendants

SCHEDULE

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

LIST D

SCI 2011 6604

B E T W E E N

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 IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN THE 2001
TIMBERCORP ALMOND PROJECT (ARSN 095 649 746)

Fifth Defendant

and

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

Sixth Defendant

and

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

Seventh Defendant

and

GRAEME PHILLIP COLE IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN THE 2004
TIMBERCORP ALMOND PROJECT (ARSN 108 336 670)

Eighth Defendant

and

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

Ninth Defendant

and

**DAVID BUTTERFIELD IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN THE
UNREGISTERED MANAGED INVESTMENT SCHEME KNOWN AS THE 2002 TIMBERCORP ALMOND
PROJECT (Private Offer No. 1)**

Tenth Defendant

Deed of Compromise

Allens & Linklaters

Executed and delivered as a Deed on 25 July 2012.

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

Signed Sealed and Delivered for Australia and New Zealand Banking Group Limited (ACN 005 357 522), by its attorney in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by OIM#2 (Receivers and Managers Appointed) (ACN 112 691 997) as trustee for Timbercorp Orchard Trust #3:



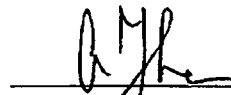
Director Signature

Print Name


Director/Secretary Signature

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by OIM#5 (Receivers and Managers Appointed) (ACN 118 204 701) as trustee for Timbercorp Orchard Trust #5:



Director Signature

Print Name



Director/Secretary Signature

Print Name

Executed and delivered as a Deed on 25 July 2012.


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

Signed Sealed and Delivered for Australia and New Zealand Banking Group Limited (ACN 005 357 522), by its attorney in the presence of:



Witness Signature
JONATHAN GUY JOSEPH

Print Name



Attorney Signature
Jonty Ephan

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by OIM#2 (Receivers and Managers Appointed) (ACN 112 691 997) as trustee for Timbercorp Orchard Trust #3:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by OIM#5 (Receivers and Managers Appointed) (ACN 118 204 701) as trustee for Timbercorp Orchard Trust #5:

Director Signature

Print Name

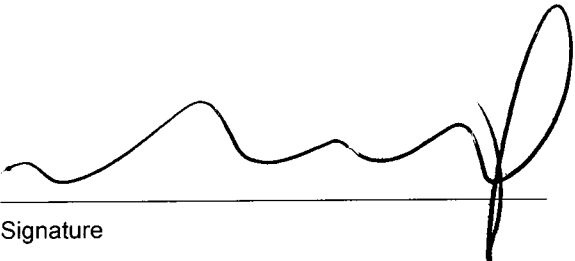
Director/Secretary Signature

Print Name

Signed by Michael Fung in his capacity as joint and several 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, in the presence of:



 Witness Signature

IAN ENGLAND
 Print Name

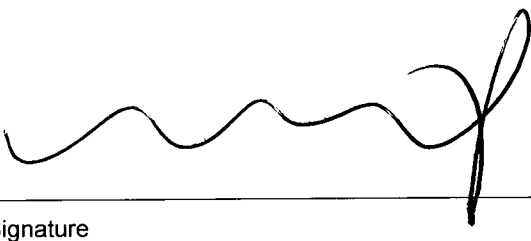

 Signature

42 WENTWORTH ST DOVER HEIGHTS
 Address of witness

Signed by Michael Fung in his capacity as joint and several receiver and manager of OIM#5 Pty Ltd (Receivers and Managers Appointed) (ACN 118 204 701) in its capacity as trustee for Timbercorp Orchard Trust #5, in the presence of:


 Witness Signature

IAN ENGLAND
 Print Name


 Signature

42 WENTWORTH ST DOVER HEIGHTS
 Address of witness

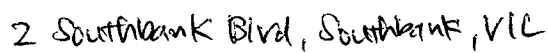
Signed by Paul William Kirk in his capacity as joint and several receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) in its capacity as trustee for Timbercorp Orchard Trust #3, in the presence of:



Witness Signature



Print Name



Address of witness

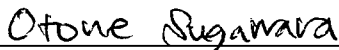


Signature

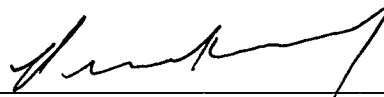
Signed by Paul William Kirk in his capacity as joint and several receiver and manager of OIM#5 Pty Ltd (Receivers and Managers Appointed) (ACN 118 204 701) in its capacity as trustee for Timbercorp Orchard Trust #5, in the presence of:



Witness Signature

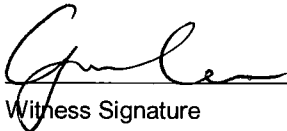


Print Name



Signature

Signed Sealed and Delivered for Graham Dace
in his capacity as representative of the Growers in
the 2001 Timbercorp Almond Project
(ARSN 095 649 746) by his attorney **Christopher**
Garnaut under power of attorney dated 27
October 2011 in the presence of:



Witness Signature

GORDON CODE

Print Name



Attorney Signature

CHRISTOPHER GARNAUT

Print Name

Signed Sealed and Delivered for Graham
Goldenberg in his capacity as representative of
the Growers in the 2002 Timbercorp Almond
Project (ARSN 099 611 7935) by his attorney
Christopher Garnaut under power of attorney
dated 26 October 2011 in the presence of:



Witness Signature

GORDON CODE

Print Name



Attorney Signature

CHRISTOPHER GARNAUT

Print Name

Signed Sealed and Delivered for Goran Runje
in his capacity as representative of the Growers in
the 2003 Timbercorp Almond Project (ARSN 103
197 299) by his attorney **Christopher Garnaut**
under power of attorney dated 10 November 2011
in the presence of:



Witness Signature

GORDON CODE

Print Name



Attorney Signature

CHRISTOPHER GARNAUT

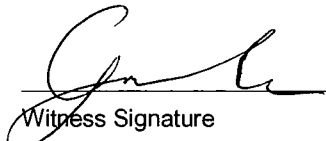
Print Name

Deed of Compromise

Allens < Linklaters

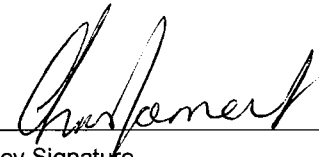
Signed Sealed and Delivered for Graeme

Phillip Cole in his capacity as representative of the Growers in the 2004 Timbercorp Almond Project (ARSN 108 336 670) by his attorney **Christopher Garnaut** under power of attorney dated 7 November 2011 in the presence of:



Witness Signature
GORDON CODE

Print Name




Attorney Signature
CHRISTOPHER GARNAUT

Print Name

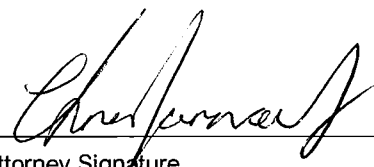
Signed Sealed and Delivered for Christopher

Mark Littley in his capacity as representative of the Growers in the 2005 Timbercorp Almond Project (ARSN 112 935 092) by his attorney **Christopher Garnaut** under power of attorney dated 15 November 2011 in the presence of:



Witness Signature
GORDON CODE

Print Name

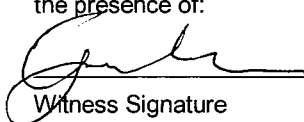


Attorney Signature
CHRISTOPHER GARNAUT

Print Name

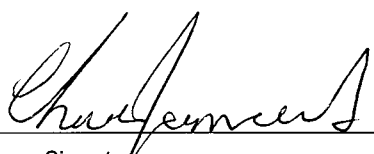
Signed Sealed and Delivered for David

Butterfield in his capacity as representative of the Growers in the Unregistered Managed Investment Scheme known as the 2002 Timbercorp Almond Project (ARSN Private Offer No. 1) by his attorney **Christopher Garnaut** under power of attorney dated 26 October 2011 in the presence of:



Witness Signature
GORDON CODE


Print Name

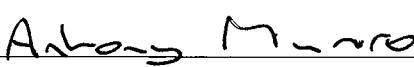


Attorney Signature
CHRISTOPHER GARNAUT


Print Name

Executed by Timbercorp Securities Limited (in liquidation) (ACN 092 3111 469) by being signed sealed and delivered in its name by Leanne Kylie Chesser in her capacity as liquidator in the presence of:



Witness Signature


Print Name



Signature
LEANNE CHESSER

Print Name