

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

S CI 2010

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) (ACN 092 311 469)

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP TABLE
GRAPE PROJECT (ARSN 108 648 086) AND THE 2005 TIMBERCORP TABLE GRAPE
PROJECT (ARSN 113 512 236) AND ORS ACCORDING TO THE SCHEDULE**
Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 23 December 2010

Filed on behalf of: the Plaintiffs

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This is the exhibit marked "MAK-6" now produced and shown to **MARK ANTHONY KORDA**
at the time of swearing his affidavit on 23 December 2010.

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

Before me: 

Exhibit "MAK-6"
2005 Timbercorp Table Grape Project
Constitution and Amending Deeds

"MAK - 6"

2005 001
CONSTITUTION

**2005 TIMBERCORP TABLE
GRAPES PROJECT**

Timbercorp Securities Limited
(ACN 092 311 469) &
Each Participant Grower

2005 Timbercorp Table Grapes Project

[EXECUTION COPY]

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Details of this Constitution

Date of the Deed:

This Deed is made on 22 March 2005.

Parties to the Deed:

1. **TIMBERCORP SECURITIES LIMITED**

ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne Victoria 3000

(Responsible Entity)

2. **EACH PARTICIPANT GROWER**

(Participant Grower)

Background to the Deed

- A. The Responsible Entity is the holder of an Australian financial services licence, which is issued by ASIC, and which authorises it to operate the Project.
- B. The Responsible Entity proposes to issue the PDS, which will invite persons to participate in the Project. By participating, either through the PDS or by some other means, such as a secondary sale, a person will become a Participant Grower and be bound by this Deed.
- C. Each Participant Grower will be granted a licence by Timbercorp Securities in respect of one or more Grapelots under the Licence Agreement.
- D. The Licence Agreement permits each several Participant Grower to use its Grapelots for the purpose of cultivation of Table Grapes and each Participant Grower intends to use its Grapelots for this purpose.
- E. Each Participant Grower wishes to engage Timbercorp Securities in its personal capacity to cultivate, maintain and harvest the Table Grapes on, and generally manage, the Grapelots in accordance with the Management Plan and to carry out and perform each Participant Grower's obligations under the Licence Agreement.
- F. Each Participant Grower further wishes to engage Timbercorp Securities in its personal capacity to process the Crop and to sell the Product or Crop on behalf of the Participant Grower and for that purpose has authorised the Responsible Entity to enter into the Project Documents subject to the terms and conditions of this Deed.

-
- G. This Deed comprises the Constitution of the Project, as required under Part 5C.3 of Chapter 5C of the Corporations Act, and is made with the intent that it be legally enforceable as between the Responsible Entity and each several Participant Grower.
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The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires or implies, the following words and expressions have the meanings set opposite each of them:

AFSL:	the Australian Financial Services Licence (Licence Number 235653) and the conditions of it, granted to the Responsible Entity by ASIC;
Agency Account:	the bank account or accounts kept by the Responsible Entity in accordance with clause 12;
Agreements:	the Licence Agreement and the Grapelot Management Agreement;
Applicant:	a person who has applied to become a Participant Grower in the Project by completing an Application form, but who is not yet a Participant Grower;
Application:	an application pursuant to clause 6.3;
Application Money:	the application money each Applicant is required to pay for each Grapelot under paragraph 6.3(c), as set out in the First Schedule;
ASIC	the Australian Securities and Investments Commission;
Auditor:	the auditor or auditors for the time being of the Project duly appointed under the Corporations Act;
Authorised Investments:	<p>(a) money;</p> <p>(b) interest bearing deposits at call or for a term not exceeding 3 months with or without security with any Financial Institution or Bank;</p> <p>(c) negotiable certificates of deposit issued by or bills of exchange drawn, accepted or endorsed by any Bank; and</p> <p>(d) any deposit in the short term money market with any company that has been approved by the Reserve Bank of Australia, or by ASIC (pursuant to section 65 of the Corporations Act), as an authorised dealer in that market,</p> <p>in each case subject to the restrictions in this Deed and the Corporations Act;</p>
Bank:	a bank licensed to carry on the business of banking in Australia under the Banking Act 1959 (Commonwealth) or otherwise lawfully carrying on the business of banking in Australia or any of its States or Territories;
Business Day:	a day other than a Saturday, Sunday or public holiday on which all trading banks are open for general banking business with the public

	in Melbourne, Victoria;
Capital Works:	the infrastructure and capital works, including the planting of the Table Grape Vines, that the Land Owner has agreed to carry out, and any other works that the Land Owner, Timbercorp Securities or Timbercorp may be required in future to carry out, at their cost respectively, on the Vineyard;
Chargee:	any chargee or mortgagee of the Participant Grower's Grapelots, the name and status of which as such chargee appears for the time being in the Register;
Constitution:	this Deed as may from time to time be amended and in force;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or if in the opinion of the Responsible Entity that index is no longer appropriate for calculating changes in the cost of living for the eight capital cities of Australia, such other index number as is recommended by the Auditor as most closely reflecting changes in the cost of living for the eight capital cities of Australia;
Crop:	the Table Grapes taken from the Table Grape Vines grown on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Custodian:	Trust Company of Australia Limited (ACN 004 027 749) of Level 3, 151 Rathdowne Street, Carlton, Victoria, and its successors and assigns, or any other person duly appointed by the Responsible Entity to provide custodial services in relation to the Project;
Deed:	this document including the Schedules to this document, comprising the Constitution for the Project, and such other deed or other instruments as may be in force for the time being amending or being supplemental to or collateral with this document or any of the foregoing components of this document;
Defaulting Grower:	a Participant Grower who is in breach of any of the Agreements or this Deed or ceases to participate in the Project due to a breach of any of the Agreements or this Deed, and for the purposes of this Deed, a Participant Grower remains a Defaulting Grower even though any of the Agreements in respect of a Grapelo of that Participant Grower are terminated;
Defaulting Joint Venturer:	a Joint Venturer in default of its obligations set out in clause 29 or otherwise under this Deed or the Agreements;
Financial Institution:	has the same meaning as that given to the definition "transferring financial institution" in Schedule 4 of the Corporations Act excluding paragraphs (e), (f) and (g) of that definition;
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Deed and ending on 30

	June 2005 and the period ending on the termination of this Deed and commencing on the preceding 1 July;
First Joint Venturer:	the first Joint Venturer as described in the Application;
Government Agency:	a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law;
Grapelot:	<p>(a) an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of the Land comprising approximately 0.25 acres on which a Participant Grower will conduct the Grapelot Operations and which includes the Table Grape Vines, the Capital Works and the Water Licences attributed to the Project, and in relation to a Participant Grower means the Participant Grower's Grapelots;</p> <p>(b) the expression "Participant Grower's Grapelots" or "Grapelots" means all of the Participant Grower's Grapelots;</p>
Grapelot Management Agreement:	an agreement of that name between Timbercorp Securities, in its personal capacity, and each Participant Grower substantially in the form contained in the Second Schedule, but with the Schedule to that agreement completed by the Responsible Entity in such manner as it sees fit, or in such other form as the Responsible Entity, with the consent of Timbercorp Securities, substitutes prior to the issue of the PDS, or if the Project has commenced, as amended from time to time (until varied, replaced or cancelled);
Grapelot Operations:	the growing and cultivation of Table Grapes on, and management of, the relevant Grapelots for the production of Product for commercial gain;
Grapelot Statement:	the notice which the Responsible Entity is required to issue under clause 10.1 of this Deed;
GST:	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 in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Head Lease:	the lease made between Timbercorp Securities (in its personal capacity, as lessee or sub-lessee, as the case may be) and the person referred to therein as the owner, lessor or sub-lessor, whereby Timbercorp Securities has been, or will be, granted a lease or sub-lease of the Vineyard;

Indexed:	<p>the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;</p>
Innocent Joint Venturer:	a Joint Venturer who is not a Defaulting Joint Venturer at the relevant time;
Joint Venture:	the joint venture between the Joint Venturers constituted by clause 29 in respect of the Joint Venture Operations, and which comprise a particular Participant Grower under this Deed, the Agreements and any Project Documents;
Joint Venture Grapelots:	the Grapelots of the Joint Venture;
Joint Venture Assets:	<p>(a) all of the right title and interest of the Joint Venture in and to the Joint Venture Grapelots and any other assets which the Joint Venture may acquire from time to time, and all agreements entered into, in respect of the Joint Venture;</p> <p>(b) all Table Grapes, Crop and Product produced from the Joint Venture; and</p> <p>(c) the Joint Venture Proceeds;</p>
Joint Venture Operations:	the growing and cultivation of Table Grape Vines on, and management of, the Grapelots for the production and processing of Table Grapes for commercial gain that are attributable to a Participant Grower that is a Joint Venture;
Joint Venture Proceeds:	the entitlement to the Proceeds of a Participant Grower that is a Joint Venture;
Joint Venturers:	the First and Second Joint Venturers;

Land:	the land on which the Project will be conducted, as described in the PDS and such other land which is used in the Project;
Land Owner:	the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which at the date of this Deed is OIM #2 Pty Ltd (ACN 112 691 997) as trustee for the Timbercorp Orchard #2 Trust;
Law:	includes those principles of law or equity established or recognised by decisions of courts and Commonwealth, State, Territory or local government legislation, including statutes, regulations, by-laws, ordinances, orders, proclamations and other subordinate legislation;
Licence:	the licence granted to a Participant Grower pursuant to a Licence Agreement;
Licence Agreement:	the agreement of that name between Timbercorp Securities, in its personal capacity, and each Participant Grower, substantially in the form contained in the Third Schedule, or in such other form as the Responsible Entity, with the consent of Timbercorp Securities, substitutes prior to the issue of the PDS, or if the Project has commenced, as amended from time to time (until varied, replaced or cancelled);
Licence Fees:	the Licence Fees payable by a Participant Grower under the Licence Agreement;
Management Plan:	the management plan for the Financial Year prepared by, or on behalf of, Timbercorp Securities;
Management Fees:	the fees payable by a Participant Grower under a Grapelot Management Agreement;
Minimum Subscription:	the minimum number of Grapelots stated in the PDS, if any, that, in the opinion of the directors of the Responsible Entity, must be applied for to make the Project commercially viable;
month:	a calendar month;
Ordinary Resolution:	a resolution passed at a meeting of Participant Growers concerned, duly convened and held in accordance with the provisions of clause 22 of this Deed, by a majority of the persons voting at that meeting upon a show of hands and if a poll is demanded then by a majority of the votes given on such a poll. Any resolution which may be put pursuant to this Deed is an Ordinary Resolution unless otherwise provided;
Participant Grower:	each several person (or in the case of joint applicants or Joint Venturers or successors or permitted assigns, each of those persons) who becomes a party to this Deed (as a participant Grower in the Project) as a result of either:

	<p>(a) the allotment of Grapelots pursuant to an Application in the PDS; or</p> <p>(b) a transmission, transfer, assignment or other disposal pursuant to clause 20 of this Deed,</p> <p>and who remains registered under this Deed as the holder for the time being of any Grapelots.</p> <p>The expression "all Participant Growers" means all persons who have so become a party to this Deed as a Participant Grower and remain the registered holder for the time being of relevant Grapelots.</p> <p>Where relevant:</p> <p>(a) the expression "Early Grower" means a person whose application was accepted on or before 30 June 2005; and</p> <p>(b) the expression "Post 30 June Grower" means a person whose application was accepted on or after 1 July 2005;</p>
Participating Interest:	has the same meaning as in the Grapelot Management Agreement;
party:	any of the Participant Grower, the Participant Growers, the Responsible Entity or any one or more of them as the context requires;
PDS:	the product disclosure statement (as defined in section 761A of the Corporations Act) in relation to the Project;
person:	includes a company, firm or body of persons;
Prescribed Proportion:	the proportionate interest of the First and Second Joint Venturers respectively in the Joint Venture Assets as set out in clause 29.4;
Proceeds:	<p>(a) interest received on moneys in the Agency Account;</p> <p>(b) any moneys payable to the Participant Growers under any policy of insurance in relation to the Participant Growers' Grapelots, the Table Grapes, the Crop, the Product or the Project subject to clause 13.9;</p> <p>(c) proceeds payable to Participant Growers under the Grapelot Management Agreement from the sale of the Product or the Crop, where applicable, in accordance with this Deed; and</p> <p>(d) any other moneys payable to a Participant Grower from or in relation to the Project;</p>
Product:	Table Grapes in a saleable condition;
Production Period:	the period of time from the day the harvesting of the Participant Grower's Grapelots commences until the day all of the produce from the harvest of all Participant Growers' Grapelots is processed and sold;
Project:	the project of managing, cultivating and harvesting Table Grape Vines and the processing and sale of Table Grapes, known as the

	2005 Timbercorp Table Grape Project and being the entire undertaking, scheme, enterprise or arrangement to which the Participant Growers and the Participant Growers' corresponding Grapelots relate, being Grapelots that will be first offered in the financial year ending 30 June 2005;
Project Documents:	the agreements entered into by the Responsible Entity under clauses 13.3 and 13.4;
Project Property:	the funds for the time being in the Agency Account, all Authorised Investments, assets and any other property acquired throughout the term of the Project using the money or property contributed by Participant Growers, including the Proceeds, but excluding any assets or other property vested directly in the Participant Growers, such as the Crop, the Product, interests in the Licence or assets or property belonging to the Land Owner or the Responsible Entity in its own right;
Register:	the register of Participant Growers set up and established by the Responsible Entity under clause 10.3 of this Deed;
relevant Grapelots:	<p>the Grapelots which are allotted to a particular Participant Grower pursuant to the PDS, allocated to a Participant Grower under paragraph 8.7(b) in substitution for other Grapelots or transmitted, transferred, mortgaged, assigned or otherwise disposed of from a predecessor in title, which predecessor in title or some earlier predecessor in title was allotted the Grapelots pursuant to the PDS and, where applicable, includes any rights, interests, powers, privileges, obligations and liabilities held by the Participant Grower under this Deed and under each of the Agreements including without limitation:</p> <ul style="list-style-type: none"> (a) any Application Money held on behalf of the Participant Grower; (b) any Proceeds to which the Participant Grower is entitled or which are held on behalf of the Participant Grower in the Agency Account; and (c) any other rights, powers, authorities to which the Participant Grower is entitled under this Deed or otherwise;
Responsible Entity:	the responsible entity for the time being under this Deed whether original or substituted;
Royalty Fees:	the royalty fees payable by a Participant Grower under the Licence Agreement;
Second Joint Venturer:	the second Joint Venturer as described in the Application;
Special Resolution:	has the meaning given to it in section 9 of the Corporations Act;
Special Trust	

Account:	a trust account established pursuant to clause 4.2;
Table Grapes:	the Table Grapes grown or growing on the Participant Grower's Grapelots or the Vineyard, whichever is applicable, and whether or not harvested;
Table Grape Vines:	the table grape vines planted or to be planted on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Timbercorp:	Timbercorp Limited (ACN 055 185 067);
Timbercorp Securities:	Timbercorp Securities Limited (ACN 092 311 469);
Vineyard:	all of the Grapelots;
Vineyard Services:	the services and duties which the Participant Grower is required to perform or carry out under the Licence Agreement, but does not include the obligation to pay any Licence Fees under the Licence Agreement;
Water Licences:	the water licences owned or acquired by the Land Owner, leased to Timbercorp Securities and attributed to the Project as required from time to time, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use.

1.2 Construction

(a) **Singular and plural**

Words importing the singular number include the plural and vice versa.

(b) **Gender**

Words importing a gender include any gender.

(c) **Headings**

Headings are for ease of reference only and do not affect the construction of this Deed.

(d) **Definitions**

Where a word or phrase is given a defined meaning in this Deed, 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.

(e) **References to statute**

A reference to a statute, ordinance, code or other law includes all regulations and other instruments made pursuant thereto, and all consolidations, amendments, re-enactments or replacements thereof.

(f) **Conversion of foreign currency to Australian currency**

Whenever it is necessary for the calculation of any cost, value, price or any other amount under this Deed to convert a foreign currency into Australian currency, the Australian currency equivalent of the foreign currency will be

determined at the spot telegraphic transfer buying rate of that foreign currency quoted by the Financial Institution or Bank that the Responsible Entity may at any time and from time to time nominate on the date of the calculation or, where the nominated Financial Institution or Bank is closed for business, on the date of calculation on the next day on which the nominated Financial Institution was open for business, or by such other method as the Responsible Entity considers prudent.

(g) Deed includes Schedules

A reference to this Deed includes a reference to an applicable Schedule.

(h) Currency

A reference to 'dollars' or '\$' is a reference to the lawful currency of Australia.

(i) ASIC Instruments

If relief from the provisions of the Corporations Act granted by an ASIC instrument requires that this Deed contain certain provisions, then those provisions are taken to be incorporated into this Deed at all times at which they are required to be included and prevail over any other provisions of this Deed to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Project) then the ASIC instrument (and the provisions it requires) will not be incorporated unless the Responsible Entity declares in writing that such is the case.

(j) Deed Binds Responsible Entity and Participant Growers

This Deed as amended from time to time binds the Responsible Entity and each Participant Grower.

(k) Participant Grower and Deed

- (i) The term "**Participant Grower**" in this Deed is a reference to the particular Participant Grower in respect of the Grapelot or Grapelots that have been, or will be, licenced to it under a Licence Agreement.
- (ii) The term "**Participant Growers**" in this Deed is a reference to all Participant Growers that hold Grapelots in the Project and according to the context, the term "Participant Growers" may also include the Participant Grower.
- (iii) This Deed is entered into in respect of the Participant Grower's Grapelots referred to in the Licence Agreement and must be read as if it were a separate Deed on the terms and conditions of this Deed in respect of the relevant Grapelots held by the Participant Grower.

2. PRODUCT DISCLOSURE STATEMENT

The Responsible Entity will issue the PDS inviting or offering for subscription Grapelots in the Project at the application prices set out in the First Schedule for each Grapelot and on the terms and conditions set out in the PDS.

3. APPOINTMENT OF RESPONSIBLE ENTITY

Each Participant Grower irrevocably appoints the Responsible Entity as its agent, representative and attorney in relation to the Project with the powers, rights, duties and

indemnities set out in this Deed and the Responsible Entity accepts such appointment.

4. BARE TRUST

4.1 Bare Trust

Until the Minimum Subscription is reached, or waived by the Responsible Entity, the Responsible Entity must hold all Application Money as a bare trustee for the Applicant.

4.2 Special Trust Account

Any amounts paid by any Applicant in accordance with clauses 6.3 and 6.4 must be accounted for by the Responsible Entity in a special trust account and such amounts must be placed in one or more bank accounts kept solely for the purpose of depositing Application Money in relation to the Project.

4.3 Pooling of Amounts

Any amounts paid by any Applicant may be pooled with any amounts paid by any other Applicant.

4.4 Interest

Subject to clauses 7.3 and 8.2, interest (if any) earned on the Application Money deposited in a special trust account provided for in clause 4.2 will, upon the Applicant becoming a Participant Grower, be retained by the Responsible Entity as fees (such fees being in addition to any other fees it is entitled to under this Deed).

5. PROJECT PROPERTY

5.1 Responsible Entity to hold property for the Participant Growers

- (a) Subject to clause 5.2, the Responsible Entity must hold all Project Property for the Participant Growers for the term of the Project.
- (b) The Participant Grower's interest in the Project Property is in the proportion that its Participating Interest bears to the aggregate Participating Interests of all Participant Growers in the Project.

5.2 Dealing with and holding property

The Responsible Entity may appoint an agent to hold Project Property separately from any other property. The terms of the appointment will be determined by the Responsible Entity and the agent. However the terms must be consistent with the provisions of this Deed.

5.3 Giving directions to an agent

If the Responsible Entity has engaged an agent to hold Project Property then the Responsible Entity must direct the agent to invest and deal with Project Property in accordance with this Deed.

6. APPLICATION PROCEDURE

6.1 Oversubscriptions

The Responsible Entity reserves the right to accept Applications for Grapelots in excess of that number of Grapelots for which subscription or purchase or invitations to subscribe or apply for are sought under the PDS.

6.2 Receipt of Application

The Responsible Entity may itself or by its duly authorised representatives receive Applications under the PDS.

6.3 How to Apply

Every Applicant must deliver to the Responsible Entity or to the duly authorised lawful agents of the Responsible Entity at the place set out in the PDS or any other place or places as the Responsible Entity may from time to time determine the following:

- (a) an Application for Grapelots, incorporating an offer to become a Participant Grower under this Deed, being in the form attached to the PDS, and signed or executed by the Applicant;
- (b) a Power of Attorney, being in the form attached to the PDS, signed or executed by the Applicant, appointing the Responsible Entity (whichever is so authorised) to be the Applicant's attorney and, on the Applicant's behalf, to execute the Agreements and any other documents which are ancillary or related to the Agreements, or contemplated by the provisions of the Agreements; and
- (c) as required by the PDS but subject to clauses 6.4 and 6.5, a cheque for the Application Money for each Grapelot being the amount set out in the First Schedule.

6.4 Payment in Full or by Instalments

- (a) Subject to clauses 6.5 and 7.1 and subject to the Responsible Entity electing to make available to Applicants a facility to pay the Application Moneys by instalments, at the option of any Applicant, the Application Money for each Grapelot may be payable in full at the time of application or may be payable by instalments. If the Applicant elects to pay the Application Money by instalments, the Applicant must pay at the time of delivering of the Application the amount shown in the application as the "DEPOSIT", and the balance of the Application Money must be paid by the Applicant (or Participant Grower, if that Applicant has become a Participant Grower in accordance with the provisions of this Deed), to the Responsible Entity by the date specified in the Application (if any) and if no such date is specified, by such date as the Responsible Entity may, in its absolute discretion, determine, provided that in its absolute discretion, the Responsible Entity may extend that date to such later day as the Responsible Entity determines.
- (b) If an Applicant, or Participant Grower, whichever is the case, fails to pay the amount shown in the Application against the words "BALANCE" (or any part of it) by the day specified in the Application, or by any other date determined by the Responsible Entity, for payment of it, the Responsible Entity is authorised to exercise all or any of the remedies below (in addition to and without prejudice to any rights at law or in equity or pursuant to this Deed). The Responsible Entity is entitled to recover from the Applicant (or Participant Grower, whichever is the case) the balance together with interest on the

balance outstanding at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) as at the date specified in the Application for payment, from the day so specified in the Application until payment; and either

- (i) the Responsible Entity may sue the Applicant (or Participant Grower, whichever is the case) for specific performance of its agreement; or
 - (ii) the Responsible Entity may terminate all the right, title and interest of the Applicant (or Participant Grower, whichever is the case) pursuant to the provisions of this Deed and any Agreement and the Applicant (or Participant Grower, whichever is the case) must forfeit the deposit money paid, provided the Responsible Entity has first given the Applicant (or Participant Grower, whichever is the case) a notice in writing informing the Applicant (or Participant Grower, whichever is the case) of the default and giving the Applicant (or Participant Grower, whichever is the case) a period of TEN (10) days from the date of posting of the notice to remedy the breach.
- (c) If the Responsible Entity exercises its right under paragraph 6.4.2(b)(ii), then within 14 days of exercising that right, the Responsible Entity must make an appropriate notation in the Register.

6.5 Condition as to Finance

If an amount is shown in an Application against the words "Amount subject to finance" (if those words appear in the Application), the Application will only be accepted by the Responsible Entity on condition that a person (which person may include the Responsible Entity) has agreed to lend that amount to the Applicant. The Responsible Entity does not warrant, undertake, covenant or agree that such finance will be provided or procured.

7. REFUSAL OF APPLICATIONS

7.1 Refusal of Application

The Responsible Entity may in its absolute discretion give notice in writing to any Applicant to the effect that its Application has been refused.

7.2 Notice of Refusal

The notice provided for in clause 7.1 may specify that the Application has been refused:

- (a) wholly in relation to the Application; or
- (b) partly, that is, with respect to a proportion of the Application Money contributed with the Application;

without giving any reasons for the refusal.

7.3 Repayment to Applicant

Upon the Responsible Entity giving notice to an Applicant that their Application has been refused, the Applicant will be entitled to be repaid the Application Money in relation to that Application, or so much as has been paid by the Applicant, with interest (if any) earned thereon, after deduction of all bank fees and government taxes and charges in relation to the deposit and withdrawal of the money and any other expenses

permitted by law. If interest is earned on the Application Money to be repaid to the Applicant under this clause, the amount of the interest will be calculated on a pro rata basis, i.e. in the proportion that the Application Moneys received by the Responsible Entity from the Applicant bears to the total of all Application Moneys received by the Responsible Entity, calculated from day to day.

7.4 Applicant ceases to be an Applicant

If any Application is wholly refused then upon repayment of any money payable to the Applicant under clause 7.3, the Applicant will also cease to be an Applicant under this Deed and have no rights or obligations in relation to this Deed in any respect.

8. ACCEPTANCE OF APPLICATIONS

8.1 Applicant to Become Participant Grower on Acceptance

Upon an Application being accepted by the Responsible Entity in whole or part, and the Minimum Subscription, if any, being reached, the Applicant will become a Participant Grower.

8.2 Minimum Subscription Not Reached

If Minimum Subscription is not reached, or waived by the Responsible Entity, within the time specified in the PDS, the Responsible Entity must within 7 days of the end of such period repay to each Applicant the Application Money, or so much of it as has been paid by the Applicant, with interest (if any) earned thereon, after deduction of all bank fees and government taxes and charges in relation to the deposit and withdrawal of the money and any other expenses permitted by law. If interest is earned on the Application Money to be repaid to an Applicant under this clause, the amount of the interest will be calculated on a pro rata basis, i.e. in the proportion that the amount of the Application Money received by the Responsible Entity from the Applicant bears to the total of all Application Money received by the Responsible Entity, calculated from day to day.

8.3 No Communication Necessary

Subject to clause 10.1, in no case will it be necessary to communicate the acceptance of an Application under this Deed to any Applicant who becomes a Participant Grower and becomes bound to this Deed on the acceptance by the Responsible Entity of the Application.

8.4 Deemed Acceptance

An Application received pursuant to the PDS, and not refused under clause 7.1, will be deemed to have been accepted immediately upon receipt, subject to the Application Money in respect of that Application being paid and the Minimum Subscription, if any, being reached or waived by the Responsible Entity.

8.5 Joint Applicants

In the absence of any express instructions to the contrary in or accompanying any Application or in any of the Agreement, any persons who jointly constitute the Participant Grower hold their Grapelots and enter into the Agreements jointly and severally and as tenants in common.

8.6 Applicant Deemed to Enter this Deed

Upon an Application being accepted by the Responsible Entity in whole or in part, the Applicant is deemed to have contemporaneously become a party to this Deed as a Participant Grower and thereby bound to the covenants and obligations on the part of each individual Participant Grower provided for in this Deed.

8.7 Allocation and Allotment of Grapelots and Entry into Agreements

- (a) At the time or times specified in the PDS, the Responsible Entity, following the acceptance of an Application:
 - (i) must immediately allocate and allot a Grapelot or Grapelots to the Participant Grower from the Land (of such location or locations within the Land as the Responsible Entity in its absolute discretion thinks fit) and the Responsible Entity must within 21 days thereafter register the name, number or other description of the Grapelot or Grapelots in the appropriate place in the Register in relation to the entry of that Participant Grower; and
 - (ii) will as attorney for and on behalf of the Participant Grower, enter into the Agreements in relation to the Grapelots allocated to the Participant Grower, and any other documents which are ancillary or related to the Agreements, or contemplated by the provisions of the Agreements.
- (b) The Responsible Entity may at any time after the Agreements described in paragraph 8.7(a)(ii) are entered into, allocate a Grapelot or Grapelots to a Participant Grower, wherever situated on the Land as the Responsible Entity in its absolute discretion thinks fit, in substitution for a Grapelot or Grapelots allocated to a Participant Grower. The allocation of a Grapelot or Grapelots in substitution for another Grapelot or Grapelots under this paragraph 8.7(b) does not affect, or detract from, any rights, interests, powers, privileges, obligations and liabilities held by the Participant Grower under this Deed and under each of the Agreements, other than that the Participant Grower will cultivate and harvest Table Grapes on the replacement Grapelot or Grapelots on and from the date of substitution.
- (c) The Responsible Entity may, and is authorised by the Participant Grower to, enter into as attorney for and on behalf of the Participant Grower such documents, and the Responsible Entity may do such other things, as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to this clause 8.7, including but not limited to making amendments to any Agreement or Project Document, or any lease or licence in respect of all or any part of the Land.

9. RESPONSIBLE ENTITY TO ARRANGE ENTRY INTO LICENCE AGREEMENT AND GRAPELOT MANAGEMENT AGREEMENT

9.1 Preparation of Licence Agreement and Grapelot Management Agreement

Following acceptance of an Application, the Responsible Entity will prepare the Licence

Agreement and Grapelot Management Agreement. The Licence Agreement and Grapelot Management Agreement:

- (a) must be completed in accordance with the details specified in the Application; and
- (b) will commence from such date as is determined by the Responsible Entity.

9.2 Responsible Entity to be reasonably satisfied

Before release of moneys referred to in clause 9.3, the Responsible Entity must be reasonably satisfied that:

- (a) the Licence Agreement and Grapelot Management Agreement are in the form required by this Deed and have been duly entered into by all parties;
- (b) Timbercorp Securities has the capacity to grant the Licence;
- (c) all necessary condition precedents to the grant of the Licence pursuant to the Licence Agreement and entry into the Licence Agreement and Grapelot Management Agreement have been satisfied;
- (d) all necessary consents to the grant of the Licence pursuant to the Licence Agreement and entry into the Licence Agreement and Grapelot Management Agreement have been obtained or will be obtained;
- (e) the Land the subject of the Licence is not subject to any encumbrance or restriction which detrimentally affects the interests of the Applicant;
- (f) any other matter required to be attended to, which is necessary for the creation of the Licence and the effective vesting in the Participant Grower of its Licence Agreement and Grapelot Management Agreement, whether by reason of this Deed or otherwise, has been attended to; and
- (g) there are no outstanding material breaches of any of the provisions of this Deed which are detrimental to the interests of the Participant Growers whose Application Money is to be allocated pursuant to clause 9.3.

9.3 Release of Application Money

(a) Release of Application Money

In relation to each Application that is unconditional as to finance, or is subject to finance and for which finance is approved, the Responsible Entity must within 2 Business Days of the Responsible Entity being satisfied of the matters specified in clause 9.2, release the Application Money and apply it in payment of the fees payable under the Licence Agreement and Grapelot Management Agreement provided that where a deposit has been paid as provided for in clause 6.4, the balance of the Application Money must be paid to the Responsible Entity in accordance with the requirements of clause 6.4.

(b) Refund of Application Moneys

Where the Responsible Entity does not issue a Grapelot to an Applicant within the time required by the Corporations Act, the Responsible Entity must refund to the Applicant the relevant Application Money paid with any interest earned in relation to that Application Money, the amount of such interest to be calculated in accordance with clause 7.3.

(c) Extinguishment of the Licence Agreement and Grapelot Management Agreement

Upon the refund of the moneys referred to in paragraph 9.3(b), the Participant Grower's Licence and Grapelot Management Agreement will be extinguished

and the Responsible Entity will make an entry in the Register noting the extinguishment.

(d) Transfer Interest to Responsible Entity

In accordance with clause 4.4, the Responsible Entity may transfer to itself the interest component (if any) from the Application Money at any time, but not before the first transfer of Application Money is made pursuant to paragraph 9.3(a).

9.4 Compliance with AFSL Requirements

In the course of and in accordance with its duties as responsible entity and in order to:

- (a) comply with its AFSL; and
- (b) protect the interests of Participant Growers in the Project,

the Responsible Entity must lodge the Head Leases for registration in its name beneficially under the land titles law of the State or Territory in which the Grapelots are situated.

10. GRAPELOT STATEMENTS AND REGISTER

10.1 Issue of Grapelot Statements

Within 2 months after the allotment of Grapelots to a Participant Grower, the allocation of Grapelots to a Participant Grower under paragraph 8.7(b) in substitution for other Grapelots or when accounting to a Participant Grower after any change in the holding of the Participant Grower in the Register, the Responsible Entity must issue to the Participant Grower a Grapelot Statement which must be substantially in the form set out in the Fourth Schedule or such other form as the Responsible Entity determines.

10.2 Grapelot Statements

- (a) Each Grapelot Statement must specify such information regarding the Grapelots held by the Participant Grower as set out in the Fourth Schedule.
- (b) The Grapelot Statements may be prepared and printed as the Responsible Entity may from time to time determine and may be issued by computer or other mechanical means and must be signed on behalf of the Responsible Entity.
- (c) A Grapelot Statement is not a certificate of title to any Grapelot, but is merely a statement from the Responsible Entity as to the state of affairs of the Register (or part of it) as it affects the Participant Grower at a particular time.

10.3 Register of Participant Growers

The Responsible Entity must set up and maintain a Register of Participant Growers in accordance with Chapter 2C of the Corporations Act.

10.4 Chargee

Any person may be registered as the Chargee of any relevant Grapelots if that person is named as such in the Application in relation to those Grapelots, or a direction to that effect is received from the person registered as the Participant Grower (in the form set out in Item 1 of the Fifth Schedule as varied from time to time by the Responsible Entity), or the Responsible Entity is otherwise satisfied that the relevant Grapelots are

subject to a mortgage or charge, provided that in no circumstances will the Responsible Entity be taken to have notice of (or be bound to enquire into) the terms of any mortgage or charge of the relevant Grapelots.

10.5 References to Chargees in Register

Upon the written request of a Chargee in the form set out in Item 2 of the Fifth Schedule as varied from time to time by the Responsible Entity, the Responsible Entity must strike from the Register all reference to the Chargee in relation to the Grapelots referred to in the request.

11. RESPONSIBLE ENTITY'S POWERS

Each Participant Grower agrees that the Responsible Entity has irrevocable power as the agent, representative and attorney of the Participant Grower and whether in the name of the Participant Grower or the Responsible Entity or both:

- (a) subject to the requirements of ASIC and of the Corporations Act, to receive and hold the Application Money;
- (b) to invest any money held in a Special Trust Account in any Authorised Investment;
- (c) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with clause 16;
- (d) to use the Application Money of the Participant Grower in discharging the Participant Grower's obligations under the Agreements or under this Deed;
- (e) to prepare reports and accounts in relation to the Vineyard Services and in relation to the processing of Crop and the sale of Product or Crop;
- (f) to monitor the performance of all parties to the Project Documents;
- (g) to appoint agents to enter into the Project Documents on behalf of a Participant Grower and to exercise all rights and powers of the Participant Grower under any Project Documents;
- (h) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Vineyard Services on behalf of the Participant Grower;
- (i) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Crop and Product from the Project;
- (j) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and bring legal or arbitration proceedings against any person who is a party to any Agreement or Project Document, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Participant Grower or Participant Growers and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Participant Grower and relating to any Agreement;
- (k) to execute any deed, agreement, certificate or other document and to do all such things as are necessary or desirable to further the powers granted to the Responsible Entity in this clause 11, including for the purposes of protecting,

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- insofar as is legally possible, the Participant Grower's tenure to its Grapelots; and
- (l) to lease the Land from the owner of the Land, and licence it to, the Participant Grower.
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12. AGENCY ACCOUNT

12.1 Agency Account

The Responsible Entity must keep or cause to be kept a separate Agency Account or Agency Accounts for the purpose of depositing the Proceeds and any other money that the Responsible Entity may hold for the Participant Grower, other than Application Money and interest on Application Money.

12.2 Use of Moneys in Agency Account

Subject to clause 16.3, the Responsible Entity must hold the moneys standing to the credit of the Participant Grower in the Agency Account for the Participant Grower to be dealt with in accordance with the provisions of this Deed.

12.3 Bank Account May be Interest Earning

The bank account or accounts in which the Responsible Entity deposits moneys standing in any Agency Account may be interest earning. Any interest so earned will be treated as Proceeds.

12.4 Pooling of Moneys

Moneys held by the Responsible Entity for any of the Participant Growers may be pooled in any one or more bank accounts with moneys held on behalf of any other Participant Growers.

13. PROCESSING OF CROP AND SALE OF PRODUCT

13.1 Table Grapes, Crop and Product of the Project

- (a) Subject to clause 13.2, each Participant Grower is entitled to a several share of the whole of the Table Grapes and the Crop in each Financial Year in proportion to the Participant Grower's Participating Interest.
- (b) Each Participant Grower severally authorises and requests the Responsible Entity to procure Timbercorp Securities to gather in the Table Grapes and store its Participating Interest in the Crop in accordance with the Grapelot Management Agreement.
- (c) Each Participant Grower participates in the Project with the intention of having its Participating Interest in the Crop in each year then processed into Product in accordance with clause 13.3.
- (d) Subject to clause 13.2, each Participant Grower is entitled to a several share of whole of any Product in each Financial Year in proportion to the Participant Grower's Participating Interest.

13.2 Crop and Product of Defaulting Grower

Subject to clauses 18.4(e) and 18.5, a Participant Grower is not entitled to its Participating Interest in each Financial Year where the Participant Grower is a Defaulting Grower, in which case that Participant Grower's Participating Interest in the Table Grapes, Crop and Product will be used to satisfy the Participant Grower's obligations in the manner set out in clause 13.7.

13.3 Processing of Crop

Each Participant Grower severally authorises and requests the Responsible Entity to procure Timbercorp Securities to:

- (a) process its Participating Interest in the Crop, or so much of it as Timbercorp Securities in its absolute discretion considers desirable;
- (b) enter into any processing agreement as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower; and
- (c) store its Participating Interest in the Product

in accordance with the Grapelot Management Agreement.

13.4 Sale of Crop and Product

Each Participant Grower severally authorises and requests the Responsible Entity to procure Timbercorp Securities to:

- (a) sell its Participating Interest in that part of the Crop that is not processed in accordance with clause 13.3;
- (b) sell its Participating Interest in the Product,

in accordance with the Grapelot Management Agreement and on such terms and conditions as Timbercorp Securities in its absolute discretion determines, and for this purpose to enter into any agreement for the sale of the Participant Grower's Participating Interest in the Product and any unprocessed Crop as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower.

13.5 Records

The Responsible Entity must keep full and complete records of the sale of the Participant Grower's Participating Interest in the Product and any unprocessed Crop and separately account to the Participant Grower for the sale of the Participant Grower's Participating Interest in the Product or Crop.

13.6 Payment into Agency Account

The Responsible Entity must pay into the Agency Account:

- (a) proceeds from the sale of Crop attributable to the Participant Growers' Grapelots to which the Participant Grower is entitled;
- (b) proceeds from the sale of Product produced from the Table Grapes and Crop, attributable to the Participant Growers' Grapelots to which the Participant Grower is entitled;
- (c) proceeds of any insurance policy to which the Participant Growers are entitled to benefit; and
- (d) any other amount properly related to the proceeds from the Participant Growers' Grapelots to which the Participant Growers are entitled.

13.7 Participant Grower's Entitlement

- (a) A Participant Grower is entitled to the money in the Agency Account which represents his Participating Interest in the gross income from the sale of the Product or Crop for a particular Production Period less:
 - (i) any fees payable under the Participant Grower's Licence Agreement plus interest;
 - (ii) any fees payable under the Participant Grower's Grapelot Management Agreement plus interest; and
 - (iii) any other amounts payable by the Participant Grower under this Deed, Participant Grower's Grapelot Management Agreement and the Participant Grower's Licence Agreement plus interest.
- (b) The Participant Grower authorises the Responsible Entity to make the deductions listed in paragraph 13.7(a) and pay the deducted amounts to the persons entitled to them. The Responsible Entity may make these payments within 14 days of receiving the money into the Agency Account in respect of the relevant Participant Grower.
- (c) If, in any Financial Year in which there is a Production Period, there is insufficient money to make all the required payments then the deductions or adjustments to be made under paragraph 13.7(a) must be made in the priority in which they are listed.
- (d) The surplus available to each Participant Grower after all deductions are made by the Responsible Entity must be paid by the Responsible Entity to the relevant Participant Grower. The payment must be made within five months after 30 June each year in which there is a Production Period provided that the Responsible Entity will not be under the obligation to make payments, directions and distributions of Proceeds in relation to the Project under this clause:
 - (i) unless and until the amount of Proceeds payable or distributable to the Grower is at least \$200 per Grapelot; and
 - (ii) unless Proceeds have been held in the Agency Account for no less than 30 days before the distribution is required to be made.
- (e) If there are any accruals of amounts to be paid in any of the categories listed in the definitions of "Proceeds" then the accrual must be paid in the same order of preference as the items listed in paragraph 13.7(a).

13.8 Product Liability Insurance

The Responsible Entity must at all times keep current with a reputable insurance company a product liability policy in respect of all of the Product or Crop of the Participant Grower which is sold by or on behalf of the Participant Grower. The policy must be in the names of the Responsible Entity and the Participant Grower.

13.9 Proceeds from Insurance

- (a) This clause 13.9 applies where insurance proceeds are paid in respect of some only of the Participant Growers' Grapelots.
- (b) Where there is an event which only affects some Participant Growers' Grapelots and insurance proceeds are paid in respect of that event, the proceeds are divided between those Participant Growers only and according to the proportion that the area of each Participant Growers' Grapelots affected bears to the total area of the Participant Growers' Grapelots affected.

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- (c) In the event this clause 13.9 is operative, the Participant Growers who receive their proportion of the insurance proceeds are not to receive any part of the other Proceeds in respect of the Production Periods to which the claim relates and accordingly, the Participating Interest of each Participant Grower in the other Proceeds is to be recalculated with the area of the affected Grapelots excluded.

13.10 Interim distribution of entitlements

Despite anything contained in this Deed, the Responsible Entity may from time to time and at any time make such interim distributions to Participant Growers on account of their respective entitlements under this clause 13. The timing and the amount of the distributions is at the complete discretion of the Responsible Entity.

13.11 Deduction of Taxes

The Responsible Entity may, at its discretion, deduct or require to be deducted from any amounts payable to any Participant Grower, the amount of any tax or duty which is paid or payable by the Responsible Entity in respect of the Participant Grower.

13.12 Indemnity

The Responsible Entity is indemnified by each person who is or was at any time a Participant Grower in respect of any tax or duty referred to in clause 13.11.

13.13 Pooling

Each Participant Grower severally authorises Timbercorp Securities to:

- (a) gather in and store each Participant Grower's Participating Interest in the Table Grapes and the Crop;
- (b) then procure the processing of each Participant Grower's Participating Interest in the Crop; and
- (c) then store, market and sell each Participant Grower's Participating Interest in any unprocessed Crop and the Product,

with those of other Participant Growers without having regard to the quantity or quality of the particular Table Grapes, Crop or Product from the particular Grapelots.

14. REMUNERATION

14.1 Fees

The Responsible Entity will receive in respect of the Project by way of remuneration for carrying out its duties and obligations under this Deed, the Grapelot Management Agreement and the Project Documents and otherwise managing the Project, those fees provided for in this Deed, the Licence Agreement and the Grapelot Management Agreement. The rights of the Responsible Entity to receive the remuneration specified in this clause are available only in relation to the proper performance of the Responsible Entity's duties.

14.2 Further Fees

The Responsible Entity will be entitled to be paid any interest earned on Application Money (pursuant to clause 4.4) and to collect, receive, get in and retain all dividends, interest, rents and other income from the Authorised Investments from time to time

comprised in or forming part of the Agency Account (pursuant to clause 16.3).

14.3 Payment of Expenses

Subject to, and without derogating from, the rights of Timbercorp Securities and the Participating Growers under the Grapelot Management Agreement, the Responsible Entity will be responsible for payment of all expenses relating to the operation and administration of the Project up to the harvest stage.

14.4 Retirement benefit

The Responsible Entity is entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Growers, and nominating to the Growers the incoming responsible entity as its replacement; or
- (b) its retirement as responsible entity,

and is not required to account to Participant Growers for such remuneration or benefit.

15. USE OF MONEYS IN THE AGENCY ACCOUNT

15.1 Authority to Make Payments

The Responsible Entity must as the agent for each of the Participant Growers pay moneys pursuant to any obligations on the part of the Participant Grower under this Deed, the Agreements or under the provisions of the Agreements.

15.2 Expenditure to be shared between Participant Growers

Expenditure will be shared between all of the Participant Growers such that each Participant Grower pays its share of the aggregate expenditure in the proportion that its Participating Interest bears to the aggregate Participating Interests of all Participant Growers in the Project.

16. INVESTMENT OF MONEYS BY RESPONSIBLE ENTITY

16.1 Power of Investment

The Responsible Entity may apply the whole or part of such moneys as are for the time being standing in any Agency Account in such Authorised Investments in the name of the Responsible Entity as the Responsible Entity sees fit.

16.2 Variation of Investments

Should the Responsible Entity at any time and from time to time consider it desirable in the interests of a Participant Grower or the Participant Growers to sell or otherwise dispose of, exchange, vary, modify or otherwise change any investment made pursuant to clause 16.1, the Responsible Entity may at its absolute discretion do so.

16.3 Application of Income from the Authorised Investments

Any interest or other income earned from the investment of moneys in any Agency Account will be treated as Proceeds.

17. ANNUAL AND EXTRAORDINARY EXPENSES OF THE PROJECT

17.1 Contribution of Further Moneys

Each Participant Grower agrees to contribute further moneys on the dates, in the amounts and in the manner set out in this Deed, the Licence Agreement and the Grapelot Management Agreement by making payment to, or at the direction of, the parties entitled to such payments. Except to the extent that any payment comprises Application Money, at least 1 month prior to any payment being due under this clause, the relevant party must give written notice to each Participant Grower as to the amount due.

18. THE LICENCE AGREEMENT AND GRAPELOT MANAGEMENT AGREEMENT

18.1 Status of Agreements

The Licence Agreement entered into between Timbercorp Securities in its personal capacity, the Land Owner and each of the Participant Growers and the Grapelot Management Agreement entered into between Timbercorp Securities in its personal capacity and each of the Participant Growers must be read subject to the terms of this Deed.

18.2 Retention of Agreements

- (a) The Responsible Entity will arrange for the Licence Agreements and Grapelot Management Agreements to be stamped (if required) and then retain each in safe custody until the end of the Project.
- (b) A Participant Grower may obtain a copy of its Licence Agreement and Grapelot Management Agreement by written request to the Responsible Entity.

18.3 Termination of Agreements

- (a) If the Licence Agreements and Grapelot Management Agreements are terminated for whatever reason, then the parties (including the Participant Growers) acknowledge that the Responsible Entity has the rights specified in paragraph 18.3(b) in respect of all Grapelots (including those in respect of which Agreements have been terminated). The Responsible Entity reserves these rights in order to permit Timbercorp Securities to properly carry out its duties under the Licence Agreements and Grapelot Management Agreements which have not been terminated. The Responsible Entity will not exercise its rights except for this purpose.
- (b) The Responsible Entity's rights are:

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- (i) rights of access to control pests, weeds, undergrowth or similar alien material;
 - (ii) rights to continue to fertilise and irrigate Grapelots;
 - (iii) rights to enter the Grapelots to inspect their condition and the condition of the plant life growing on the Grapelots; and
 - (iv) any other rights which the Responsible Entity must reasonably exercise to fulfil its obligations under this clause, and its obligations under the Licence Agreements and Grapelot Management Agreements.
- (c) If, in exercising any of its rights, the Responsible Entity causes damage to any Participant Growers' Grapelot, then the Responsible Entity must make good that damage.
 - (d) If any Participant Grower's actions cause damage to any Grapelot and the performance of the Project then the relevant Participant Grower must make good that damage. The Participant Grower's obligations in this respect are owed to the Responsible Entity.
 - (e) This clause will survive the termination of the Licence Agreement and the Grapelot Management Agreement with the Participant Grower.

18.4 Consequences of Default & Termination

- (a) **Participant Grower in breach or ceases participation**

If a Participant Grower becomes a Defaulting Grower, then this clause 18.4 applies.
- (b) **Responsible Entity may sue**

The Responsible Entity may sue the Defaulting Grower for any amount or amounts due under the Agreements or this Deed.
- (c) **Responsible Entity may give notice**
 - (i) The Responsible Entity may give notice to the Defaulting Grower that the Defaulting Grower is in default and that the Responsible Entity may exercise its right for and on behalf of the Defaulting Grower to assign to the Land Owner or any other person nominated by the Responsible Entity all of the relevant Grapelots held by the Defaulting Grower if payment of the amount or amounts due under the Agreements or this Deed, or other default thereunder, is not rectified within 30 days of the notice being so given to the Defaulting Grower.
 - (ii) In the event that notice is given as provided in paragraph 18.4(c)(i) and the Defaulting Grower fails or neglects to remedy the default complained of, the Responsible Entity may, for and on behalf of the Defaulting Grower, assign some or all of the relevant Grapelots to the Land Owner or any other person nominated by the Responsible Entity in accordance with paragraph 18.4(d).
 - (iii) The Responsible Entity has no liability to the Defaulting Grower in respect of such assignment.
- (d) **Responsible Entity may assign**
 - (i) If:
 - (A) the Responsible Entity has given a Defaulting Grower a notice as provided in paragraph 18.4(c)(i) and the Defaulting Grower has failed or neglected to remedy the default

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- complained of, the Defaulting Grower must, if the Responsible Entity requires, assign to the Land Owner or any other person nominated by the Responsible Entity its interests in the relevant Grapelots; or
- (B) a Defaulting Grower has ceased to participate in the Project in respect of a relevant Grapelot due to the termination of the Agreements, the Responsible Entity must procure an assignment of the Grapelot to the Land Owner or any other person nominated by the Responsible Entity by the later of:
- (1) 6 months after the Agreements have been terminated; or
 - (2) 14 days after the independent valuer has determined the market value of the relevant Grapelots.
- (ii) The consideration for the assignment of relevant Grapelots to the Land Owner or any other person nominated by the Responsible Entity in accordance with this paragraph 18.4(d) will be the market value of the relevant Grapelot determined by an independent valuer at the Defaulting Grower's cost. The Responsible Entity and the Defaulting Grower must jointly request the President of the Law Institute of Victoria Limited (or, if such body has ceased to exist, then such other institute or body which carries out similar functions) to nominate a person to value the Grapelots for the purposes of this paragraph 18.4(d).
- (iii) The moneys received for the assignment of any relevant Grapelots must be applied in the following order of priority:
- (A) in payment of the costs of the valuer;
 - (B) in payment of the reasonable costs and expenses incurred by the Responsible Entity and the Land Owner in connection with the Defaulting Grower's default plus interest;
 - (C) in payment of any amounts owing by the Defaulting Grower under the Licence Agreement plus interest;
 - (D) in payment of any amounts owing by the Defaulting Grower under the Grapelot Management Agreement plus interest;
 - (E) in payment of any amounts owing by the Defaulting Grower under this Deed plus interest;
 - (F) any residue is to be treated as Proceeds for the benefit of the Defaulting Grower.
- (iv) If there is insufficient money remaining from the proceeds of the sale of the Defaulting Grower's Grapelots to pay all of the outstanding costs and liabilities set out in paragraph 18.4(d)(iii), then the Defaulting Grower must make good that difference. The difference constitutes a debt owing by the Defaulting Grower to the Responsible Entity.
- (v) The Defaulting Grower appoints the Responsible Entity its attorney to enter into and execute for and on behalf of the Defaulting Grower such documents, and do such other things, as the Responsible Entity in its absolute discretion considers necessary or desirable in order to give effect to this paragraph 18.4(d).

(e) Responsible Entity may continue to manage Grapelot

After the Defaulting Grower has ceased to participate in the Project in respect of a relevant Grapelot due to the termination of any of Agreements in respect of the relevant Grapelot:

- (i) the Responsible Entity may continue to manage the Grapelot in accordance with this Deed and the Grapelot Management Agreement, in which case Timbercorp Securities will be entitled to all amounts that it would have received under the Agreements had they not been terminated in respect of the relevant Grapelot;
- (ii) the Participating Interest in the gross income from the sale of the Product or Crop for a particular Production Period or any other Proceeds attributable to the relevant Grapelot of the Defaulting Grower will be applied in the following order of priority:
 - (A) in payment of any amounts to Timbercorp Securities to which it is entitled under paragraph 18.4(d)(ii) plus interest;
 - (B) in payment of any amounts to Timbercorp Securities to which it is entitled under paragraph 18.4(e)(i) plus interest;
 - (C) any residue is to be treated as Proceeds for the benefit of the Land Owner.

(f) Interest

Interest under this clause 18.4 is to be calculated from the specified date for payment of the amount under the Deed or the Agreements to the time of actual payment, at a rate equal to 600 basis points above the rate of interest from time to time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) unless the relevant Agreement or a clause of this Deed specifies another interest rate.

(g) Costs in connection with default

A Participant Grower must pay the reasonable costs and expenses incurred by the Responsible Entity and the Land Owner in connection with any default of the Participant Grower under the Agreements or this Deed within 1 month of receiving written notice to pay such amounts.

(h) Excluding Grapelots

- (i) After the Defaulting Grower has ceased to participate in the Project in respect of a relevant Grapelot due to the termination of any of the Agreements in respect of the relevant Grapelot, the Responsible Entity may decide to exclude the relevant Grapelot from the Project, whether on a temporary or permanent basis.
- (ii) While a Grapelot is excluded from the Project, the:
 - (A) the excluded Grapelot;
 - (B) the Table Grapes and the Crop attributable to the excluded Grapelot;
 - (C) the Product attributable to the excluded Grapelot;
 - (D) the proceeds from the sale of the unprocessed Crop and Product attributable to the excluded Grapelot,

do not form part of the Project and are not to be taken into account in calculating a Participant Grower's Participating Interest in the Table Grapes, Crop, Product or Proceeds.

(i) Joint Venturers

- (i) Subject to clause 29.5, the Responsible Entity agrees and acknowledges that a Joint Venturer is not liable for any amount or liability exceeding the Joint Venturer's respective Prescribed Proportion by reason of joint liability incurred or joint loss sustained in connection with any contract or arrangement entered into by the Joint Venturer.
- (ii) Subject to paragraph 18.4(i)(iii)(A), a default on the part of one Joint Venturer will constitute a default of both Joint Venturers that comprise the Participating Grower in respect of the Joint Venture Grapelots.
- (iii) Each Joint Venturer acknowledges and agrees with the Responsible Entity and the other Joint Venturer that:
 - (A) if a Joint Venturer defaults in its obligations set out in clause 29 or otherwise under this Deed or the Agreements, an Innocent Joint Venturer in respect of the Participating Grower's Grapelots may within 30 days of the Responsible Entity notifying the Joint Venturers of such default purchase the Defaulting Joint Venturer's interest in the Joint Venture at its market value, subject to:
 - (1) the market value of the relevant Grapelot being determined by an independent valuer at the Defaulting Grower's cost;
 - (2) the Responsible Entity and the Innocent Joint Venturer jointly requesting the President of the Law Institute of Victoria Limited (or, if such body has ceased to exist, then such other institute or body which carries out similar functions) to nominate a person to value the Grapelots for the purposes of this paragraph 18.4(i)(iii) (A),and the Defaulting Venturer:
 - (3) irrevocably directs the Innocent Joint Venturer to pay the moneys for any assignment of the Defaulting Joint Venturer's interest in the Joint Venture to the Responsible Entity, free of any deductions;
 - (4) agrees that the Responsible Entity may apply the moneys received under this paragraph 18.4(i)(iii)(A) in accordance with paragraph 18.4(d)(iii).;
 - (B) if the Innocent Joint Venturer has not purchased the Defaulting Joint Venturer's interest in the Joint Venture as provided in the paragraph 18.4(i)(iii)(A) and served on the Responsible Entity a copy of the assignment document in the form of the Sixth Schedule within a further 14 days, the Responsible Entity may exercise all its rights and powers that it has under this Deed and the Agreements in respect of the Joint Venture as a Defaulting Grower, although only one of the Joint Venturers may have defaulted in its obligations as set out in clause 29, including the power and right of the Responsible Entity to:
 - (1) terminate the Agreements in respect of the Joint Venture's relevant Grapelots; and

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- (2) assign the Joint Venture's interest in its relevant Grapelots,

and the Innocent Joint Venturer:

- (3) will then be entitled to receive its Prescribed Proportion of the moneys received for any assignment of the Joint Venture's interest in its relevant Grapelots, before it is applied in accordance with paragraph 18.4(d)(iii);
 - (4) will not be liable for any difference for which the Joint Venture is liable under paragraph 18.4(d)(iv), with the Defaulting Joint Venturer being liable to make good the whole difference as required under paragraph 18.4(d)(iv); and
 - (5) will be entitled to receive its Prescribed Proportion of the Joint Venture Assets free of any amounts deducted by the Responsible Entity under clause 18.5, with all amounts being deducted from the Defaulting Joint Venturer's Prescribed Proportion of the Joint Venture Assets;
- (C) if the Innocent Joint Venturer purchases the Defaulting Joint Venturer's interest in the Joint Venture as provided in paragraph 18.4(i)(iii)(A), the Innocent Joint Venturer for the purpose of this Deed and the Agreements becomes the sole Participating Grower in respect of the Joint Venture Grapelots, but the Defaulting Joint Venturer will not be relieved of any of its liabilities and obligations under this Deed and the Agreements.

(j) No Charge

Nothing in this clause 18.4 is intended to create a charge.

18.5 Payment by Responsible Entity

- (a) Despite clause 18.4, the Responsible Entity may from its own funds pay any person or itself on behalf of the Participant Grower such amount of fees, expenses, licence fees, costs or other amounts as may for the time being and at any time thereafter be due by the Participant Grower under the provisions of this Deed or under the provisions of any Agreement.
- (b) In the event that any amount is so paid by the Responsible Entity on behalf of the Participant Grower, or in the event that any other expenses are reasonably and properly incurred (whether under paragraph 18.5(a) or otherwise) or are required to be incurred on behalf of the Participant Grower in relation to the Project by the Responsible Entity, then the Responsible Entity may:
 - (i) require the amount or expenses to be paid from moneys (if any) in the Agency Account; and/or
 - (ii) pay for such expenses itself.
- (c) Subject to clause 24.1, in the event that the Responsible Entity pays for any amounts or expenses on behalf of a Participant Grower or Participant Growers in relation to the Project itself (other than expenses which it has contracted to incur pursuant to this Deed and the Grapelot Management Agreement), the Responsible Entity will be entitled to be reimbursed by the relevant Participant Grower or Participant Growers from the Agency Account in the amount of such

expenses plus the rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria) from the time of such payment by the Responsible Entity until the date of reimbursement, and in cases where reimbursement is from each of the relevant Participant Growers, each of the Participant Growers must pay an amount equal to its Participating Interest of the aggregate amounts of expenses including interest.

19. PARTICIPANT GROWER'S GRAPELOTS

19.1 Right to Inspect Documents and Express Opinions

Each Participant Grower has the right:

- (a) to inspect and copy any document or other information relevant to the activities of the Responsible Entity on its behalf (except for information which is confidential because its disclosure could in the reasonable opinion of the Responsible Entity assist competitors or otherwise prejudice the interests of all Participant Growers), provided that on each occasion upon which the Participant Grower seeks to exercise its right under this paragraph the Participant Grower will sign a suitable undertaking to keep confidential the document or other information; and
- (b) to express opinions and to give recommendations relating to any matters the subject of the Agreements or proposed Agreements, and the Responsible Entity will give due consideration to any such opinions or recommendations received in writing.

19.2 Participant Grower's Right regarding the Agency Account

No Participant Grower has the right to require payment to the Participant Grower of that part of any money comprising the Agency Account to which it is beneficially entitled or entitled at law subject always to the rights of the Participant Grower as expressly provided in this Deed.

19.3 Relationships Between each Participant Grower

Other than as joint venturers in a Joint Venture:

- (a) no Participant Grower will have any relationship with any other Participant Grower (except as specifically provided in this Deed);
- (b) the relationship between each Participant Grower and each other Participant Grower, between each Participant Grower and the Responsible Entity and between each Participant Grower, the Responsible Entity and the Land Owner is not intended to be, will not be deemed to be, and will not be treated as a partnership, limited partnership or a joint venture, or, limited company or association, nor will Participant Growers or any Participant Grower and the Responsible Entity for any purpose be or be deemed to be or be treated as in any way whatsoever liable or responsible under this Deed as partners or joint venturers;
- (c) nothing in this Deed is, or is intended to be, or will be deemed to be a contract between Participant Growers and each Participant Grower will take and enjoy all its Grapelots and will incur all its liabilities and obligations under this Deed severally and independently of each other Participant Grower, and none of the undertakings or conditions in this Deed on the part of any Participant Grower will operate for the benefit of or be enforceable by any other Participant Grower or Participant Growers and no Participant Grower has any right or

claims against any other Participant Grower or against any other Participant Growers; and

- (d) no Participant Grower is, or is intended to be, or will be deemed to be the partner, agent, or legal representative of any other Participant Grower or of the Responsible Entity, whether for the purpose of this Deed or otherwise, nor will any Participant Grower have any authority or power to act for or to undertake any obligation or responsibility or incur any liability on behalf of any other Participant Grower, nor will the Responsible Entity (except where expressly provided) have any authority to act for or to undertake any obligation or responsibility or incur any liability on behalf of any Participant Grower.

19.4 Attorney

- (a) A Participant Grower may by written notice to the Responsible Entity appoint a person to act on its behalf under this Deed as a representative or agent (in this clause 19.4 called an "**Attorney**") in relation to the relevant Grapelots held by that Participant Grower with power in the name of the Participant Grower to subscribe for, purchase, sell, mortgage, redeem, convert, transfer, transmit or otherwise deal with the Grapelots, and to give directions, authorities, requests and to receive payment in relation to the relevant Grapelots for and on behalf of that Participant Grower.
- (b) The notice so appointing the Attorney must be in such form as the Responsible Entity may for the time being require or approve, must be signed or executed by the Participant Grower, and must be delivered to the Responsible Entity prior to any dealing or transaction in respect of which it is to be so used.
- (c) A Participant Grower may cancel any appointment of an Attorney by delivering a written notice to the Responsible Entity in such form as the Responsible Entity may for the time being require or approve, signed or executed by the Participant Grower. Such cancellation is not to be effective until the written notice is in fact received by the Responsible Entity and the Responsible Entity will not be held liable in any way whatsoever with respect to any transactions which are entered into by the Attorney after the appointment of the Attorney has been cancelled but before the written cancellation has been received by the Responsible Entity.
- (d) The Responsible Entity may in its absolute discretion accept or refuse the appointment of an Attorney or refuse to accept or give effect to the exercise of any given authority of the Attorney, and the Responsible Entity will not be required to give any reason for such refusal.
- (e) Any direction or authority which the Responsible Entity reasonably believes to have been given by any partner or authorised officer of the Attorney is deemed to be a direction or authority validly given by the Attorney.
- (f) Despite anything contained in this clause 19.4, the Responsible Entity must send to the Participant Grower, within 2 months after any transaction or dealing is entered into by an Attorney on behalf of that Participant Grower, details of the transaction or dealing. A Grapelot Statement is sufficient evidence of details of a transaction or dealing in the case of an Application or a partial redemption or a conversion.
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20. REGISTRATION OF ASSIGNMENTS AND TRANSMISSIONS

20.1 Assignments

- (a) No assignment that is permitted under paragraph 20.1(b) may be registered unless a deed of assignment has been delivered to the Responsible Entity.
- (b) The deed of assignment of any Grapelots must be in writing in the form set out in the Sixth Schedule and must be duly stamped with the necessary stamp duty applicable to the deed of assignment.
- (c) The deed of assignment of any Grapelots must be signed both by the assignor and the assignee and until such deed of assignment is registered and the name of the assignee is entered in the Register in respect of the Grapelots assigned the assignee will not be deemed the Participant Grower in respect of such Grapelots.
- (d) Subject to paragraphs 18.4(i)(iii)(A) and 29.10(c), no assignment of any Grapelot may be made under this clause if the Participant Grower is in default of any of its obligations under this Deed, the Agreements or any other agreement to which the Participant Grower is a party in respect of the Project.

20.2 Transmission

- (a) No transmission may be registered unless an instrument of transmission has been delivered to the Responsible Entity.
- (b) The instrument of transmission of any Grapelots must be in writing as set out in the Seventh Schedule and must be duly stamped with the necessary stamp duty applicable to the instrument of transmission.
- (c) The instrument of transmission of any Grapelot must be signed by the party to whom the Grapelots are being transmitted and, until such instrument of transmission is registered and the name of the transmittee is entered in the Register in respect of the Grapelots transmitted, the transmittee will not be deemed the Participant Grower (or Chargee) in respect of such Grapelots.

20.3 Registration

- (a) Within 1 month after the date on which a deed of assignment or transmission with respect to any Grapelots is lodged with the Responsible Entity, the Responsible Entity must:
 - (i) complete and have ready for delivery to the assignee or transmittee a Grapelot Statement in connection with the assignment or transmission; and
 - (ii) unless otherwise instructed by the relevant person, send or deliver the completed Grapelot Statement to the relevant person or, where the relevant person has instructed the Responsible Entity in writing to send it to a nominated person, to that person.
- (b) In addition, the Responsible Entity, upon receipt of a deed of assignment or transmission of any Grapelots, must enter the assignee or transmittee in the Register as the holder of such Grapelots.
- (c) If the Responsible Entity refuses to enter in the Register a deed of assignment or transmission of Grapelots, it must, within 2 months after the date on which

the deed of assignment or transmission was lodged with it, send to the assignee or transmittee notice of the refusal.

21. RESTRICTIONS ON ASSIGNMENT AND TRANSMISSION

21.1 Restrictions on Transfers, Assignments, etc.

No Participant Grower may transfer, assign or otherwise dispose of the whole or part of its Grapelots without the consent of the Responsible Entity, which consent may be withheld in its absolute discretion, unless:

- (a) the Participant Grower transfers, assigns or otherwise disposes of (whichever is the case) those Grapelots individually;
- (b) the Participant Grower transfers, assigns or otherwise disposes of (whichever is the case) those Grapelots to the one person, unless the Responsible Entity otherwise agrees in its absolute discretion;
- (c) the person or persons benefiting from the transfer, assignment or other disposal agrees to become a party to this Deed and to each of the Agreements as the Participant Grower in respect of the rights and interests transferred, assigned or otherwise disposed of; and
- (d) the person or persons benefiting from the transfer, assignment or other disposal will be deemed to have severally become a party as the Participant Grower to each of the Agreements and to this Deed.

21.2 Death, Liquidation or Bankruptcy of Participant Grower

Subject to the provisions of the *Duties Act 2000 (Vic)* or stamp duties legislation of another State or Territory, upon the death, liquidation or bankruptcy of any Participant Grower, or otherwise upon any person becoming entitled in equity to all the Grapelots of a Participant Grower for any lawful reason, then the Participant Grower will be deemed to have at the same time assigned all its Grapelots to the person who becomes entitled to them to hold absolutely, conditional upon that person producing evidence to the Responsible Entity of its entitlement in respect of the Grapelots.

21.3 Executors, Administrators and Survivors

The executors or administrators of a deceased Participant Grower will be the only persons recognised as having any title to the Participant Grower's Grapelots, but in the case of death of any one or more Participant Growers who hold their Grapelots as joint tenants, the survivors will be the only persons recognised as holding the Grapelots.

22. MEETINGS OF PARTICIPANT GROWERS

22.1 Convening of Meetings

The Responsible Entity may at any time convene a meeting of Participant Growers and must convene a meeting of Participant Growers when required to do so by the Corporations Act.

22.2 Separate Meetings for Classes of Growers

The Responsible Entity may convene separate meetings of the Early Growers and Post 30 June Growers in addition to convening a meeting of all Growers, in respect of all or some business to be considered at a meeting, in the circumstances where it reasonably believes that it is necessary in order for it to act fairly between the two classes of Growers as required by section 601FC(1)(d) of the Corporations Act.

22.3 Calling and Holding Meetings

Meetings of Participant Growers must be called and convened in accordance with Part 2G.4 of the Corporations Act, except that:

- (a) in relation to section 252R of the Corporations Act, no business will be transacted at any meetings of Participant Growers unless a quorum is present when the meeting proceeds to business. The quorum necessary for a meeting at which an Ordinary Resolution is to be proposed is 5 persons holding or representing by proxy at least 10% of the aggregate number of relevant Grapelots for the time being issued to the Participant Growers concerned, and for a meeting at which a Special Resolution is to be proposed, is 5 persons holding or representing by proxy at least 25% of the aggregate number of relevant Grapelots issued to the Participant Growers concerned.
 - (b) in relation to section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Participant Grower and as a proxy or body corporate representative, the Responsible Entity may, in determining whether a quorum is present, count the individual more than once.
 - (c) in relation to section 252R(3) of the Corporations Act, a proxy is entitled to speak and vote for a Participant Grower (to the extent allowed by the appointment) even if the Participant Grower is present at the meeting (but only so long as the Participant Grower does not speak or vote, as the case may be).
 - (d) in relation to section 252Z(5) of the Corporations Act, the Responsible Entity may determine, in relation to a particular meeting or generally, that proxy documents may be received up to any shorter period before the meeting.
 - (e) in relation to section 253K(2) of the Corporations Act, a poll cannot be demanded on any resolution concerning:
 - (i) the election of the chair of a meeting; or
 - (ii) the adjournment of a meeting.
 - (f) in relation to section 253L(2) of the Corporations Act, at a meeting of Participant Growers, a poll may be demanded by:
 - (i) at least 1 Participant Grower concerned holding or representing by proxy at least 10% of the aggregate number of relevant Grapelots for the time being on issue to the Participant Growers concerned and entitling the holders to vote on the resolution; or
 - (ii) the chair.
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23. LIABILITIES AND INDEMNITIES OF RESPONSIBLE ENTITY

23.1 Liability of Responsible Entity

- (a) To the extent permitted by the Corporations Act, the Responsible Entity is not liable for any loss or damage to any person (including any Participant Grower) arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Deed and its duties; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Deed and its duties.
- (b) In particular, the Responsible Entity is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
 - (i) to the extent permitted by the Corporations Act, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Responsible Entity;
 - (ii) it acted as required by Law;
 - (iii) it relied in good faith upon any signature, marking or document; or
 - (iv) it followed a direction given to it by a resolution passed at a duly convened meeting of Participant Growers.
- (c) The Responsible Entity may decide how and when to exercise its powers in its absolute discretion.

23.2 Indemnity of Responsible Entity

- (a) In addition to any indemnity under any Law, the Responsible Entity has a right of indemnity out of the Agency Account on a full indemnity basis in respect of a matter unless, in respect of that matter, the Responsible Entity has acted negligently, fraudulently or in breach of its duties.
- (b) Such right of indemnity in respect of a matter ("**Indemnified Matter**") will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in breach of this Deed.
- (c) The right of indemnity continues to be available after the Responsible Entity retires or is removed as Responsible Entity.
- (d) The Responsible Entity may pay out of the Agency Account any amount for which the Responsible Entity would be entitled to be indemnified under paragraph 23.2(a).

24. LIABILITIES AND INDEMNITIES OF PARTICIPANT GROWERS

24.1 Liability Limited

Except as provided by any express indemnity given by any Participant Grower to the Responsible Entity, and except as provided in clause 26.7, the entire liability of each Participant Grower is limited to the balance of any Application Money owing (if any) and the Participant Grower's Participating Interest in the Proceeds, and no Participant Grower will have any liability to make any further contribution to the Project or payment

to the Responsible Entity in respect of the Project, other than the payments required under clause 17.1.

24.2 Indemnity of each Participant Grower by Responsible Entity

The Responsible Entity indemnifies each Participant Grower against all debts and liabilities which may be incurred by the Participant Grower at any time in relation to the Project or otherwise in any way as a result of or arising out of any act, default or omission of the Responsible Entity.

24.3 No Indemnity by any Participant Grower

Despite any other provision of this Deed or provisions deemed to be included in this Deed, no Participant Grower will, by reason of this Deed or by reason of the relationship created under this Deed with the Responsible Entity, be under any obligation personally to indemnify the Responsible Entity in the event of there being any deficiency in relation to the Project except, in respect of the relevant Grapelots, out of any Application Money of the Participant Grower or other moneys held in the Agency Account in relation to the Participant Grower, or the payments required under clause 17.1.

25. COMPLAINTS PROCEDURE

25.1 Procedure

- (a) Subject to paragraph 25.1(b) and rules of any external complaints resolution scheme of which the Responsible Entity is a member in accordance with paragraph 25.6(a), complaints made by any Participant Grower in relation to the Project or the Responsible Entity, including any dispute or difference whatsoever with the Responsible Entity or in connection with this Deed ("**complaints**") must be dealt with in the manner set out in this clause 25.
- (b) Any dispute or difference between a Participant Grower and Timbercorp Securities in connection with an Agreement must be resolved in accordance with the terms of the relevant Agreement.

25.2 Complaints Officer

- (a) The Responsible Entity must appoint an internal complaints officer ("**Complaints Officer**") with authority to review any complaints from Participant Growers.
- (b) The roles and responsibilities of the Complaints Officer include:
 - (i) to receive and process verbal and written complaints from Participant Growers, at no charge to Participant Growers;
 - (ii) to review and properly consider complaints from Participant Growers in a timely and efficient manner;
 - (iii) to communicate directly with Participant Growers in relation to complaints;
 - (iv) to make readily available to Participant Growers information on how, when, where and to whom to make complaints and any documented policies and procedures for the resolution of complaints;
 - (v) periodically to develop and review the Responsible Entity's policies and procedures for the resolution of complaints, in accordance with

Australian Standard AS 4269:1995, Complaints Handling (as amended from time to time);

- (vi) to provide information relating to the Responsible Entity's complaints handling procedures to employees of the Responsible Entity, in the form of training, brochures and the development of internal rules.

25.3 Receipt of Complaint

- (a) Upon receipt of a verbal complaint which cannot be resolved verbally, the Complaints Officer may request that the complainant provide:
 - (i) a written notice specifying the nature of the complaint, the desired outcome and what action the Participant Grower thinks will settle the complaint; and
 - (ii) all relevant material to support the complaint.
- (b) Upon receipt of the written notice described in paragraph 25.3(a)(i) (or, if a written notice is not required, upon receipt of a verbal complaint) ("**Lodgement Date**"), the Complaints Officer must:
 - (i) within 7 days of the Lodgement Date, make a written record of the complaint setting out the following details:
 - (A) the name, address and telephone number of the complainant;
 - (B) the date the complaint was received;
 - (C) the nature of the complaint; and
 - (D) any other information the Complaints Officer deems adequate;
 - (ii) within 14 days of the Lodgement Date, provide the complainant with a written acknowledgement of receipt of the complaint and the time-frame in which the complaint will be considered;
 - (iii) consider and investigate the circumstances surrounding the complaint;
 - (iv) advise the complainant of the criteria and processes applied by the Responsible Entity in dealing with complaints;
 - (v) upon request, provide the complainant with any relevant material (not being confidential material) relating to the complaint; and
 - (vi) communicate directly with the complainant, with a view to resolving the complaint in a fair and timely manner.

25.4 Notification of Decision

- (a) If the complaint is not resolved within 45 days following the Lodgement Date, the Complaints Officer must inform the complainant of the reasons for the delay.
- (b) No later than 90 days following the Lodgement Date, the Complaints Officer must:
 - (i) notify the complainant, in writing, of the decision of the Responsible Entity in relation to the complaint;
 - (ii) provide the complainant with written reasons for the decision;

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- (iii) outline to the complainant the remedies, if any, available to the complainant; and
 - (iv) advise the complainant of any further avenues for complaint and the timeframes involved in those avenues.

25.5 Further Avenues

If the complainant is dissatisfied with the decision of the Responsible Entity in relation to the complaint, the complainant may take the following action:

- (a) if the Responsible Entity is a member of an external complaints resolution scheme approved by ASIC, the complainant may refer the complaint to that external complaints resolution scheme, for determination in accordance with the rules of that external complaints resolution scheme; or
- (b) if
 - (i) the Responsible Entity is not a member of an external complaints resolution scheme approved by ASIC, and only in that case, the complainant may take any appropriate lawful action; or
 - (ii) the complaint does not fall within the rules of an external complaints resolution scheme approved by ASIC of which the Responsible Entity is a member; or
 - (iii) the complainant does not wish to refer the complaint to an external complaints resolution scheme approved by ASIC of which the Responsible Entity is a member,the complainant must submit the complaint to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (iv) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (v) the arbitration will be conducted in Melbourne, Victoria.

25.6 External Complaints Resolution Scheme and Arbitration

- (a) For the purposes of clause 25.5, the Responsible Entity is a member of two external complaints resolution scheme approved by ASIC.
- (b) If the procedure set out in paragraph 25.5(a) is adopted, subject to any right of appeal contained in the rules of the relevant external complaints resolution scheme, the complainant and the Responsible Entity agree to accept the determination of the external complaints resolution scheme as final and binding.
- (c) If the procedure set out in paragraph 25.5(b) is adopted the complainant and the Responsible Entity:
 - (i) agree to accept the determination of the arbitrator as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

25.7 Responsible Entity

- (a) Clauses 25.5 and 25.6 are for the benefit of the Responsible Entity only, and do not prevent the Responsible Entity from:

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- (i) commencing proceedings against a Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Deed to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 25.5(b), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
-

26. TERMINATION OF THE PROJECT

26.1 Completion of Obligations by Parties

The Project terminates upon the completion by the parties of their obligations under the Agreements and this Deed unless previously terminated under the provisions of this Deed or of the Agreements.

26.1A Prior Termination

The Project may be wound up:

- (a) at the direction of Participant Growers in accordance with section 601NB of the Corporations Act;
- (b) if the Responsible Entity considers that the purpose of the Project has been accomplished, or cannot be accomplished, in accordance with section 601NC of the Corporations Act;
- (c) the court directs the Responsible Entity to wind up the Project in accordance with section 601ND of the Corporations Act; and
- (d) in any other circumstances provided for under the Corporations Act.

26.2 Extension of the Project

The Project may be extended for additional periods not exceeding 3 years each, as Participant Growers may by Special Resolution agree.

26.3 Notice of Expiry

At least 3 months prior to the end of any additional period of extension under the preceding paragraph, each of the Participant Growers must be duly notified by the Responsible Entity of the expiry date and the calling of a meeting of the Participant Growers at which a resolution must be put to the effect that unless otherwise resolved by Special Resolution the Project will terminate on the expiry date.

26.4 Termination by Special Resolution

At any time in relation to the Project, a meeting of Participant Growers may by Special Resolution resolve that the Project be terminated.

26.5 Consequences of Termination of the Project

- (a) On the termination of the Project, the following provisions apply.
- (b) The Responsible Entity must immediately following such termination as agent for the Participant Grower sell, call in, convert and realise all assets for the time being in relation to the Project after paying all proper costs and disbursements, commissions, brokerage fees, legal fees and other outgoings. The Responsible Entity may but need not have regard to any contingency or outstanding matter and may if it sees fit to do so, settle or discharge any such contingencies as agent for the Participant Grower or retain part or all of the assets by way of indemnity in respect thereof but such retention does not affect the release of the Responsible Entity's obligations under section 601FS of the Corporations Act.
- (c) The Responsible Entity must prepare final accounts of the Project and cause an Auditor to be appointed to audit and report on those accounts.
- (d) The Responsible Entity may postpone the sale, calling in, conversion and realisation of all or any part of the assets for such time as it thinks it desirable so to do in the interests of the Participant Grower and is not responsible for any loss attributable to such postponement.
- (e) The balance obtained after the sale of all assets in relation to the Project must be distributed by the Responsible Entity as if the balance represented the Proceeds payable under the Project Documents provided that if the aggregate amount to be distributed to all of the Participant Growers in relation to the Project is less than one thousand dollars (\$1,000), Indexed from 30 June 2005, then at the discretion of the Responsible Entity, the amount will be either distributed to Participant Growers or on behalf of each of the Participant Growers donated to the Salvation Army of Victoria.

26.6 Final Statement

Upon so distributing, the Responsible Entity must forward to the Participant Grower a final statement setting out the details of the sale, calling in and conversion of the assets and the balance obtained in relation to the Project and the distribution and all payments otherwise made or allowed for, whereupon the Responsible Entity will be released from all further duties and obligations incurred under this Deed in relation to the Participant Grower without prejudice to any liability of the Responsible Entity previously incurred under this Deed to the Participant Grower for any breach of its duties imposed by Law or otherwise.

26.7 Release of Participant Grower's Duties

Each of the Participant Growers will be released from all further duties and obligations incurred under this Deed in relation to the Project, without prejudice to any liability of the Participant Growers incurred under this Deed to any party to this Deed for any breach of its duties imposed by Law or otherwise.

27. MISCELLANEOUS

27.1 Notices

(a) Notices by Post, Facsimile or Other Electronic Means

Subject to the Corporations Act, any notice, report or other communication required to be given to any party under this Deed will be deemed to have been duly given if it is given in writing and either delivered or sent:

- (i) by post to any Applicant at his address appearing in the Application, to any Participant Grower at its address appearing in the Register, to the Responsible Entity at the registered office for the time being and to any other party at their last known address; or
- (ii) by facsimile or other electronic transmission to any Applicant at his facsimile number or electronic address appearing in the Application, to any Participant Grower at its facsimile number or electronic address appearing in the Register and to the Responsible Entity at the facsimile number or electronic address of its registered office and to any other person at their last known facsimile number or electronic address.

(b) Notice to Joint Applicants or Participant Growers

In the case of joint Applicants or Participant Growers a notice, report or other communication given to that joint Applicant or Participant Grower whose name stands first on the Application or Register is sufficient notice to all such joint Applicants or Participant Growers.

(c) Receipt of Notice

- (i) Any notice, report or other communication given by post will be deemed to have been received on the Business Day 48 hours after the notice has been properly posted if that falls on a Business Day, and if not, on the first Business Day afterwards and in proving receipt it will be sufficient to prove that the envelope containing the notice was properly addressed and posted and a statement signed by the sender that it was so posted and when, will be conclusive of that fact.
- (iii) Any notice, report or other communication given by facsimile or other electronic transmission will be deemed to have been given on the Business Day after it is sent and the transmission report will be sufficient evidence of receipt.

27.2 Payments to Applicants or Participant Growers

Any money payable to any Applicant or Participant Grower under the provisions of this Deed may be paid by crossed "not negotiable" cheque made payable to the Applicant or Participant Grower or bearer and sent through the post in the case of the Applicants to the address of the Applicant appearing in the Application and in the case of each Participant Grower to the registered address of each such Participant Grower and in the case of joint Applicants or Participant Growers made payable to the joint Applicants or Participant Growers or bearer and sent to the address of that one of the joint Applicants or Participant Growers who is first named on the Application or Register. Payment of every such cheque if duly presented and paid will be in full satisfaction of the money payable and will be a good discharge to the Responsible Entity provided that if the Responsible Entity is directed in writing by any Participant Grower so to do, the Responsible Entity may pay any such money to the credit of an account in any bank and the receipt of such bank shall be a good discharge to the Responsible Entity.

27.3 Copies

A copy of this Deed will at times during the usual business hours be made available by the Responsible Entity at its office (whether registered or principal) in Melbourne for the inspection of each Participant Grower who will be entitled to receive from the Responsible Entity a copy of this Deed and all supplemental Deeds (if any) on payment to the Responsible Entity of the sum of one hundred dollars (\$100.00) Indexed from 30 June 2005, or such lesser sum as the Responsible Entity may from time to time prescribe.

28. GOODS AND SERVICES TAX

- (a) If any supply made by a party ("**Supplier**") to the other ("**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 represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
 - (b) In addition to the GST Exclusive Amount for a taxable supply under this 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 in force from time to time.
 - (c) The GST payable under paragraph (b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
 - (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
 - (e) If a payment to satisfy a claim or a right to a 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 paragraph (b).
 - (f) If a Government Agency 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 Government Agency to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
 - (g) If a party has a claim under or in connection with this Deed for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit.
 - (h) If a party has a claim under or in connection with this Deed and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.
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29. PARTICIPANT GROWER JOINT VENTURE

29.1 Background

The Joint Venturers propose to establish an unincorporated joint venture amongst themselves for the purpose of engaging in a primary production business of developing and cultivating a table grape vineyard and producing and processing Table Grapes for commercial gain under this Project.

29.2 Terms and Conditions

- (a) The First Joint Venturer and the Second Joint Venturer constitute a joint venture for the purposes of carrying on the Joint Venture Operations in respect of the Joint Venture Assets in accordance with this clause 29.
- (b) The interests of the Joint Venturers in the Joint Venture and the Joint Venture Assets and any losses realised from the Joint Venture will be as tenants in common in their Prescribed Proportions.
- (c) Nothing contained in this clause 29 whether express or implied is to be read and construed so as to constitute the Joint Venturers in the relationship of a partnership or trust.

29.3 Name

The joint venture will be known as the 2005 Timbercorp Table Grape Project Joint Venture.

29.4 Joint Venturer's Prescribed Proportion

- (a) If the Joint Venturers are Early Growers:
 - (i) The First Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 55%; and
 - (ii) the Second Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 45%.
- (b) If the Joint Venturers are Post 30 June Growers:
 - (i) The First Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 57.5% and
 - (ii) the Second Joint Venturer is entitled to a Prescribed Proportion of the Joint Venture Assets of 42.5%.

29.5 Obligations

The obligations and rights of the Joint Venturers are as follows:

Early Growers:

- (a) the First Joint Venturer will be solely responsible for paying the following fees and other amounts:
 - (i) 100% of the management fees payable under the Grapelot Management Agreement for the year ended 30 June 2005 (which fees are payable upon application);
 - (ii) 55% of the management fees payable under the Grapelot Management Agreement in respect of management services provided in all Financial Years commencing on and from the 2009 Financial Year;

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- (iii) 55% of the deferred management fees payable under clauses 11.1(b)(ii) and 11.1(c)(ii) of the Grapelot Management Agreement;
 - (iv) 55% of the Licence Fees payable under the Licence Agreement in respect of all licence rights granted in all Financial Years, commencing on and from the 2009 Financial Year; and
 - (v) 55% of the Royalty Fees payable under the Licence Agreement.
 - (b) the Second Joint Venturer will be solely responsible for paying the following fees and other amounts:
 - (i) 100% of the management fees (other than the deferred management fees) and licence fees payable under the Grapelot Management Agreement and the Licence Agreement in respect of management services and licence rights provided in the 2006, 2007 and 2008 Financial Years;
 - (ii) 45% of the management fees payable under the Grapelot Management Agreement in respect of management services provided in all Financial Years, commencing on and from the 2009 Financial Year;
 - (iii) 45% of the deferred management fees payable under clauses 11.1(b)(ii) and 11.1(c)(ii) of the Grapelot Management Agreement;
 - (iv) 45% of the Licence Fees payable under the Licence Agreement in respect of all licence rights granted in all Financial Years, commencing on and from the 2009 Financial Year; and
 - (v) 45% of the Royalty Fees payable under the Licence Agreement.

Post 30 June Growers:

- (c) the First Joint Venturer will be solely responsible for paying the following fees and other amounts:
 - (i) 100% of the management fees and licence fees payable under the Grapelot Management Agreement and the Licence Agreement for the year ended 30 June 2006 (which fees are payable upon application); and
 - (ii) 57.5% of the management fees payable under the Grapelot Management Agreement in respect of management services provided in all Financial Years commencing on and from the 2010 Financial Year;
 - (iii) 57.5% of the deferred management fees payable under clause 11.2(b)(ii) of the Grapelot Management Agreement;
 - (iv) 57.5% of the Licence Fees payable under the Licence Agreement in respect of all licence rights granted in all Financial Years, commencing on and from the 2010 Financial Year; and
 - (v) 57.5% of the Royalty Fees payable under the Licence Agreement.
- (d) the Second Joint Venturer will be solely responsible for paying the following fees and other amounts:
 - (i) 100% of the management fees (other than the deferred management fees) and licence fees payable under the Grapelot Management Agreement and the Licence Agreement in respect of management services and licence rights provided in the 2007, 2008 and 2009 Financial Years;

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- (ii) 42.5% of the management fees payable under the Grapelot Management Agreement in respect of management services provided in all Financial Years commencing on and from the 2010 Financial Year;
 - (iii) 42.5% of the deferred management fees payable under clause 11.2(b)(ii) of the Grapelot Management Agreement;
 - (iv) 42.5% of the Licence Fees payable under the Licence Agreement in respect of all licence rights granted in all Financial Years, commencing on and from the 2010 Financial Year; and
 - (v) 42.5% of the Royalty Fees payable under the Licence Agreement.

All Growers:

- (e) the Joint Venturers will be responsible for paying their Prescribed Proportion of any incentive fees payable by the Joint Venture under the Grapelot Management Agreement;
- (f) each Joint Venturer indemnifies the other against any losses or liability exceeding its respective Prescribed Proportion by reason of any joint liability incurred or joint loss sustained in connection with any contract or arrangement entered into by the Joint Venture, subject to Clause 29.5.

29.6 Rights to the Joint Venture's Table Grapes, Crop, Product and Proceeds

- (a) In consideration for the First Joint Venturer being solely responsible for paying the fees and licence fees and other amounts described in clauses 29.5(a) and 29.5(c), the First Joint Venturer is entitled to its Prescribed Proportion of the Joint Venture's Table Grapes, Crop and the Product, and the Joint Venture Proceeds.
- (b) In consideration for the Second Joint Venturer being solely responsible for paying the fees and licence fees and other amounts described in clauses 29.5(b) and 29.5(d), the Second Joint Venturer is entitled to its Prescribed Proportion of the Joint Venture's Table Grapes, Crop and the Product, and the Joint Venture Proceeds.

29.7 Acknowledgement

The Responsible Entity acknowledges that the Joint Venturers have entered into the Grapelot Management Agreement and the Licence Agreement as joint venturers on the terms and conditions set out in paragraph 18.4(i) and this clause 29.

29.8 Disposal of Interest

Each Joint Venturer may dispose of its interest in the Joint Venture by offering to sell all or part of its interest in the Joint Venture to the other for a price equal to the market value of that interest and on terms otherwise agreed between the parties, provided that the Joint Venturers are not in default of their obligations under this Deed and the Agreements.

29.9 Commencement and Term of this Joint Venture

- (a) The Joint Venture commences on the date of Grapelot Management Agreement and the Licence and unless terminated under paragraph 29.9(b), terminates on the expiry of the Project.
- (b) The Joint Venture will terminate on the earlier of:

-
- (i) the completion of the sale of the Joint Venture Assets; and
 - (ii) the date on which a Joint Venturer sells its interest in the Joint Venture to the other Joint Venturer at market value,

provided that the Joint Venture may not be terminated if any of the Joint Venturers are in default of their obligations under this Deed and the Agreements.

- (c) On termination of the Joint Venture, the Joint Venture Assets must be distributed to, or be held for the benefit of, the Joint Venturers in their Prescribed Proportions, or be sold.
- (d) If the Joint Venture Assets are sold under paragraph 29.9(b)(i), the net proceeds of sale must be divided amongst the Joint Venturers in accordance with their Prescribed Proportions.

29.10 Dealing with a Joint Venture Interest

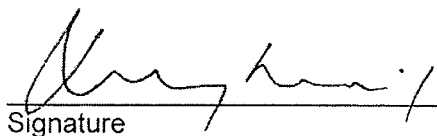
- (a) The interests of the Joint Venturers in each of the relevant Grapelots of the Joint Venture issued pursuant to this Deed must not be dealt with without the interest of the other Joint Venturer in that relevant Grapelots and vice versa.
- (b) The Responsible Entity may not register any assignment of the interests of the Joint Venturers in a relevant Grapelot under clause 20.1 unless the assignment is for the whole of the Joint Venture's interest in the relevant Grapelot.
- (c) This clause 29.10 does not apply to a Joint Venturer selling its interest in the Joint Venture to the other Joint Venturer.

29.11 Miscellaneous

- (a) Each Joint Venturer agrees with the other Joint Venturer to be just and faithful in all transactions relating to the Joint Venture and to perform the obligations imposed on it under clause 29.5.
- (b) Nothing in this clause 29 is intended to create a charge.

Executed as a Deed


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


Signature

John Vaughan

Full Name

Director


Signature

Sol Rabinowicz

Full Name

Director/Secretary

FIRST SCHEDULE

ITEM 1: Application Money for each Grapelot

Applications on or before 30 June 2005 [Early Growers]:

\$7,000 which includes \$636.36 GST.

Applications on or after 1 July 2005 [Post 30 June Growers]:

\$9,000 which includes \$818.18 GST.

SECOND SCHEDULE

GRAPELOT MANAGEMENT AGREEMENT

**Grapelot Management
Agreement**

Timbercorp Securities Limited

**Each Several Participant Grower
named in the First Schedule to
this Agreement**

2005 Timbercorp Table Grape Project

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Grapelot Management Agreement

Date of the Agreement:

In respect of each several Participant Grower means the date on which Timbercorp Securities has accepted the Participant Grower's application for Grapelots being offered under the PDS as specified in the Schedule to the Licence Agreement.

Parties to the Agreement:

1. Each several Participant Grower named in the Schedule to the Licence Agreement.
(Participant Grower)
2. **TIMBERCORP SECURITIES LIMITED**
ACN 092 311 469
Level 8, 461 Bourke Street
MELBOURNE VICTORIA 3000
(Timbercorp Securities)

Background to the Agreement

- A. Timbercorp Securities intends to establish a project for the management of a table grape vineyard, the cultivation of table grape vines and harvesting and processing of table grapes for commercial gain. The Participant Grower will participate in the Project.
 - B. Each Participant Grower has been, or will be, granted a licence by Timbercorp Securities in respect of one or more Grapelots under the Licence Agreement.
 - C. The Licence Agreement permits each several Participant Grower to use its relevant Grapelots for the purpose of growing and cultivating table grape vines and the harvesting of the table grapes and the Participant Grower intends to use the relevant Grapelots for this purpose.
 - D. The Participant Grower wishes to engage Timbercorp Securities to cultivate and maintain Table Grape Vines on, and generally manage, the relevant Grapelots in accordance with the Management Plan and to carry out and perform each Participant Grower's obligations under the Licence Agreement.
 - E. The Participant Grower further wishes to engage Timbercorp Securities to harvest the Table Grapes, procure the processing of the Table Grapes and to sell the Product on behalf of the Participant Grower and for that purpose has authorised Timbercorp Securities under the Constitution and this Agreement to enter into the Project Documents subject to the terms and conditions of this Agreement.
-

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context is clearly to the contrary, the following words have the meanings set out opposite them:

2005 Bella Vista Land:	those parts of the land in an unregistered plan of proposed subdivision of Lot 2 in DP 1067588 (a copy of which is attached to the Sub-lease) on which a new vineyard of 600 acres will be established by the Land Owner on or before 30 June 2005;
Accounts:	receipt and expenditure statements and financial statements together with statements, reports and notes (including any notes of Timbercorp Securities) attached to or intended to be read with any of those statements or financial statements;
Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Agency Account:	the bank account or bank accounts kept and operated by the Responsible Entity as agent for the Participant Grower in carrying out its duties under the Constitution with a bank nominated by the Responsible Entity;
ASIC:	the Australian Securities and Investments Commission;
Authority:	includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Land or any part of them or anything about them;
Best Viticultural Practice:	sound viticultural and environmental practices and industry practices that have been adopted in relation to similar vineyards;
Business Day:	a day other than a Saturday or Sunday or a public holiday on which all trading banks are open for general banking business in Melbourne, Victoria;
Capital Works:	(a) the infrastructure and capital works on the Vineyard as at the date of this Agreement; and (b) the infrastructure and capital works that Timbercorp Securities has agreed to procure the Land Owner to carry out, and any other works that Timbercorp Securities, Timbercorp or the Land Owner may be required in future to carry out, at their cost respectively, on the Vineyard;
Commencement Date:	in respect of each several Participant Grower, the date of this Agreement;
Constitution:	the deed entered into by the Responsible Entity and all the Participant Growers and which governs the Project;

Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 11.6;
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2005 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Grapelot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of the Land comprising approximately 0.25 acres (established or to be established by the Land Owner on or before 30 June 2005) on which a Participant Grower will conduct the Grapelot Operations and which includes the Table Grape Vines, the Capital Works and the Required Water Licences attributed to the Project;
Grapelot Operations:	the growing and cultivation of Table Grapes on, and management of, the relevant Grapelots for the production of Product for commercial gain;
Gross Proceeds:	Proceeds, less the costs and expenses of processing the Table Grapes into Product and marketing and selling the Product and any Table Grapes;
GST:	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:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Incentive Fee Threshold:	the Net Proceeds for Participant Growers specified in the PDS as the incentive fee threshold for that Financial Year;
Indexed:	the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:

$$A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$$

where:

A_t = the amount on the Adjustment Date;

A_0 = the amount being adjusted;

CPI_t = the highest CPI for a full calendar quarter

	published between the date CPI_0 is published and the Adjustment Date, including CPI_0 ;
CPI_0 =	the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, " CPI_0 " will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;
Joint Venture:	the Participant Grower that is a joint venture, as constituted in accordance with the Constitution;
Joint Venturers:	participants in a Joint Venture;
Land:	the land on which the Project will be conducted as described in the PDS or such other land which is used for the Project;
Land Owner:	the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which is OIM #2 Pty Ltd (ACN 112 691 997) as trustee of the Timbercorp Orchard #2 Trust;
Licence Agreement:	the agreement of that name between Timbercorp Securities as licensor and the Participant Grower as licensee in relation to the Participant Grower's relevant Grapelots;
Management Fees:	the fees payable to Timbercorp Securities under clause 11;
Management Plan:	the management plan for a Financial Year prepared by, or on behalf of, Timbercorp Securities and attached as the Second Schedule to this Agreement;
month:	a calendar month;
Net Proceeds:	the proceeds to which a Participant Grower is entitled in a Financial Year under clause 13.7 of the Constitution;
Participant Grower:	<p>(a) a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule; and</p> <p>(b) the term "Early Grower" refers to a Participant Grower whose application under the PDS is accepted on or before 30 June 2005; and</p> <p>(c) the term "Post 30 June Grower" refers to a Participant Grower whose application under the PDS is accepted on or after 1 July 2005 and before the offer period closes;</p>
Participating Interest:	(a) the entitlement of the Participant Grower to the Project assets, the Table Grapes, the Product and the

	<p>Proceeds calculated in accordance with the formula :</p> A/B <p>where:</p> <p>A: is the area of Grapelots licensed to the Participant Grower under the Licence Agreement and used in the Project Operations; and</p> <p>B: is the total area of Grapelots licensed to all of the Participant Growers under the Licence Agreements and used in the Project Operations, including all Grapelots of Participant Growers that have ceased to participate in the Project and which have not been excluded from the Project by Timbercorp Securities in accordance with the Constitution.</p> <p>(b) In the event that there is a reduction in the area of a Participant Grower's Grapelot or Grapelots under clause 10.4 of the Licence Agreement, the Participating Interest of each Participant Grower will be recalculated in accordance with the formula in paragraph (a) of this definition. The recalculated Participating Interest will be applied from the date of the reduction in the area;</p>
party:	any one or more of the Participant Grower and Timbercorp Securities, as the context requires;
Part A Grapelot:	means that part of a Participating Grower's Grapelot that will be fully planted by 23 June 2005, representing no less than 60% of the Participating Grower's Grapelot;
PDS:	the product disclosure statement (as defined in section 761 of the Corporations Act) in relation to the Project;
Pre-Planting Capital Works:	the capital works described in paragraphs 2.1(a)(i)-(vii) of the Licence Agreement which have been, or will be, carried out on the Vineyard by the Land Owner;
process:	means sort, grade, package and store and " processing " has a corresponding meaning;
Proceeds:	<p>(a) interest received on moneys in the Agency Account;</p> <p>(b) any moneys payable to the Participant Growers under any policy of insurance in relation to the relevant Grapelots, the Table Grapes the Product or the Project;</p> <p>(c) proceeds from the sale of Table Grapes;</p> <p>(d) proceeds from the sale of Product; and</p> <p>(e) any other monies payable to a Participant Grower, from or in relation to, the Project;</p>
Product:	Table Grapes produced in a saleable condition from the relevant Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Production Period:	has the same meaning as in the Constitution;

Project:	the 2005 Timbercorp Table Grape Project promoted by Timbercorp Securities involving the management of a table grape project, the cultivation and harvesting of table grape vines and the processing of table grapes for commercial gain;
Project Documents:	the agreements entered into by Timbercorp Securities in accordance with clauses 13.3 and 13.4 of the Constitution and clause 7.2 of this Agreement;
Project Operations:	the growing, cultivation and management of a commercial table grape vineyard on behalf of all the Participant Growers and includes the Vineyard Services, the harvesting and processing of the Table Grapes, delivery of the Table Grapes for distribution to or on behalf of all the Participant Growers in accordance with their Participating Interests and procuring the sale of Table Grapes;
Required Water Licences:	<p>(a) the water licences that are, or will be, leased by Timbercorp Securities under the Sub-lease and that are attributed to the Land as required from time to time, and</p> <p>(b) that provide for a maximum licence entitlement specified in paragraph 3.2(a) of the Licence Agreement, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;</p>
Responsible Entity:	the responsible entity for the time being of the Project;
Special Resolution:	a resolution passed at a meeting of Participant Growers duly convened and held in accordance with this Agreement by a majority of Participant Growers in number present in person or by representative, attorney or proxy whose aggregate number of Grapelots on issue is at least 75%;
Sub-lease:	the deed made between Timbercorp Securities, as sub-lessee, and Timbercorp, as sub-lessor, whereby Timbercorp Securities has been, or will be, granted a sub-lease of the Land;
Table Grapes:	the table grapes grown or growing on the relevant Grapelots of the Participant Grower or the Vineyard, whichever is applicable and whether harvested or unharvested and any other products, rights, benefits or credits derived from the Table Grape Vines;
Table Grape Vines:	the table grape vines planted or to be planted on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Term:	the term of this Agreement under clause 2.1;
Timbercorp:	Timbercorp Limited (ACN 055 185 067);

Vineyard:	all of the Grapelots;
Vineyard Services:	the services described in clauses 5 and 6;

1.2 Construction

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other agreement includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to "\$" or "dollars" is a reference to Australian dollars;
- (i) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
- (j) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;
- (k) if any of the persons comprising the Participant Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
- (l) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word.

1.3 Headings

Headings are for convenience of reference only and do not affect the interpretation of this Agreement.

1.4 Participant Grower and Agreement

- (a) The term "**Participant Grower**" in this Agreement is a reference to the particular Participant Grower named in the First Schedule to this Agreement in relation to the relevant Grapelots allocated to it from time to time.
- (b) The term "**Participant Growers**" in this Agreement is a reference to all Participant Growers that hold Grapelots in the Project and according to the context, the term "**Participant Growers**" may also include the particular Participant Grower.
- (c) This Agreement is entered into in respect of the Participant Grower's Grapelots referred to in the First Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect

of the relevant Grapelots held by the Participant Grower.

1.5 Delegation

Timbercorp Securities is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement, through its employees, agents and contractors but any delegation by Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

1.6 Payments under this Agreement

The Participant Growers that are Joint Venturers agree and acknowledge that Timbercorp Securities granting time, waiver or other indulgence to, compounding or compromising with, or wholly or partially releasing, one of the Joint Venturers in any way, from any obligation under this Agreement does not:

- (a) cause the other Joint Venturer's obligations and liabilities under this Agreement to be reduced or avoided;
- (b) prejudicially affect Timbercorp Securities' rights against the other Joint Venturers under this Agreement.

1.7 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.8 Grapelot Management Agreement is not Project Property

This Agreement does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. COMMENCEMENT AND TERM OF THIS AGREEMENT

2.1 Term

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 15.1 to 15.3, this Agreement will continue until the earlier of:
 - (i) termination of the Participant Grower's participation in the Project;
 - (ii) 30 June 2020;
 - (iii) termination of the Licence Agreement; and
 - (iv) termination of the Project.

3. RELATIONSHIP OF THE PARTIES

3.1 No Partnership etc

The relationship amongst the Participant Growers and between the Participant Growers and Timbercorp Securities is not, is not intended to be, is not deemed to be and is not to be treated as, a partnership association or a joint venture, other than the

Joint Venture which may comprise a Participant Grower.

3.2 Project

The parties expressly agree and acknowledge that:

- (a) each party is an independent contracting party; and
- (b) no party has any authority or power for or on behalf of any other party to enter into any contract, to pledge any credit, to incur any liabilities, to assume any obligations or to make any warranties or representations whatsoever except as specifically provided by this Agreement.

4. APPOINTMENT OF TIMBERCORP SECURITIES

4.1 Engagement of Timbercorp Securities

The Participant Grower engages Timbercorp Securities on the terms and conditions set out in this Agreement generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Participant Grower and perform the Vineyard Services.

4.2 Timbercorp Securities to Carry out Vineyard Services as Independent Contractor

The Parties agree that Timbercorp Securities will carry out the Vineyard Services as an independent contractor and not as agent of the Participant Grower.

4.3 Authority to Act

Timbercorp Securities does not have any authority to act for, or to assume any obligation or liability on behalf of, the Participant Grower except such authority as is conferred on Timbercorp Securities by this Agreement or the Constitution.

4.4 Performance of Obligations

- (a) Subject to this Agreement, Timbercorp Securities must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and conduct the Project Operations:
 - (i) in a commercially reasonable manner;
 - (ii) honestly;
 - (iii) generally in accordance with Best Viticultural Practice which is generally recognised and adopted in Australia and is known and acceptable to Timbercorp Securities and suitable for use on the Vineyard; and
 - (iv) in the best interests of all the Participant Growers and not in the interests of Timbercorp Securities if those interests are not the same as those of the Participant Growers.
- (b) The phrase "commercially reasonable manner" means, in any particular circumstances, a manner which Timbercorp Securities honestly believes is commercially reasonable in those circumstances (having regard where appropriate to the fact that Timbercorp Securities has to meet the costs of conducting the Project Operations out of the fees paid to it). Subject to paragraph 4.4(a)(iv), the phrase does not require Timbercorp Securities to

have regard to the interests of any person other than itself.

4.5 Additional Services

In addition to the activities set out in clause 4.1 and without limiting the generality of clause 4.1, Timbercorp Securities must, at its own expense, provide all necessary administrative, supervisory and consulting services.

4.6 Acceptance of Engagement

Timbercorp Securities accepts its engagement on the terms of this Agreement.

5. VINEYARD MANAGEMENT

5.1 Management Plan and Good Practices

Timbercorp Securities must cultivate and manage the Vineyard in accordance with:

- (a) the Management Plan; and
- (b) Best Viticultural Practice.

The initial Management Plan for the Financial Year ending 30 June 2005 will be prepared on or about the Commencement Date or before 30 June 2005, whichever date is earlier and attached to this Agreement as the Second Schedule. The Management Plan must include the following:

- (c) a horticultural plan for the Vineyard;
- (d) a horticultural program for the Financial Year ending 30 June 2005;
- (e) an operational plan including human resources requirements, machinery requirements and farm programs; and
- (f) annual financial and operational budgets in relation to these horticultural matters.

5.2 Services for period ending 30 June 2005

Without limiting the generality of clause 5.1, Timbercorp Securities will carry out the following services in the period ending 30 June 2005. Timbercorp Securities may determine the most appropriate time to carry out the services provided that the services must be completed on or before 30 June 2005:

Infrastructure Management Services

These services commence from the later of the Commencement Date and completion of the Pre-Planting Capital Works on the Participating Grower's Grapelots and are carried out until 30 June 2005:

- (a) undertake a comprehensive internal quality assurance audit in respect of the Pre-Planting Capital Works carried out by the Land Owner under clause 2.1 of the Licence Agreement, including but not limited to all irrigation infrastructure, valves, pumps, moisture monitoring equipment;
- (b) keep the following in good repair and condition:
 - (i) any access road or roads within the Vineyard, all waterways, dams, irrigation and pumping equipment within the Vineyard, as necessary;
 - (ii) all fences, fire-breaks and other improvements within the Vineyard, as necessary;

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- (iii) all farm equipment, plant and equipment, tractors, vehicles, protective gear and other things used to perform the services described in this clause;
 - (c) as permitted by law, control or eradicate rabbits and other vermin which have caused or may cause damage to the Vineyard by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments), and any other statutes, rules, regulations and by-laws relating to or affecting the Grapelots or the Participant Grower;
 - (d) to the extent that any fertilisers, nutrients and other chemicals are used, keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Vineyard and store the chemicals in accordance with all legal requirements;
 - (e) use and apply appropriate soil management techniques and undertake or procure the carrying out of drainage works to reduce soil erosion, maintain soil quality and carry out or procure the carrying out of drainage work and other works to control salinity levels; and
 - (f) carry out any other activity that may be required to generally maintain the Vineyard in accordance with Best Viticultural Practice or in respect of the provision of the services listed in paragraphs (a)-(e) above including:
 - (i) training of staff in use of equipment, infrastructure and performance of duties;
 - (ii) supervision of contractors performing any of the services; and
 - (iii) obtaining professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the services.

Administrative and other Management Services

The following services will also be carried out by Timbercorp Securities from the Commencement Date until 30 June 2005:

- (g) prepare a market report to the Participating Grower detailing the following:
 - (i) world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
 - (ii) the Australian supply situation (covering the expected crop size for Australia);
 - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or other relevant periods);
 - (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or other relevant periods);
 - (v) information on project crop (covering new or potential supply contracts and markets, key customers, promotional activities, and other relevant matters);
 - (vi) 12-month outlook (covering available information on the expected supply/demand and price trends over the upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters); medium-term outlook (covering a 2-5 year period);
 - (vii) any new articles in relation to the supply, consumption and pricing of table grapes; and
 - (viii) any other relevant market information.

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- (h) carry out any other obligation to be performed by Timbercorp Securities pursuant to the terms of any agreement entered into by Timbercorp Securities;
 - (i) procure on behalf of the Participant Grower and keep current with a reputable insurer the insurance policies described in clause 12 and all other activities in respect of arranging insurance of the Table Grapes and the Grower's table grape growing activities;
 - (j) prepare the reports and statements described in clauses 8 and 13 and provide the administrative services required to perform the above services;
 - (k) comply with the Participant Grower's obligations under the Licence Agreement by ensuring that the Participant Grower carries out on the Land only those activities he or she is entitled to carry out under the Licence Agreement and then only subject to the terms of the Licence Agreement; and
 - (l) review the Management Plan and, if necessary, make amendments to it in accordance with this Agreement; and
 - (m) in accordance with clause 7, undertake all marketing activities in respect of the future sale of Table Grapes, including without limitations entering into forward sales agreements in respect of Table Grapes and foreign exchange hedging agreements, as required and monitor and supervise the performance of all contractors in that regard.

Part A Grapelot – Table Grape Vines Management Services

These services will be carried out by Timbercorp Securities from the completion of planting of Part A of the Grower's Grapelots until 30 June 2005. By their very nature, the services relate to the maintenance of established Table Grape Vines and, therefore, for the avoidance of doubt it is provided expressly that they will not be carried out, nor are they capable of being carried out, on the unplanted part of the Participant Grower's Grapelots. The services are:

- (n) undertake a comprehensive internal quality assurance audit in respect of the Table Grape Vines, stakes, and all infrastructure associated with the application of fertiliser and water to the Table Grape Vines including valves, dripper lines and other things;
- (o) obtain a formal verification by 30 June 2005 from an expert that Part A of the Grapelots is of an appropriate standard and all required services have been performed are to an appropriate standard;
- (p) cultivate, tend, cull, replant, spray and otherwise care for the Table Grape Vines, as necessary;
- (q) undertake pest control, fungicide control and other Table Grape Vines disease measures, as necessary;
- (r) operate the irrigation system at various times in order to irrigate the Grapelots;
- (s) fertilise the relevant Grapelots as required, in accordance with Best Viticultural Practice, to maintain satisfactory rates of growth and productivity of the Table Grape Vines;
- (t) in its absolute discretion and without needing the Participant Grower's consent, destroy any of the Table Grape Vines which are damaged or which have contracted an exotic, noxious or incurable disease;
- (u) as far as reasonably possible, keep the relevant Grapelots free from competitive weeds or other vegetation which may affect the growth or yield of the Table Grape Vines;
- (v) protect the Table Grape Vines from insect infestation, disease and other things using Best Viticultural Practice, including (as necessary) applying

-
- herbicides or pesticides to the relevant Grapelots and spraying the Table Grape Vines as permitted by law;
- (w) regularly inspect and repair all stakes, fences and other equipment including plant and machinery such as tractors and other vehicles used during the period ending 30 June 2005 to carry out tree maintenance services on the Grapelots;
 - (x) inspect and, where appropriate, retie and attach the Table Grape Vines to trellising in accordance with Best Viticultural Practice; and
 - (y) any other activity that may be required to generally maintain the Vineyard in accordance with Best Viticultural Practice or in respect of the provision of the services listed in paragraphs (n)-(x) above including:
 - (i) training of staff in use of equipment, infrastructure and performance of duties;
 - (ii) supervision of contractors performing any of the services; and
 - (iii) obtaining professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the services.

5.2A Subsequent Year Services

Without limiting the generality of clause 5.1, commencing on the later of 1 July 2005 and completion of the planting of Table Grape Vines on the Participating Grower's Grapelots, and during each subsequent Financial Year during the term of the Project, Timbercorp Securities will carry out the following services on the Participant Grower's Grapelots. Timbercorp Securities may determine the most appropriate time to carry out the services. The services are:

- (a) intentionally left blank;
- (b) prepare a market report to the Participating Grower detailing the following:
 - (i) world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
 - (ii) the Australian supply situation (covering the expected crop size for Australia);
 - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
 - (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
 - (v) information on project crop (covering new or potential supply contracts and markets, key customers, promotional activities and other relevant matters);
 - (vi) 12-month outlook (covering expected supply/demand and price trends over upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters); medium-term outlook (covering a 2-5 year period);
 - (vii) any new articles in relation to the supply, consumption and pricing of table grapes; and
 - (viii) other relevant market information.
- (c) in respect of the 2006 Financial Year only, following the completion of planting of all Table Grape Vines:
 - (i) undertake a further internal quality assurance audit in respect of the Table Grape Vines, stakes, and all infrastructure associated with the

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- application of fertiliser and water including valves, pumps, dripper lines, moisture monitoring equipment; and
- (ii) obtain a formal verification from an expert that the remaining part or all of the Grapelots (as the case may be) are of an appropriate standard and all required services have been performed and to an appropriate standard
- (d) prune the Table Grape Vines by mechanical or other methods;
- (e) as permitted by law, control or eradicate rabbits and other vermin which have caused or may cause damage to the Table Grape Vines or the relevant Grapelots by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments), and any other statutes, rules, regulations and by-laws relating to or affecting the Grapelots or the Participant Grower;
- (f) undertake pest control, fungicide control and other Table Grape Vines disease measures, as necessary;
- (g) operate the irrigation system at various times in order to irrigate the relevant Grapelots;
- (h) at its discretion, conduct tests to ascertain the availability of nutrients in the soil on the Grapelots and, based on the results, take whatever action is required to maintain the growth rate and productivity of the Table Grape Vines;
- (i) fertilise the relevant Grapelots as required, in accordance with Best Viticultural Practice;
- (j) in its absolute discretion and without needing the Participant Grower's consent, destroy any of the Table Grape Vines or Table Grapes which have contracted an exotic, noxious or incurable disease;
- (k) as necessary, keep in good repair and condition all fences, irrigation and adequate fire-breaks and other improvements within the Vineyard;
- (l) keep the improvements on the Grapelots in good and substantial repair;
- (m) maintain fire breaks in accordance with regulatory and insurance requirements and Best Viticultural Practice;
- (n) maintain the relevant Grapelots in accordance with Best Viticultural Practice including using soil management technique methods to reduce erosion and maintain soil quality;
- (o) as far as reasonably possible, keep the relevant Grapelots free from competitive weeds or other vegetation which may affect the growth or yield of the Table Grape Vines;
- (p) protect the Table Grape Vines from insect infestation, disease and competition from competing growth using Best Viticultural Practice, including applying herbicides or pesticides to the relevant Grapelots and spraying under the Table Grape Vines as permitted by law;
- (q) keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the relevant Grapelots or Table Grape Vines;
- (r) regularly inspect and repair all stakes, fences and irrigation equipment on the relevant Grapelots;
- (s) properly maintain all plant and machinery used in the performance of the services;

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- (t) inspect and, where appropriate, retie the Table Grape Vines to stakes and attach Table Grape Vines to trellising in accordance with Best Viticultural Practice;
 - (u) replant any of the Table Grape Vines in need of replacement in accordance with the terms of any agreement made with suppliers of the Table Grape Vines;
 - (v) comply with the Participant Grower's obligations under the Licence Agreement (except for those relating to payment of fees);
 - (w) keep current with a reputable insurer the insurance policies described in clause 12 and carry out all other activities in respect of arranging insurance of the Table Grapes;
 - (x) carry out any other obligation to be performed by Timbercorp Securities pursuant to the terms of any agreement entered into by Timbercorp Securities;
 - (y) not discriminate between Participant Growers in the supply of water under the Required Water Licences;
 - (z) if water in excess of that available under the Required Water Licences is required from time to time in order to irrigate the Vineyard and such additional water can be reasonably procured by way of temporary water rights, procure such additional water and supply it to all Participant Growers, at a cost to the Participant Growers under clause 11.3 of this Agreement, calculated and to be taken into account as Timbercorp Securities' reasonable costs of procuring the additional water in operating the relevant Grapelots;
 - (aa) review and update the Management Plan for the Project, including a horticultural plan for the Vineyard, horticultural program, operational plan and annual financial and operational budgets in relation to these horticultural matters, review the Management Plan and, if necessary, make amendments to it;
 - (bb) obtain professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the maintenance of the Grapelots and the Table Grape Vines;
 - (cc) prepare the reports and statements described in clauses 8 and 13 and provide the administrative services required to perform the above services;
 - (dd) in accordance with clause 7, undertake all marketing activities in respect of the sale or future sale of Table Grapes, including without limitations entering into forward sales of Table Grapes and foreign exchange hedging agreements, as required, and monitor and supervise the performance of contractors in that regard;
 - (ee) provide any other service or thing which, in the reasonable opinion of Timbercorp Securities, is incidental or ancillary to the ongoing management of the relevant Grapelots; and
 - (ff) comply with all laws and regulations relating to the use of the relevant Grapelots.

5.3 No Unlawful Acts

Timbercorp Securities must not do or allow any unlawful act to be done on or adjacent to the Vineyard and nothing in this Agreement or in the Management Plan for any Financial Year will require Timbercorp Securities to do so.

5.4 Notify Land Owner or Timbercorp of Notices

Timbercorp Securities must give the Land Owner or Timbercorp, as the case requires,

a copy of any notice (other than rates notices), which it receives from any Authority with respect to the relevant Grapelots or the Vineyard within seven days after receipt of the notice.

6. HARVESTING

6.1 Harvesting

Each year during the Term Timbercorp Securities will, in accordance with Best Viticultural Practice, test the maturity of the Table Grapes to determine whether the Table Grape Vines are ready for harvesting and, having done so, will harvest the mature Table Grape Vines.

6.2 Harvesting Method

Harvesting must be done by Timbercorp Securities in accordance with Best Viticultural Practices by any method (including machine harvesting) deemed appropriate by Timbercorp Securities.

6.3 Delivery

Timbercorp Securities will promptly deliver all harvested Table Grapes to a delivery point or points to enable the Table Grapes to be processed and sold.

6.4 Storage

- (a) Until the harvested Table Grapes are delivered, Timbercorp Securities will store the Participant Grower's Participating Interest in the Table Grapes in an appropriate manner to minimise the deterioration of the Table Grapes' quality.
- (b) The Participant Grower's Participating Interest in the Table Grapes may be stored on the Vineyard or any other premises whether or not owned or operated by Timbercorp Securities.

6.5 Early Harvests

The Participant Grower agrees that until the relevant Grapelots enter commercial production, Timbercorp Securities may harvest immature Table Grapes from those Grapelots and use them for promotional and marketing purposes.

7. PROCESSING AND SALE

7.1 Processing of Table Grapes

Timbercorp Securities will procure the processing of the Participant Grower's Participating Interest in the Table Grapes into Product and will enter into a Project Document as agent and attorney for the Participant Grower.

7.2 Marketing and Sale

Timbercorp Securities will:

- (a) sell the Participant Grower's Participating Interest in the Product, using its reasonable endeavours to seek to maximise returns, and on such terms and conditions as Timbercorp Securities in its absolute discretion determines and,

for this purpose, it is authorised to and will enter into a Project Document for the sale of the Participant Grower's Participating Interest in the Product as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower; and

- (b) in the event that Responsible Entity determines that any part of the Participant Grower's Participating Interest in the Table Grapes should not or could not be sold as Product, put such Table Grapes to commercial use, using its reasonable endeavours to seek to maximise returns, on such terms and conditions as Timbercorp Securities determines in its absolute discretion and, for this purpose, is authorised to and will enter into any agreement as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower.

7.3 Acknowledgement by the Participant Grower

The Participant Grower acknowledges and agrees that the Table Grapes and the proceeds of sale of all the Product or Table Grapes will be divided pro rata according to the Participating Interest of each of the Participating Growers in the Project in the Product or Table Grapes.

- (a) The Participating Grower authorises and directs Timbercorp Securities to:
- (i) gather in the Participant Grower's Participating Interest in the Table Grapes;
 - (ii) procure the processing of the Participant Grower's Participating Interest in the Table Grapes; and
 - (iii) then store, market and sell the Participant Grower's Participating Interest in the any unprocessed Table Grapes and the Product,
- with those of other Participating Growers in the Project without having regard to the quantity or quality of the particular Table Grapes or Product from the particular Grapelots of any Participating Growers in the Project, and the Participating Grower authorises Timbercorp Securities to do so.

7.4 Lien

- (a) The Participant Grower acknowledges and agrees with Timbercorp Securities that Timbercorp Securities can call for a first and paramount lien at any time in respect of the Participant Grower's Participating Interest in the Table Grapes and Product until such time as any outstanding fees or expenses due and payable to Timbercorp Securities under this Agreement have been paid.
- (b) Timbercorp Securities is authorised to sell or cause to be sold any of the Participant Grower's Participating Interest in the Table Grapes and Product over which Timbercorp Securities has the lien for the purpose of applying the sale proceeds in payment of any outstanding fees or expenses due to Timbercorp Securities.
- (c) Nothing in this clause 7.4 is intended to create a charge.

7.5 Action for Recovery of Sale Proceeds

In the event that a payment due by a purchaser of the Product or Table Grapes under an agreement for the sale of the Product or Table Grapes is overdue, the Participant Grower authorises Timbercorp Securities to take any action which it reasonably considers to be necessary for the purpose of recovering any such outstanding payments or any Product or Table Grapes from the purchaser.

8. ADMINISTRATIVE SERVICES

8.1 Services

Timbercorp Securities agrees to provide the following administrative services throughout the Term of the Agreement:

- (a) prepare reports to Participant Growers on the allocation and location of Participant Growers' Grapelots;
- (b) prepare reports to Participant Growers detailing the work to be done on each Participant Grower's Grapelot;
- (c) prepare reports to Participant Growers on the matters described in clauses 13.5 and 13.6;
- (d) prepare a statement to the Participant Grower in each Financial Year to assist with the preparation of income tax returns;
- (e) record the Participant Grower's transactions and make payments on behalf of the Participant Grower;
- (f) provide general administrative management of the Project;
- (g) review the sales and marketing plan for the Project; and
- (h) co-ordinate visits of Participant Growers to inspect their Grapelots.

9. ACCESS TO VINEYARD

9.1 Timbercorp Securities has Access

Timbercorp Securities and its invitees will be entitled to such access to the Grapelots and Table Grape Vines as is necessary or desirable to perform Timbercorp Securities' obligations under this Agreement, the Constitution and the Project Documents relating to the relevant Grapelots of all Participant Growers in the Project.

9.2 Removal of Timbercorp Securities' Property after Termination

Timbercorp Securities may remove from the relevant Grapelots such plant and equipment, implements, furniture and other items brought onto the Grapelots within one month after the termination of this Agreement and may enter the Grapelots for the purpose of removing such items.

9.3 Roads and Tracks

- (a) Timbercorp Securities is entitled (but has no obligation) to construct and maintain roads and tracks on the Grapelots primarily and principally to provide access to and from the Vineyard from a public road for the:
 - (i) cultivation, maintenance and tending of the Table Grape Vines and the Table Grapes;
 - (ii) harvesting of the Table Grapes; and
 - (iii) removal of the Table Grapes.
- (b) Where Timbercorp Securities has removed any material for road building purposes, Timbercorp Securities must use reasonable endeavours to return the surface of the land to an appearance as close as possible to the appearance of the surface of surrounding land.

9.4 Participant Grower's Access

Provided the Participant Grower first gives Timbercorp Securities 7 days' prior notice in writing, Timbercorp Securities must permit the Participant Grower or its duly authorised representatives to have access, at the Participant Grower's expense and risk, at all reasonable times to the relevant Grapelots and the facilities located on them.

9.5 Warranty as to Access

The Participant Grower warrants that:

- (a) it has the right to grant access to the relevant Grapelots for the performance by Timbercorp Securities of its obligations under this Agreement, the Constitution and the Project Documents in respect of the relevant Grapelots of all Participant Growers in the Project; and
- (b) the exercise by Timbercorp Securities of its rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the Land Owner, any of the other Participant Growers in the Project or any person who derives title through or under the owner or any of the Participant Growers in the Project.

9.6 Failure to Perform if Access Denied

Timbercorp Securities will not be liable for any failure to perform its obligations under this Agreement, which arises because it is denied access to, or possession or occupation of, the Vineyard or any part of it by any Participant Growers in the Project.

10. NO LEASE OR LICENCE

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of Timbercorp Securities concerning the relevant Grapelots.

11. TIMBERCORP SECURITIES' FEES

11.1 Annual Fee and Charges Payable by Participant Growers

Where the Participant Grower is an **Early Grower**, the Participant Grower must pay Timbercorp Securities the following management fees and charges in respect of the Vineyard Services and all other services to be provided under this Agreement:

- (a) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2005 an amount of \$6,363.63 per relevant Grapelot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period 1 July 2005 to 30 June 2006:
 - (i) an amount of \$1,363.63 per relevant Grapelot payable on 31 October 2005; and
 - (ii) an amount equal to 2.25% of the Participant Grower's Participating Interest of the Gross Proceeds from the sale of Table Grapes and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted

under this Agreement, the Constitution, the Licence Agreement and the Project Documents);

- (c) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period 1 July 2006 to 30 June 2007:
 - (i) an amount of \$1,363.63 per relevant Grapelot payable on 31 October 2006; and
 - (ii) an amount equal to 2.25% of the Participant Grower's Participating Interest of the Gross Proceeds from the sale of Table Grapes and Product in that Financial Year payable out of, and at the time Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Licence Agreement and the Project Documents); and
- (d) thereafter, in consideration of the Vineyard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees specified in clauses 11.3 and 11.5.

11.2 Annual Fee and Charges Payable by Post 30 June Participant Growers

Where the Participant Grower is a Post 30 June Grower, the Participant Grower must pay Timbercorp Securities the following management fees and charges in respect of the Vineyard Services and all other services to be provided under this Agreement:

- (a) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2006 an amount of \$7,727.27 per relevant Grapelot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period 1 July 2006 to 30 June 2007:
 - (i) an amount of 1,363.63 per Grapelot payable on 31 October 2006; and
 - (ii) for each relevant Grapelot an amount equal to 4.5% of the Gross Proceeds of the sale of Table Grapes and Product in each Financial Year of the Project payable out of and at the time any Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Licence Agreement and the Project Documents); and
- (c) thereafter, in consideration of the Vineyard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.3 Management Fees Payable by all Participant Growers

- (a) Timbercorp Securities will be entitled to be paid in respect of all Participant Grower's relevant Grapelots the following management fees in consideration of the Vineyard Services and all other services to be provided under this Agreement for each Financial Year after 30 June 2007 on 31 October 2007 and each subsequent 31 October, the estimated costs of operating the relevant Grapelots (which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$20 per relevant Grapelot Indexed (adopting 30 June 2005 as the base date), as adjusted under paragraph 11.3(b);

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- (b) Timbercorp Securities will:
- (i) when notifying the Participant Grower under paragraph 11.3(a) of the estimated costs of operating the relevant Grapelots, notify the Participant Grower of its Participating Interest of the actual costs of Timbercorp Securities operating the relevant Grapelots for the preceding Financial Year, including overhead costs incurred by Timbercorp Securities or its contractors,
 - (ii) adjust the estimated costs of operating the relevant Grapelots of operating the relevant Grapelots for the current Financial Year by the difference between the actual costs and the costs estimated by Timbercorp Securities under paragraph 11.3(a) for the preceding financial year unless the surplus per relevant Grapelot has been added, or the excess per relevant Grapelot has been deducted, from any distribution of Proceeds made to the Participant Grower following the end of the preceding Financial Year.

11.4 Responsible Entity to make certain payments

The Participant Grower agrees and acknowledges that the Responsible Entity is authorised to:

- (a) deduct from the Proceeds to which the Participant Grower is entitled, any amounts payable by the Participant Grower under this Agreement, the Licence Agreement, the Project Documents and the Constitution including any amounts which are outstanding and in arrears; and
- (b) pay the deducted amounts to the persons entitled to them.

11.5 Incentive Fee

- (a) Timbercorp Securities will be entitled to be paid as an incentive fee in a Financial Year by the Participant Grower out of, and immediately prior to, any distribution 25% of so much of the annual Net Proceeds received by the Participant Grower in a Financial Year as exceeds the Incentive Fee Threshold.
- (b) But, if in the immediately preceding Financial Year, the Net Proceeds received by the Participant Grower were less than the Incentive Fee Threshold the amount of the deficit must be deducted from the Net Proceeds when calculating the fee payable to Timbercorp Securities under this clause 11.5 in respect of the Financial Year to which reference is first made.

11.6 Discontinuance or suspension of CPI

- (a) If the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause must be borne equally between Timbercorp Securities and the Participant Grower.

11.7 Capacity

All Management Fees and other amounts to be paid to Timbercorp Securities under this Agreement are paid to Timbercorp Securities in its personal capacity.

12. INSURANCE

12.1 Timbercorp Securities to Keep Insurance

Timbercorp Securities will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Participant Growers in the Project with a reputable insurer against damage to the Vineyard, which is caused by fire or other insurable risks, including public risk and occupier's liability provided that the cost of any such insurance is economically justified and it does not include crop insurance (unless specifically agreed between Timbercorp Securities and the Participant Grower from year to year).

12.2 Names of Policies

All policies of insurance obtained by Timbercorp Securities in accordance with clause 12.1 must be in the names of or note the interests of Timbercorp Securities, the Land Owner, Timbercorp and all the Participant Growers.

12.3 No party may Prejudice Insurance Policies

No party will at any time during the Term permit or suffer to be done (and nothing in this Agreement will require Timbercorp Securities to permit or suffer to be done) any act, matter or thing upon the Vineyards whereby any insurances in respect of the Vineyard or any Participant Grower's Grapelots (or any part thereof) may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

13. MANAGEMENT PLAN AND REPORTS

13.1 Management Plan

- (a) In performing its obligations under this Agreement, Timbercorp Securities must observe, and act in accordance with, the Management Plan.
- (b) Despite the preceding paragraph, Timbercorp Securities is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from the Participant Grower under clause 13.2 requires Timbercorp Securities to do something which is not in accordance with the Management Plan.

13.2 Recommendation or Direction by the Participant Grower

Timbercorp Securities must consider any recommendation or direction made by a Participant Grower and where it is satisfied that any such recommendation or direction is in the interests of the Participant Growers and the Project generally, Timbercorp Securities must use its best endeavours to carry out the recommendation or direction in accordance with the terms and conditions set out in this Agreement.

13.3 Changes to Management Plan

At any time during the Financial Year to which a Management Plan relates, Timbercorp Securities may make changes to that Management Plan.

13.4 Performance of Management Services

Timbercorp Securities will have complete discretion as to the manner and method of conducting the Project Operations, subject to the express terms of this Agreement.

13.5 Reports

Within 4 months after the end of each Financial Year during this Agreement Timbercorp Securities will send a report to the Participant Grower that addresses and contains information concerning the following matters:

- (a) the results of the harvest of Table Grapes;
- (b) the condition of the Vineyard, the Participant Grower's Grapelots and Table Grape Vines;
- (c) any other matters which Timbercorp Securities considers material concerning the Vineyard, the relevant Grapelots or the Project and which ought reasonably to be made known to the Participant Grower; and
- (d) any other matter reasonably requested by the Participant Grower.

13.6 Statements of Income and Expenses

Within 4 months after the end of each Financial Year, commencing at the end of the Financial Year in which the Table Grape Vines start to produce Table Grapes, Timbercorp Securities will send to the Participant Grower an annual statement of income and expenses relating to the management of the relevant Grapelots and the sale of the Participant Grower's Participating Interest in the Product or Table Grapes during the relevant Financial Year.

14. DISTRIBUTIONS

14.1 Distribution of Proceeds to the Participant Growers

Subject to this Agreement, Timbercorp Securities as the Responsible Entity must pay to the Participant Grower the amount of Proceeds standing to the credit of the Participant Grower in the Agency Account in accordance with the Constitution.

15. TERMINATION AND DEFAULT

15.1 Termination by the Participant Grower

The Participant Grower may terminate this Agreement by notice in writing to Timbercorp Securities:

- (a) immediately, if Timbercorp Securities:
 - (i) goes into liquidation other than for the purposes of reconstruction or amalgamation or a Controller or Administrator is appointed in relation to the undertaking of Timbercorp Securities or any part of its undertaking;

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- (ii) ceases to carry on business; or
 - (iii) fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied (except where Timbercorp Securities has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan); or
- (b) 6 months (or such shorter period as Timbercorp Securities and the Participant Growers agree) after the Participant Growers by Special Resolution at a meeting of Participant Growers resolve to terminate the engagement of Timbercorp Securities under the Agreement.

15.2 Termination by Timbercorp Securities

- (a) Timbercorp Securities may terminate this Agreement, with immediate effect in respect of all the Grapelots of the Participant Grower, if the Participant Grower fails to make a payment within the required time under this Agreement in relation to any Grapelot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Grapelot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower specifying the breach and requiring the Participant Grower to remedy the breach.
- (b) If this Agreement is terminated under paragraph 15.2(a) then:
- (i) the Participant Grower loses all rights as a participant in the Project;
 - (ii) the Participant Grower remains liable for payment of all fees in respect of work done by Timbercorp Securities, and
 - (iii) the procedure for the consequences of termination as set out in clause 18 of the Constitution must be followed.

15.3 Termination of Licence Agreement

This Agreement terminates in respect of the relevant Grapelots immediately if the Licence Agreement is terminated in respect of the relevant Grapelots for any reason.

15.4 Relinquish Property and Books and Records

Provided that the Participant Grower has paid all of the fees and other moneys due to Timbercorp Securities and it is not otherwise in breach of any of its obligations under this Agreement, Timbercorp Securities must relinquish custody and control to the Participant Grower or as the Participant Grower direct, of all property of the Participant Grower held by Timbercorp Securities under this Agreement and all books and records and documents kept under this Agreement upon cancellation of the engagement of Timbercorp Securities or termination of this Agreement, other than those which Timbercorp Securities is required by law to keep.

15.5 Effect of Termination

- (a) The termination of this Agreement (whether under this clause 15 or under any other clause) will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.
- (b) The termination of this Agreement will not prejudice any right, power or

remedy to the extent that it accrued prior to or on termination.

16. EXCUSES FOR NON PERFORMANCE

16.1 Force Majeure

Timbercorp Securities will not have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

16.2 Lack or unavailability of funds

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

16.3 Liability

Timbercorp Securities' failure to observe or comply with the terms of this Agreement will not give rise to any liability to the Participant Grower for any direct or indirect consequential or special loss or damage of any kind to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

16.4 Definition of Force Majeure

For the purposes of this Agreement, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or which Timbercorp Securities is not reasonably able to prevent. It includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);
- (e) epidemic or quarantine;
- (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
- (g) delays in transportation or communication; and
- (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other.

17. LIMITATION OF THE PARTICIPANT GROWER'S LIABILITY

17.1 No obligation beyond Fees and Expenses

Despite anything else contained in this Agreement the Participant Grower is not obliged to contribute any money in respect of the Project Operations beyond the fees and other amounts payable by the Participant Grower under the Constitution, the Licence Agreement and this Agreement.

17.2 Limitation of Liability

Despite anything else contained in this Agreement, the liability of the Participant Grower is absolutely limited to the fees and other amounts paid or payable to Timbercorp Securities under the Constitution, the Licence Agreement and this Agreement and to any Proceeds to which the Participant Grower is entitled.

17.3 Timbercorp Securities to disclose

In any contract which Timbercorp Securities enters into on behalf of the Participant Grower, to the extent practicable, Timbercorp Securities must disclose that:

- (a) it is contracting as agent for the Participant Grower;
- (b) the liability of the Participant Grower in respect of the Project Operations and the Licence Agreement is limited to the amount of money contributed by the Participant Grower as provided in clause 17.1; and
- (c) the Participant Grower is under no liability to the other party to the contract or to any of its servants or agents, whether in contract or otherwise, beyond the money contributed by the Participant Grower as provided in clause 17.1 and to any Proceeds to which the Participant Grower is entitled.

18. DISPUTES

18.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Agreement must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
 - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service Limited (**FICS**) or Insurance Brokers Disputes Limited (**IBD**), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 18.1(a)(i),the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of

Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:

- (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 18.1(a) as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

18.2 Timbercorp Securities

- (a) Clause 18.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
- (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Agreement to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 18.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
- (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.

19. COUNTERPARTS

- (a) This Agreement may consist of a number of counterparts and if so the counterparts taken together will constitute the one instrument.
- (b) The Participant Grower covenants with Timbercorp Securities that it will at the request of Timbercorp Securities execute any further counterparts in the form or to the effect of this Agreement, which counterparts may include a lesser or greater number of Participant Growers to those executing this instrument so long as in no circumstances will the rights or entitlement of any Participant Grower be diminished.

-
- (c) The Participant Grower and Timbercorp Securities agree that by their execution of any counterpart of this Agreement they will be and remain liable to each other despite that any other person intended to be a party does not sign or execute this or any other counterpart of the Agreement.
-

20. MISCELLANEOUS

20.1 Further Assurances

The Participant Grower and Timbercorp Securities must execute all agreements and take all other action necessary or desirable to give full effect to this Agreement.

20.2 Entire Understanding

This Agreement contains the entire understanding between the Participant Grower and Timbercorp Securities concerning the subject matter contained in it. All previous representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect, other than the PDS and any agreement executed by the Participant Grower and Timbercorp Securities that is clearly intended to be supplemental to this Agreement or in substitution for it.

20.3 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right to exercise of any other right.
- (b) No party is liable for any loss or expense of another party caused or partly caused by the waiver, exercise or failure to exercise a right.

20.4 Parties to Give Effect to the Agreement

- (a) The Participant Grower and Timbercorp Securities must exercise all powers as are available to it, do all such acts and things and sign, execute and deliver all documents as may be necessary or reasonably required to give full effect to this Agreement.
- (b) If the Participant Grower immediately after being requested by Timbercorp Securities fails to do the act or thing, the Participant Grower irrevocably appoints Timbercorp Securities as its attorney for the purpose of giving effect to this clause.
- (c) The Participant Grower indemnifies Timbercorp Securities and holds it harmless from and against all actions, suits, demands and claims consequent upon the exercise of the power granted under this clause 20.4.

20.5 Stamp Duty

- (a) Timbercorp Securities will pay the stamp duty payable in relation to this Agreement.
- (b) The Participant Grower will pay any duty payable in proportion to its Participating Interest in relation to any agreement executed pursuant to this Agreement, including all Project Documents.

20.6 Amendments

- (a) This Agreement may be amended by another document in writing and duly

-
- signed by the parties to this Agreement.
- (b) Subject to paragraph 20.6(c), Timbercorp Securities may amend the provisions of this Agreement to such extent as may be required to:
 - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
 - (ii) comply with the effect of any judicial decision; or
 - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
 - (c) Before Timbercorp Securities may amend the Agreement as provided under paragraph 20.6(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of the Participant Growers.
 - (d) Timbercorp Securities may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Participant Growers. To give effect to this clause, each of the Participant Growers appoints the Responsible Entity as its attorney to make amendments to this Agreement.
 - (e) If the Responsible Entity cannot be satisfied that the amendments can be made in accordance with paragraph 20.6(c), then amendments may only be made in accordance with paragraph 20.6(a).

20.7 Constitution

The rights and obligations of the parties under this Agreement are subject to the terms and conditions of the Constitution.

20.8 GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, 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 in force from time to time.
- (c) The GST payable under paragraph 20.8(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 20.8(b).
- (f) If an Authority orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the Authority to order that a further

amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.

- (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

20.9 Proper Law

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

21. NOTICES

21.1 Form of Notice

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

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

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

21.2 Receipt of Notice

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

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

22. ASSIGNMENT

22.1 Assignment by Timbercorp Securities

Subject to clause 22.2, Timbercorp Securities may freely assign any of its rights and interests under this Agreement so long as Timbercorp Securities does not assign its interest in this Agreement in any way without first entering a deed with the person with

whom Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

- (a) contained or implied in this Agreement and the Licence Agreement; and
- (b) required to be observed or performed by Timbercorp Securities.

22.2 Agreements with Contractors

Timbercorp Securities may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which Timbercorp Securities has delegated some or all of its obligations under this Agreement, and for this purpose, Timbercorp Securities has obtained the written consent to the assignment from the contractor.

22.3 Payment for deed

The cost of any deed required under clause 22.1 must be paid by Timbercorp Securities or the Grantee, but not the Participant Grower.

22.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Agreement if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of Timbercorp Securities and the Responsible Entity stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Agreement, the Constitution and the Licence Agreement applying to the Participant Grower's Grapelots being assigned; and
 - (ii) is not in default of any of its obligations under this Agreement, the Constitution and the Licence Agreement applying to the relevant Grapelots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into a Grapelot Management Agreement and Licence Agreement, with the same terms and conditions as those applying to the Grapelots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

22.5 Release of liability of the Participant Grower

Once the Participant Grower has perfected an assignment of its interest in this Agreement in accordance with clause 22.4, the Participant Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected in respect of the Grapelots assigned.

Executed as an Agreement

FIRST SCHEDULE

GROWERS AND GRAPELOTS

	Name of the Participant Grower	Date Application Accepted	Address, Phone/Fax Number	Grapelot No.
	eg. John Smith			

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

Signature

Full Name

Position Held

Signature

Full Name

Position Held

EXECUTED by TIMBERCORP)
SECURITIES LIMITED as agent)
and attorney for and on behalf of)
each several Participant Grower in)
accordance with section 127 of)
the Corporations Act:)
)

Signature

Full Name

Position Held

Signature

Full Name

Position Held

SECOND SCHEDULE

**INITIAL MANAGEMENT PLAN
(Clause 5.1)**

THIRD SCHEDULE

LICENCE AGREEMENT

Licence Agreement

Timbercorp Securities Limited

**Each several Participant Grower
named in Schedule to this
Agreement**

OIM #2 Pty Limited

Timbercorp Limited

2005 Timbercorp Table Grape Project

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Licence Agreement

Date of the Agreement:

In respect of each several Participant Grower means the date on which Timbercorp Securities has accepted the Participant Grower's application for Grapelots being offered under the PDS as specified in the Schedule.

Parties to the Agreement:

1. **TIMBERCORP SECURITIES LIMITED**

ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Timbercorp Securities)

2. The Participant Grower named in the Schedule to this Agreement in relation to Grapelots allocated to the Participant Grower.

(Participant Grower)

3. **OIM #2 Pty Ltd**

ACN 112 691 997
Level 5, 605 St Kilda Road
MELBOURNE VIC 3004

in its capacity as trustee
of the Timbercorp Orchard #2 Trust

(OIM #2)

4. **TIMBERCORP LIMITED**

ACN 055 185 067
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Timbercorp)

Background to the Agreement

- A. Timbercorp Securities has established a project for the management of a table grape vineyard, the cultivation of table grape vines and harvesting and processing of table grapes for commercial gain.
- B. Timbercorp Securities will sub-lease from Timbercorp the Land and the Table Grape Vines, the Required Water Licences and the Capital Works and any other capital works

that may be established on the Land under the Sub-lease. Timbercorp's rights to use the Land and the Table Grape Vines including the plant breeders' rights, the Required Water Licences and the Capital Works are granted to it by OIM #2 under the Lease.

- C. Under the Sub-lease Timbercorp also grants Timbercorp Securities a sub-licence of the necessary plant breeders' rights to plant and grow the Table Grape Vines on the Grapelots and to process and sell the Licensed Fruit. The plant breeders' rights are owned by Andriske who has granted a licence of those rights to OIM #2 under the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement, as defined in clause 22.
 - D. Timbercorp Securities has agreed to grant a licence to the Participant Grower to use the Grapelots for the cultivation of Table Grape Vines and the harvesting and processing of Table Grapes, subject to the terms and conditions of this Agreement.
 - E. OIM #2 and Timbercorp have entered into this Licence Agreement for the purpose of the agreements in paragraph 10.6.
-

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

2005 Bella Vista Land:	means those parts of the land in an unregistered plan of proposed subdivision of Lot 2 in DP 1067588 (a copy of which is attached to the Sub-lease) on which a new vineyard of 600 acres will be established by the Land Owner on or before 30 June 2005;
Administrator:	has the meaning given to it in section 9 of the Corporations Act;
ASIC:	the Australian Securities and Investments Commission;
Authority:	includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Land or any part of them or anything about them;
Best Viticultural Practice:	sound viticultural and environmental practices and industry practices that have been adopted in relation to similar vineyards;
Business Day:	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
Capital Works:	(a) the infrastructure and capital works on the Vineyard as at the date of this Agreement; and (b) the infrastructure and capital works that Timbercorp Securities has agreed to procure OIM #2 to carry out, and any other works that Timbercorp Securities, Timbercorp or OIM #2 may be required in future to carry

	out, at their cost respectively, on the Vineyard;
Commencement Date:	in respect of each Participant Grower, the date of this Agreement;
Constitution:	the deed entered into by the Responsible Entity and all the Participant Growers, which governs the Project;
Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 7.2;
Encumbrance:	any mortgage, pledge, charge, lien or assignment by way of security (excluding any such thing arising by operation of law);
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2005 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Force Majeure:	has the meaning given to it in clause 11.4;
Grapelot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of the Land comprising approximately 0.25 acres on which a Participant Grower will conduct the Grapelot Operations and its interest in, and rights in relation to the Table Grape Vines, the Capital Works and the Required Water Licences attributed to the Project;
Grapelot Management Agreement:	the agreement of that name for the management of the Grapelot Operations conducted on the Grapelots between Timbercorp Securities and the Participant Grower;
Grapelot Operations:	the growing and cultivation of Table Grapes on, and management of, the Grapelots for the production of Product for commercial gain;
GST:	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:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Indexed:	the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula:

$$A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$$

where:

A_t = the amount on the Adjustment Date;

A_0 = the amount being adjusted;

CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0 ;

CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (**the Base Date**), provided that if no Base Date is specified, " CPI_0 " will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;

Irrigation Infrastructure:

means the pipeline (including the mainline), dam, pump and other equipment which are installed and owned, or are to be installed and owned by the Land Owner or to which the Land Owner has rights under and which already services or will be able to service adequately that part of the Vineyard situated on the Land by enabling and facilitating the irrigation and delivery of the necessary water to the Grapelots;

Land:

the land on which the Project will be conducted as described in the PDS or such other land that is used for the Project;

Land Owner:

the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which is OIM #2 Pty Limited (ACN 112 691 997) as trustee of the Timbercorp Orchard #2 Trust;

Lease:

the Lease made between Timbercorp, as lessee, and OIM #2, as lessor, whereby OIM #2 has granted Timbercorp a lease of the Land;

Licence Fees:

the licence fees payable under clause 7 of this Agreement;

Licensed Fruit:

all Table Grapes and Product derived from the Licensed Vines grown on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;

Licensed Vines:

all Table Grape Vines which are licensed under this Agreement;

OIM #2:

OIM #2 Pty Ltd (ACN 112 691 997) as trustee of the Timbercorp Orchard #2 Trust;

Participant Grower:

- (a) a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule; and
- (b) the term "**Early Grower**" refers to a Participant Grower whose application under the PDS is accepted on or

	before 30 June 2005; and
	(c) the term " Post 30 June Grower " refers to a Participant Grower whose application under the PDS is accepted on or after 1 July 2005 and before the offer period closes;
Participating Interest:	has the same meaning as in the Grapelot Management Agreement;
Part A Grapelot:	means that part of a Participating Grower's Grapelot that will be fully planted by 23 June 2005, representing no less than 60% of the Participating Grower's Grapelot;
PDS:	has the same meaning as in the Constitution;
Pre-Planting Capital Works:	the capital works described in clause 2.1(a)(i)-(vii) which have been, or will be, carried out on the Vineyard by the Land Owner;
Proceeds:	has the meaning given in the Grapelot Management Agreement;
Product:	Table Grapes produced in a saleable condition from the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Project:	the 2005 Timbercorp Table Grape Project promoted by Timbercorp Securities involving the management of a table grape vineyard, the cultivation and harvesting of table grape vines and the processing of table grapes for commercial gain;
Required Water Licences:	<p>(a) the water licences that are, or will be, licensed to Timbercorp Securities under the Sub-lease and that are attributed to the Land as required from time to time and as specified in clause 3.2; and</p> <p>(b) that provide for a maximum licence entitlement specified in paragraph 3.2(a), as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;</p>
Responsible Entity:	means the responsible entity of the Project from time to time;
Royalty Fees:	the royalty fees payable under clause 7 of this Agreement;
Shed Door Price:	<p>(a) the sale price of the Licensed Fruit; less</p> <p>(b) any cost incurred in respect of the Licensed Fruit after the Licensed Fruit leaves the installation where the Licensed Fruit is packed, including costs such as freight, insurance, agents' fees, cold storage charges, import duty and AQIS (other than any amount or amounts payable to Sales Agents),</p> <p>except in the case of any sale of Licensed Fruit at an invoice price that is less than that which would have been charged to persons negotiating at arms' length, there will be substituted for the purpose of calculation of payments due under this Agreement,</p>

	such invoice price (exclusive of GST) as would be charged in an arms' length transaction;
Shed Door Proceeds:	the gross price charged (exclusive of GST) for Licensed Fruit sold on an arms' length basis at the Shed Door Price;
Sub-lease:	the Sub-lease made between Timbercorp Securities, as sub-lessee, and Timbercorp, as sub-lessor, whereby Timbercorp Securities has been, or will be, granted a sub-lease of the Land;
Table Grapes:	the table grapes grown or growing on the Grapelots of the Participant Grower or the Vineyard, whichever is applicable and whether harvested or unharvested and any other products, rights, benefits or credits derived from the Table Grape Vines;
Table Grape Vines:	the table grape vines planted or to be planted on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Term:	the term of this Agreement set out in clause 4.1;
Timbercorp:	Timbercorp Limited (ACN 055 185 067);
Timbercorp Securities:	Timbercorp Securities Limited (ACN 092 311 469);
Vineyard:	all of the Grapelots.

1.2 Interpretation

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
- (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;
- (j) if any of the persons comprising the Participant Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
- (k) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be

read as if the expression "(but not limited to)" immediately followed such word.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this Agreement.

1.4 Grower and Agreement

- (a) The term "**Participant Grower**" in this Agreement is a reference to the particular Participant Grower named in the Schedule to this Agreement in relation to the Grapelot.
- (b) Each set of "**Joint Venturers**", as defined in the Constitution, comprise a particular "**Participant Grower**" under this Agreement and any Project Documents.
- (c) The term "**Participant Growers**" in this Agreement is a reference to all several Participant Growers that hold Grapelots in the Project and according to the context, the term "**Participant Growers**" may also include the particular Participant Grower.
- (d) This Agreement is entered into in respect of Participant Growers' Grapelots referred to in the Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of the Grapelots held by each Participant Grower in the Project.

1.5 Delegation

Timbercorp Securities is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
 - (b) exercise any of its rights under this Agreement through,
- its employees, agents and contractors, but any delegation by Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.7 Licence Agreement is not Scheme Property

This Agreement does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. THE TABLE GRAPE VINEYARD

2.1 Agreement by Timbercorp Securities as to the Grapelots

- (a) Timbercorp Securities agrees with the Participant Grower that it must procure OIM #2, at OIM #2's own cost, to establish the Grapelots on the Land in accordance with its obligations under the Lease and Best Viticultural Practice, and construct the necessary infrastructure and carry out the necessary capital works. Without limiting the generality of this paragraph 2.1(a), it must procure OIM #2 to:

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- (i) organise various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
 - (ii) prepare that part of the Land on which each Grapelot is located to ensure that the Table Grape Vines can grow satisfactorily subject to any Force Majeure;
 - (iii) acquire rights to or construct and install appropriate Irrigation Infrastructure and carry out the necessary irrigation works to ensure proper reticulation of water to the Table Grape Vines on each Grapelot;
 - (iv) carry out drainage work and other works to help prevent soil erosion on the Land on which the Grapelots are to be located;
 - (v) eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Table Grape Vines on the Grapelots;
 - (vi) rip and mound vine rows;
 - (vii) construct posts and trellising;
 - (collectively, '*Pre-Planting Capital Works*')
 - (viii) ensure that it has available sufficient labour and equipment to enable planting of all the Vines as follows:
 - (A) as to Part A of the Grapelots by 23 June 2005, subject to planting taking place in appropriate climatic and horticultural conditions; and
 - (B) as to all other parts of the Grapelots on or before 31 July 2005 subject to planting taking place in appropriate climatic and horticultural conditions.
 - (ix) provide or undertake, as the case requires, such other capital works, services or things which, in the reasonable opinion of Timbercorp Securities, are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 2.1(a)(i) to (vi) above.
- (b) The Participant Grower agrees and acknowledges that:
- (i) Timbercorp Securities will use its best endeavours to have OIM #2 complete the Pre-Planting Capital Works in respect of the Grapelots in full by 30 April 2005;
 - (ii) Timbercorp Securities, Timbercorp and OIM #2 will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Participant Grower arising from any delay in establishing the Grapelots for any reason other than the negligence of Timbercorp Securities, Timbercorp and OIM #2 or their respective officers, employees or agents.

2.2 Acknowledgments by the Participant Grower

- (a) The Participant Grower acknowledges that the Capital Works and Table Grape Vines on, and the Required Water Licences attaching to, the Participant Growers' Grapelots are, and will at all times remain, the property of OIM #2.

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- (b) The Participant Grower agrees and acknowledges that Timbercorp Securities will not be liable for any loss or damage incurred by the Participant Grower arising out of or in connection with any act or omission of OIM #2 or Timbercorp or their respective officers, directors, employees, agents or agents under this Agreement, whether or not constituting negligence, misconduct, dishonesty or fraud.
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3. LICENCES

3.1 Grant of Licence

- (a) Timbercorp Securities grants to the Participant Grower and the Participant Grower takes from Timbercorp Securities a licence, effective from the Commencement Date, to use the Grapelots for the sole purpose of conducting the Grapelot Operations.
- (b) Timbercorp Securities represents and warrants that:
- (i) as at the date of execution of this Agreement, the Sub-lease is valid and subsisting;
 - (ii) Timbercorp Securities is entitled under the Sub-lease to grant the licence under this Agreement; and
 - (iii) any consents which may be required to the granting of the licence under this Agreement, have been obtained.

3.2 Water Licences

- (a) The required water licences for each Grapelot and the Land on which the Grapelots are located are:

	2005/06 (by 15 August 2005)	2006/07 (by 15 August 2006)	2007/08 (by 15 August 2007)	2008/09 ongoing (by 15 August 2008)
Vineyard: 2005 Bella Vista Land – ML/acre	1.8	3.0	3.0	3.0
Vineyard: 2005 Bella Vista Land – Total for 600 acres	1,080	1,800	1,800	1,800

- (b) Timbercorp Securities must:
- (i) do all things necessary to ensure that its rights under the Required Water Licences (secured to Timbercorp Securities under the Sub-lease) are fully exploited to maximise the use and enjoyment of them by all the Participant Growers in the Project;
 - (ii) take all steps to avoid interfering with the supply of water to the Grapelots and to avoid any actions that would prejudice the Participant Grower's rights under this Agreement; and

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- (iii) ensure that the Required Water Licences are maintained during the term of the Project,
except where any Force Majeure or any action or requirement of any Authority prevents or inhibits Timbercorp Securities from doing so.
 - (c) The Participant Grower acknowledges that:
 - (i) OIM #2 may purchase additional water licences and provide water to Timbercorp Securities to meet its obligations under the Grapelot Management Agreement, or to Timbercorp under the Lease; and
 - (ii) such additional water licences will at all times remain the property of OIM #2.
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4. TERM OF AGREEMENT

4.1 Term of Agreement

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 6, 10.1 to 10.3 and clauses 10.5 and 12, this Agreement will continue until the earlier of:
 - (i) the date which is the date of expiry or termination of the Sub-lease between Timbercorp Securities, Timbercorp and OIM #2;
 - (ii) termination of the Participating Grower's Participating Interest in the Project;
 - (iii) 29 June 2020; and
 - (iv) termination of the Project.

4.2 Grower's Obligations Upon Termination

- (a) At the end of this Agreement, the Participant Grower must return the Grapelots to Timbercorp Securities in good condition, but the Participant Grower is not required to remove the Table Grape Vines or restore the Grapelots to their original condition.
- (b) Any structures or plant and equipment of any description which belong to the Participating Grower must be removed from the Grapelots within 30 days after the end of this Agreement. If the Participating Grower does not comply with this requirement then, as between Timbercorp Securities and the Participant Grower, all structures and plant and equipment remaining on the Grapelots at the time will become the absolute property of Timbercorp Securities.
- (c) OIM #2 and Timbercorp have no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for any structures and plant and equipment remaining on the Grapelots that become the absolute property of Timbercorp Securities in accordance with paragraph 4.2(b).
- (d) Timbercorp Securities has no obligation to pay the Participant Grower any compensation at the end, or on termination, of this Agreement, including for

any structures and plant and equipment remaining on the Grapelots that become the absolute property of Timbercorp Securities in accordance with paragraph 4.2(b).

5. TIMBERCORP SECURITIES' OBLIGATIONS AND RIGHTS

5.1 Obligations

Timbercorp Securities must:

- (a) maintain for the Term of the Project all local, State and Commonwealth government approvals, licences or permits required for the establishment, ownership and operation of all the Grapelots;
- (b) allow the Participant Grower to use the Grapelots without any interruption by Timbercorp Securities or any person claiming through or under Timbercorp Securities for the purpose of the Project operations;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Grapelots;
- (d) comply with the provisions of the Sub-lease;
- (e) not create any Encumbrances over the Land or the Grapelots or any part of the Land or the Grapelots ranking in priority to the interests of the Participant Growers under this Agreement other than the agreements referred to in clause 6.1 or where required to do so by an Authority;
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by Timbercorp Securities are properly controlled and supervised;
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by Timbercorp Securities; and
- (h) duly and punctually pay or cause to be paid all rates, taxes and other charges levied by any government or competent Authority in respect of all Grapelots.

5.2 Rights

Timbercorp Securities:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under this Agreement and the Grapelot Management Agreement with or without vehicles to the Grapelots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, OIM #2, Timbercorp or other Participant Growers which gives access to the Grapelots;
 - (b) is entitled to full and free access with or without vehicles to the Grapelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, OIM #2, Timbercorp or other Participant Growers;
 - (c) may at its own expense erect and maintain a sign on the Grapelots detailing such matters as Timbercorp Securities reasonably considers appropriate.
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6. CONDITIONS PRECEDENT

6.1 Conditions Precedent

This Agreement is subject to and conditional on:

- (a) the Participant Grower entering into the Grapelot Management Agreement with Timbercorp Securities; and
- (b) Timbercorp Securities entering into a valid and subsisting Sub-lease with Timbercorp,

on or before the Commencement Date in respect of the Grapelots.

6.2 Reasonable Endeavours

Each of Timbercorp Securities and the Participant Grower will use all reasonable endeavours to ensure that the conditions specified in clause 6.1 are satisfied as soon as is reasonably practicable, and where required will keep each other fully informed as to progress towards satisfaction of the conditions.

7. LICENCE & ROYALTY FEES

7.1 Licence Fees

- (a) Where the Participant Grower is an **Early Grower**, the Participant Grower must pay to Timbercorp Securities the following licence fees per Grapelot:
 - (i) for the period from the Commencement Date until 30 June 2005, nil;
 - (ii) for each of the financial years ending 30 June 2006 and 30 June 2007, \$454.55 payable on 31 October 2005 and 2006;
 - (iii) for the Financial Year ending 30 June 2008, an amount equal to \$1,194.54, payable on 31 October 2007; and
 - (iv) on 31 October of each subsequent Financial Year during the Term, an amount equal to the licence fees payable on the immediately preceding 31 October, Indexed.
- (b) Where the Participant Grower is a **Post 30 June Grower**, the Participant Grower must pay to Timbercorp Securities the following licence fees per Grapelot:
 - (i) For the period from the Commencement Date until 30 June 2006, \$454.55 payable on or before the Commencement Date;
 - (ii) for each subsequent Financial Year of the Term, the same licence fees as is payable by an Early Grower, payable on 31 October of each Financial Year.

7.2 Discontinuance or suspension of CPI

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants

(Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".

- (b) The cost of any expert determination carried out under this clause 7.2 must be borne equally between Timbercorp Securities and the Participant Grower.

7.3 Royalty Fees

- (a) Timbercorp Securities will be entitled to be paid in respect of all Participant Grower's Grapelots, 3% of each Participant Grower's Participating Interest in the Shed Door Proceeds of the Licensed Fruit. The fees payable under this clause 7.3 are payable out of and at the time any Proceeds are received by Timbercorp Securities as Responsible Entity.
- (b) Termination of this Agreement will not relieve the Participant Grower from its obligation to pay any Royalty Fee then due and owing or Royalty Fee that may accrue subsequent to such cancellation upon the Participant Grower's disposition of existing inventory of Licensed Fruit pursuant to clause 22.

7.4 Capacity

All Licence Fees, Royalty Fees and other amounts paid to Timbercorp Securities under this Agreement are paid to Timbercorp Securities in its personal capacity.

8. GROWER'S OBLIGATIONS

8.1 Permitted use

The Participant Grower must only use the Grapelots solely for the purpose of the Grapelot Operations.

8.2 Grower's duties

The Participant Grower must, at its expense:

- (a) undertake the Grapelot Operations on the Grapelots;
- (b) use the Grapelots solely for the purpose of Grapelot Operations;
- (c) comply with Best Viticultural Practice;
- (d) comply with all laws and regulations relating to the use of the Grapelots;
- (e) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (f) maintain the Grapelots in accordance with Best Viticultural Practice, including using soil management technique methods to reduce erosion and maintain soil quality;
- (g) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Grapelots from time to time with or without equipment for the purposes of observing the state of the Grapelots;
- (h) permit Timbercorp Securities and its employees, agents and contractors to enter upon the Grapelots from time to time with or without equipment for the purpose of performing its obligations under this Agreement and the Grapelot Management Agreement;

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- (i) permit OIM #2 and its employees, agents and contractors to enter upon the Grapelots from time to time with or without equipment for the purpose of performing its obligations under this Agreement;
 - (j) comply or procure compliance with the provisions of the Grapelot Management Agreement; and
 - (k) give such rights of way and free access to the occupiers of any other Grapelots adjoining the Grapelots and their agents and contractors, as are necessary for their proper use and enjoyment of their Grapelots, but such rights of access are limited to the unimpeded use of any existing access roads, pathways or fire-breaks on or about the Grapelots.

8.3 Delegation by the Participant Grower

The Participant Grower may, for the better performance of its obligations under this Agreement, engage any person as an agent and all rights granted and obligations imposed on the Participant Grower under this Agreement may be enjoyed by the Participant Grower's agent.

8.4 Delegation does not limit Grower's liability

Any delegation by the Participant Grower under clause 8.3 does not release the Participant Grower from liability under this Agreement.

9. RIGHTS OF OIM #2 AND TIMBERCORP

9.1 Rights of OIM #2

The Participant Grower agrees and acknowledges that OIM #2:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under the Lease with or without vehicles to the Grapelots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, OIM #2, Timbercorp, other Participant Growers or any other person which gives access to the Grapelots;
- (b) is entitled to full and free access with or without vehicles to the Grapelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, OIM #2, Timbercorp, other Participant Growers or any other person.

9.2 Rights of Timbercorp

The Participant Grower agrees and acknowledges that Timbercorp:

- (a) is entitled to full and free access for the purposes of carrying out its obligations and exercising its rights under the Sub-lease with or without vehicles to the Grapelots along any road or track or any neighbouring land owned or occupied by Timbercorp Securities, OIM #2, Timbercorp, other Participant Growers or any other person which gives access to the Grapelots;
 - (b) is entitled to full and free access with or without vehicles to the Grapelots for the purpose of accessing neighbouring land owned or occupied by Timbercorp Securities, OIM #2, Timbercorp, other Participant Growers or any other person.
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10. TERMINATION OF AGREEMENT

10.1 Termination of Agreement by the Participant Grower

The Participant Grower may terminate this Agreement by notice in writing to Timbercorp Securities immediately, if:

- (a) Timbercorp Securities goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of Timbercorp Securities or any part of its undertaking;
- (b) Timbercorp Securities ceases to carry on business; or
- (c) Timbercorp Securities fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied, except where Timbercorp Securities has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan.

10.2 Termination of Agreement by Timbercorp Securities

- (a) Subject to paragraph 10.2(b) and without prejudice to Timbercorp Securities' rights under clause 12, Timbercorp Securities may terminate this Agreement in respect of all the Grapelots of the Participant Grower, with immediate effect, if the Participant Grower fails to make a payment within the time required under this Agreement in relation to any Grapelot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Grapelot of the Participant Grower or the Constitution and fails to remedy the breach or make reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower requiring the Participant Grower to remedy the breach.
- (b) The written notice referred to in paragraph 10.2(a) must specify the breach and request the breach to be remedied.
- (c) The Agreement will terminate if Timbercorp Securities exercises its rights under clause 12.

10.3 Damage to Grapelots

If, in respect of the Grapelots:

- (a) the whole or a substantial part of the Grapelots are damaged or destroyed whether by fire or any other cause whatsoever; or
- (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that the whole or a substantial part of the Grapelots is no longer commercially viable,

the Participant Grower may terminate this Agreement in respect of the Grapelots by giving not less than 4 months prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.4 Reduction of Grapelots

If, in respect of the Grapelots:

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- (a) part of the Grapelots are damaged or destroyed whether by fire or any other cause whatsoever; or
 - (b) an independent horticultural consultant jointly commissioned by the Participant Grower and Timbercorp Securities reasonably determines that part of the Grapelots is no longer commercially viable,

the Participant Grower may terminate this Agreement in respect of that part of the Grapelots which is damaged or destroyed, by giving not less than 4 months' prior written notice of such termination to Timbercorp Securities. Termination under this clause takes effect on and from the 30 June next following the expiration of the period of notice.

10.5 Effect of Termination

- (a) Termination of this Agreement under clauses 10.1, 10.2 or 10.3 or reduction of the Grapelots under clause 10.4 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) Termination of this Agreement in respect of any number of all of the Grapelots or part of the Grapelots under this clause 10 does not affect the rights or obligations of the parties in respect of any other Grapelots or any other part of the reduced Grapelots.
- (c) If this Agreement is terminated under clause 10.2 in relation to all of the Grapelots of the Participant Grower, the Participant Grower loses all rights and interest as a participant in the Project, and the procedures for consequences of default and termination as set out in the Constitution and, if applicable, clause 12 of this Agreement may be followed.
- (d) The termination of this Agreement will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.

10.6 Termination of Sub-lease

If the Sub-lease terminates before it would otherwise have expired by the effluxion of time, then the following provisions apply:

- (a) OIM #2 agrees with the Participant Grower who agrees with OIM #2 that this Licence Agreement will continue with all necessary modifications as if OIM #2 were named as the licensor in lieu of the Licensor from the termination of the Sub-lease;
 - (b) In the event that the Participant Grower pays Licence Fees to the Licensor rather than OIM #2, then the Licensor must pay to OIM #2 all Licence Fees so paid under this Agreement (on a GST exclusive basis) within 60 days after receiving the Licence Fees from the Grower; and
 - (c) To the extent that the amount paid to OIM #2 under this clause and the Sub-lease is less than the rent which OIM #2 would have otherwise received from Timbercorp under the Lease, Timbercorp must pay to OIM #2 the shortfall within 30 days after OIM #2 gives Timbercorp notice in writing requesting such payment to be made.
 - (d) To the extent that at any given time the amount paid by the Licensor to OIM #2 under paragraph (b) and the Sub-lease is more than the rent which OIM #2 would have otherwise received from Timbercorp under the Lease at that time, OIM #2 must refund the excess to the Licensor within 5 Business Days.
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11. EXCUSES FOR NON PERFORMANCE

11.1 Force Majeure

Timbercorp Securities will not have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

11.2 Lack or unavailability of funds

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

11.3 Liability

Timbercorp Securities' failure to observe or comply with the terms of this Agreement will not give rise to any liability to any party for any direct or indirect consequential or special loss or damage of any kind to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

11.4 Definition of Force Majeure

For the purposes of this Agreement, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or OIM #2, as the case requires, or which Timbercorp Securities or OIM #2, as the case requires, is not reasonably able to prevent. It includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);
- (e) epidemic or quarantine;
- (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
- (g) delays in transportation or communication; and
- (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other.

12. LICENCE FEES AND EXPENSES

12.1 Failure to Pay

If the Participant Grower fails or neglects to pay:

- (a) the Licence Fees payable under this Agreement;
- (b) the Royalty Fees payable under this Agreement;
- (c) any amount due and payable by the Participant Grower under the Grapelot Management Agreement; or
- (d) any amount due and payable by the Participant Grower under the Constitution in respect of the Grapelots,

by the due date, Timbercorp Securities may, after giving the Participant Grower 30 days' prior written notice, terminate this Agreement under clause 10.2 and exercise either of the remedies set out in clauses 12.2 and 12.3 (in addition to and without prejudice to any other rights of Timbercorp Securities).

12.2 Timbercorp Securities may pay on Behalf of Defaulting Grower

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1, Timbercorp Securities may pay on behalf of the Participant Grower, from its own funds, any such expense owing by the Participant Grower and Timbercorp Securities will be entitled to be reimbursed out of any Proceeds to which the Participant Grower is entitled, the amount of such payment together with interest at a rate of interest for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Victoria), calculated from the date that the payment fell due until Timbercorp Securities has been reimbursed in full.

12.3 Defaulting Participant Grower's Interest may be dealt with under the Constitution

If the Participant Grower fails or neglects to make payment of any amount under clause 12.1 then Timbercorp Securities may deal with the interest of the Participant Grower by exercising any of its powers and rights under the Constitution.

13. ASSIGNMENT

13.1 Assignment by Timbercorp Securities

Subject to clause 13.2, Timbercorp Securities may freely assign any of its rights and interests under this Agreement so long as Timbercorp Securities does not assign its interest in this Agreement in any way without first entering a deed with the person with whom Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

- (a) contained or implied in this Agreement and the Grapelot Management Agreement; and
- (b) required to be observed or performed by Timbercorp Securities.

13.2 Agreements with Contractors

Timbercorp Securities may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which it has delegated some or all of its obligations under this Agreement, and for this purpose, Timbercorp Securities has obtained the written consent to the assignment from the contractor.

13.3 Timbercorp Securities or Grantee to pay for deed

The cost of any deed required under clause 13.1 must be paid by Timbercorp Securities or the Grantee, but not the Participant Grower.

13.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Agreement if the Participant Grower:
 - (i) first obtains a deed of covenant signed by the proposed assignee in favour of Timbercorp Securities and the Responsible Entity stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Agreement, the Constitution and the Grapelot Management Agreement applying to the Participant Grower's Grapelots being assigned; and
 - (ii) is not in default of any of its obligations under this Agreement, the Constitution and the Grapelot Management Agreement applying to the Grapelots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into a Grapelot Management Agreement and this Agreement, with the same terms and conditions as those applying to the Grapelots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

13.5 Release of liability of Grower

Once the Participant Grower has perfected an assignment of its interest in this Agreement in accordance with clause 13.4, the Participant Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected in respect of the Grapelots assigned.

14. GOODS AND SERVICES TAX

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST Rate.

-
- (c) The GST payable under paragraph 14(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
 - (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
 - (e) If a payment to satisfy a claim or a right to a claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 14(b).
 - (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
 - (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
 - (h) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

15. LIMITATION OF LIABILITY OF GROWER

Subject to clause 12.2, in no circumstances will the Participant Grower be obliged to incur any liability under this Agreement in excess of the annual licence fees payable under this Agreement, the fees and expenses payable by the Participant Grower under the Grapelot Management Agreement in relation to the Grapelots and its Participating Interest in the Proceeds.

16. NOTICE

16.1 Form of Notice

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

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

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

16.2 Receipt of Notice

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

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

17. PROPER LAW

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

18. AMENDMENTS

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
 - (b) Subject to paragraph 18(c), Timbercorp Securities, may amend the provisions of this Agreement to such extent as may be required to:
 - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
 - (ii) comply with the effect of any judicial decision; or
 - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
 - (c) Before Timbercorp Securities, Timbercorp and OIM #2 may amend the Agreement as provided under paragraph 18(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of all the Participant Growers.
 - (d) Subject to the Corporations Act, Timbercorp Securities may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Participant Growers. To give effect to this clause, the Participant Grower appoints the Responsible Entity as its attorney to make amendments to this Agreement.
 - (e) If the Responsible Entity cannot be satisfied that it can consent to the amendments in accordance with the paragraph 18(c), then amendments may only be made in accordance with paragraph 18(a).
-

19. DISPUTE RESOLUTION

19.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Agreement must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
 - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service (FICS) or Insurance Brokers Disputes Limited (IBD)¹, the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 19.1(a)(i),the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
 - (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 19.1(a) as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

19.2 Timbercorp Securities

- (a) Clause 19.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
 - (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Agreement to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.

-
- (b) The Participant Grower and Timbercorp Securities:
 - (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 19.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
 - (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.
-

20. CONSTITUTION

The rights and obligations of the parties under this Agreement are subject to the terms and conditions of the Constitution.

21. STATUTORY PROVISIONS

21.1 General

To the extent permitted by law, all provisions implied by statute are expressly excluded from this Agreement and the licence granted under this Agreement.

21.2 Agricultural Tenancies Act (NSW)

Without limiting generality of clause 21.1,

- (a) the parties acknowledge and agree that in determining the Licence Fees and other terms of this Agreement they have taken into account improvements that may be made by the Participant Grower to the Grapelots licensed during the Term;
 - (b) the Participant Grower agrees that it will not make any claim in respect of any improvements effected by the Participant Grower to the Grapelots licensed during the Term.
-

22. PLANT BREEDERS' RIGHTS

22.1 The licence grant

- (a) Timbercorp Securities grants the Participant Grower the following rights, subject to the terms of this Licence Agreement, the Lease, the Sub-lease, the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Andriske Agreement:
 - (i) the right to grow the Licensed Vines on the Grapelots;
 - (ii) the non-exclusive right to process and sell the Licensed Fruit in the Licensed Territory.
- (b) The Participant Grower agrees and acknowledges that:
 - (i) Andriske retains the right to plant, grow and market up to a maximum of 25,000 vines of each of the Protected Products described in the

-
- Andriske Exclusive Licence Agreement, in the Licensed Territory;
- (ii) the rights granted under this clause 22 are subject to the rights granted by Andriske to OIM #2 and the Timbercorp Group and other third parties as described in the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement;
 - (iii) the exclusive rights granted under the Andriske Exclusive Licence Agreement to OIM #2 and the Timbercorp Group are revoked and replaced with non-exclusive rights in the event that the Timbercorp Group fails to reach certain planting targets specified in the Andriske Exclusive Licence Agreement.
- (c) The Participant Grower agrees and acknowledges that Timbercorp Securities specifically withholds from the Participant Grower the following:
- (i) any right or licence to Propagate Licensed Vines;
 - (ii) the ownership of the PBRs and intellectual property in the Protected Products,
- as these rights are retained by Andriske.

22.2 Marketing

The Participant Grower must use the cultivar name of Licensed Vines and Licensed Fruit given by Andriske to OIM #2 in its marketing.

22.3 Quality assurance

- (a) The Participant Grower agrees to ensure that all Licensed Fruit it sells to others:
- (i) is true to cultivar;
 - (ii) has been grown and handled in a manner consistent with Best Viticultural Practice; and
 - (iii) has been handled with reasonable precaution taken to avoid preventable infestation by disease causing or transmitting organisms or by other pests harmful to the commercial quality of Licensed Fruit;
 - (iv) is packed according to best table grape packing practice; and
 - (v) is presented for sale in the best possible manner.
- (b) Subject to Timbercorp Securities giving the Participant Grower reasonable notice in writing, the Participant Grower agrees that OIM #2's, Timbercorp's, Timbercorp Securities' and Andriske's designated employees or agents may inspect any or all growing facilities, fields and/or storage facilities on the Vineyard or the Grapelots at any time during normal business hours to ensure that the Licensed Vines and the Licensed Fruit contained therein are being grown in accordance with paragraph 22.3(a).
- (c) OIM #2, Timbercorp, Timbercorp Securities or Andriske and their authorised agents have the right to seek and discover and examine all the Licensed Vines or Licensed Fruit licensed pursuant to this Agreement, and while accompanied by the Participant Grower or its employees or agents, take away for inspection a reasonable number of samples sufficient for examination of the Licensed Vines or Licensed Fruit, or part thereof, and for that purpose, subject to OIM #2, Timbercorp, Timbercorp Securities or Andriske giving the Participant Grower reasonable notice in writing, OIM #2, Timbercorp, Timbercorp Securities or Andriske is authorised to enter the Vineyard and the

Grapelots, but must take reasonable care in so doing.

- (d) The Participant Grower must abide by all mandatory local, regional and national government laws, rules and regulations that govern the growing of Licensed Vines and sale and distribution of Licensed Fruit.

22.4 Intellectual property rights

- (a) The Participant Grower must take all reasonable steps to ensure that no Licensed Vines, parts of Licensed Vines or Licensed Fruit are misappropriated by any third parties.
- (b) The Participant Grower must not challenge the validity of any intellectual property rights, including PBRs, in relation to the Licensed Vines or Licensed Fruit.
- (c) The Participant Grower must not breach or encourage or permit any breach of any intellectual property rights, including PBRs, in relation to the Licensed Vines or Licensed Fruit.
- (d) The Participant Grower agrees and acknowledges that all rights to:
 - (i) variations or mutations arising from the Licensed Vines or the Licensed Fruit; or
 - (ii) any vines or Licensed Fruit demonstrating Essential Characteristics of the Protected Product; or
 - (iii) any Hybrid of the items specified in paragraphs 22.4(d)(i) and (ii),will be the property of Andriske notwithstanding that the same may constitute a new cultivar.

22.5 Labelling and packaging

- (a) The Participant Grower must give notice to Timbercorp Securities, OIM #2, Timbercorp and Andriske of its intention to use any of the cultivar names of Licensed Fruit in any of its catalogues, advertisements, brochures or merchandise lists.
- (b) The Participant Grower must ensure that all Licensed Fruit is properly classified, packaged and boxed in accordance with all relevant statutes and regulations affecting the same, and otherwise as directed by Timbercorp Securities, OIM #2, Timbercorp or Andriske.

22.6 Sales agents

- (a) The Participant Grower nominates Timbercorp Securities in accordance with the Grapelot Management Agreement as the initial sales agent of the Participant Grower for all Licensed Fruit grown by Participant Grower.
- (b) The Participant Grower agrees and acknowledges that Grapecorp Management Pty Ltd (ACN 105 995 195) will be appointed through Timbercorp Securities as an initial sales agent, and through Grapecorp Management Pty Ltd, The Grape House Pty Ltd (ACN 084 438 951).

22.7 Books and Records

- (a) The Participant Grower must itself or through the manager engaged by it under the Grapelot Management Agreement or any Sales Agent keep books and records relating to receipt and sale of Licensed Fruit for a period of 5 years from the year in which such receipt or sale occurred to accurately show

the following information:

- (i) the amount of Licensed Vines and Licensed Fruit on hand; and
 - (ii) the amount and price of Licensed Fruit sold to each third party (identified by name and business location) in the Licensed Territory together with the date of sale (**Records**).
- (b) The Records must be made available for inspection and audit by Timbercorp Securities, Timbercorp, OIM #2 or Andriske or their designated employees or agents during regular business hours for the purpose of verifying the accuracy of Participant Grower's gross sales of the Licensed Fruit.
- (c) The Participant Grower authorises the manager engaged by it under the Grapelot Management Agreement and any Sales Agent to cause any Records in their power, possession or control to be made available for inspection and audit by Timbercorp Securities or its designated employees or agents.
- (d) The Participant Grower authorises Timbercorp Securities and the manager engaged by it under the Grapelot Management Agreement, upon receiving prior and reasonable written notice, to:
 - (i) provide OIM #2, Timbercorp or Andriske with the location of each of the greenhouses, screen houses, laboratories, cold storage and field plantings used by or for the benefit of the Participant Grower containing Licensed Vines or Licensed Fruit; and
 - (ii) use its best endeavours to procure the manager of the relevant facility or field to permit OIM #2, Timbercorp or Andriske and its designated employees or agents, during ordinary business hours, to inspect and audit such facilities and plantings for the purpose of verifying the Records.

22.8 Infringement

- (a) The Participant Grower agrees to co-operate with Timbercorp Securities in any proceedings instituted by Timbercorp Securities for infringement of the Protected Product.
- (b) Nothing in this clause 22 is to be construed as conferring upon the Participant Grower any right to commence proceedings for infringement of the Protected Product, and Participant Grower acknowledges that it does not have any rights in relation to the control of any such proceedings. This paragraph 22.8(b) does not apply whilst the Participant Grower is Timbercorp.
- (c) Nothing in this clause 22 is to be construed as an obligation for OIM #2, Timbercorp, Timbercorp Securities or Andriske to bring or prosecute actions or proceedings against third parties for infringement of OIM #2's Timbercorp's, Timbercorp Securities', or Andriske's rights.
- (d) Where proceedings are commenced against the Participant Grower in respect of any matter involving any breach of the warranties referred to in paragraph 22.13, the Participant Grower may, on leave being granted, withdraw from the proceedings and OIM #2, Timbercorp, Timbercorp Securities and/or Andriske will, in their own name and at their own expense, conduct the proceedings.

22.9 Further assurances

The Participant Grower must not by act or omission cause Timbercorp Securities to be in breach of its obligations under the Sub-lease in relation to the Protected Product.

22.10 Use of Names

- (a) The use of the names designated by Andriske, variations of such names or reference to such names by the Participant Grower in any advertisement, labelling or publicity release relating to the Licensed Vines or the Licensed Fruit will only be allowed as directed by Timbercorp Securities, OIM #2, Timbercorp or Andriske.
- (b) Should the Participant Grower use any advertisement relating to Licensed Vines or Licensed Fruit or to Timbercorp Securities or Andriske, which the Responsible Entity or Andriske, in good faith, finds objectionable on reasonable grounds, Participant Grower agrees promptly to stop the use of such advertisement upon written notification by Timbercorp Securities or Andriske.
- (c) If any trade mark of Andriske is used on or in relation to the Licensed Vines or Licensed Fruit, then all representations of the trade mark must be clearly marked or accompanied with a clear statement that Andriske is the owner of the trade mark and the Participant Grower uses the trade mark under licence from Andriske.
- (d) All use of the trade mark will inure to Andriske.

22.11 Undertakings of the Participant Grower

The Participant Grower must, in addition to its obligations under clause 8.2:

- (a) comply in all respects with the terms and conditions as the case may be of the *Plant Diseases Act 1924 (NSW)*, *Phyloxera and Grape Industry Act 1995 (SA)*, *Plant Health and Plant Products Act 1995 (Vic)* and *Plant Diseases Act, 1914 (WA)* and any amendments to such legislation;
- (b) deliver all books, records, statements and reports required by this clause 22;
- (c) not use Licensed Vines or Licensed Fruit for purposes not expressly contemplated by this clause 22;
- (d) not violate or fail to keep or perform any obligation imposed under this clause 22;
- (e) not violate or induce or knowingly permit others to violate any country, state or other governmental laws, rules or regulations relative to the propagation, sale and or distribution of Licensed Vines or Licensed Fruit as may be in force in Licensed Territory.

22.12 Disposition of Inventory and Forfeiture of Other Rights

- (a) Upon the lawful termination of this Agreement by either party, the Participant Grower must provide Timbercorp Securities with a written inventory listing the quantity of Licensed Vines and Licensed Fruit in the possession of Participant Grower, the manager engaged by it under the Grapelot Management Agreement or any Sales Agent.
- (b) The existing inventory of such Licensed Fruit must be disposed of within 3 calendar months from the date of lawful termination of this Agreement, provided however that such disposition will be subject to this clause 22.
- (c) Should this Agreement be lawfully terminated by either Timbercorp Securities or Participant Grower, the Participant Grower forfeits all rights granted under this clause 22 other than for the purpose of complying with paragraphs 22.12(a) and 22.12(b).

22.13 Warranty and Acknowledgments

- (a) Timbercorp Securities warrants to the Participant Grower that:
 - (i) it has the right, authority and capacity to grant the licence and rights granted under this clause 22;
 - (ii) the exercise by the Participant Grower of its rights under this clause 22 will not infringe the rights of any other person.
- (b) To the extent permitted by law, Timbercorp Securities makes no express or implied warranties or merchantability, trueness to type, or fitness of the Licensed Vines or Licensed Fruit for a particular purpose and Timbercorp Securities will have no liability to Participant Grower or the Participant Grower's party customers on account of any defect or failure of Licensed Vines or Licensed Fruit.
- (c) All other conditions and warranties which would, or may, but for this paragraph 22.13(c), be implied (whether by statute, law, trade usage or otherwise) into this Agreement are expressly excluded.
- (d) Nothing in this Agreement is to be construed as:
 - (i) conferring by implication, estoppel or otherwise any licence or rights under any other patents, plant variety titles, or variety protection certificates belonging to Andriske, OIM #2, Timbercorp or Timbercorp Securities other than such limited rights granted to Participant Grower in this Agreement; or
 - (ii) an obligation to furnish any know-how in relation to Licensed Vines or Licensed Fruit, save as expressly provided in this clause 22.
- (e) The Participant Grower agrees and acknowledges that:
 - (i) no representations whatsoever other than are set out in this Agreement, have been made by Timbercorp Securities as to the suitability or fitness for the purpose of trueness of type or merchantability of the Licensed Vines or Licensed Fruit;
 - (ii) the cultivars the subject of this clause 22 have not been viticulturally assessed and the genetic stability of such cultivars has not been established.

22.14 Further Restrictions

The Participant Grower must not:

- (a) propagate or asexually reproduce the Licensed Vines or Licensed Fruit; and
- (b) sell, transfer, lease or otherwise dispose of the Licensed Vines or Licensed Fruit other than on the terms imposed on the Participant Grower under this clause 22.

22.15 Expiry of Term

The rights granted under this clause 22 remain in full force and effect for the Term, after which the Participant Grower must immediately discontinue selling the Licensed Fruit, subject to clause 22.12.

22.16 Definitions

In this clause 22, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

Andriske:	Andriske Research Pty Ltd (ACN 006 565 260);
Andriske Exclusive Licence Agreement:	means the Licence Agreement between Andriske as licensor and OIM #2 as licensee made on or about 21 March 2005;
Andriske Non-Exclusive Licence Agreement:	means the Licence Agreement between Andriske as licensor and OIM #2 as licensee made on or about 21 March 2005;
Essential Characteristics:	has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ;
Hybrid:	has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ;
Licensed Products:	<ul style="list-style-type: none"> (a) White Seedless Grape Cultivar known as "Stanley Seedless" Table Grape Vines and Table Grapes from such "Stanley Seedless" Table Grape Vines (Plant Breeder's Rights Application No. 1996/046 and granted 25 May 2002 and Numbered 2010); (b) Red Seedless Grape Cultivar known as "Red Rob" Table Grape Vines and Table Grapes from such "Red Rob" Table Grape Vines (Plant Breeder's Rights Application No. 1998/144 and granted 11 June 2003 and Numbered 2263); and (c) 45,000 White Seeded Grape Cultivar known as "BW41/5" and Table Grapes from such vines (Plant Breeders Rights Application No. 1996/018 and granted 27th March, 2002, and Numbered 1910).
Licensed Territory:	<ul style="list-style-type: none"> (a) <u>For planting of Licensed Vines:</u> The Grapelots or Vineyard, as the case requires. (b) <u>For Sale of Licensed Fruit:</u> <ul style="list-style-type: none"> (i) For export quality - The World; (ii) For less than export quality – Australia;
PBRs:	plant breeders rights;
Propagate:	to grow, culture or multiply by sexual or asexual means including growing of any seeds produced, grafting, budding, hybridisation or any other means of reproduction;
Protected Products:	<ul style="list-style-type: none"> (a) Plant Breeders Rights Application No. 1996/046 in respect of the White Seedless Grape Cultivar known as "Stanley Seedless" and granted 25 May 2002 and

	Numbered 2010;
(b)	Plant Breeders Rights Application No. 1998/144 in respect of the Red Seedless Grape Cultivar known as "Red Rob" and granted 11 June 2003 and Numbered 2263;
(c)	Plant Breeders Rights Application No. 1996/018 in respect of the "Golden Globe" Grape cultivar and granted 27th March 2002, and Numbered 1910);
Sales Agents:	sales agents nominated by the Participant Grower in accordance with clause 22.6;
Timbercorp Group:	Timbercorp and its controlled entities.

23. INSURANCE

Each party agrees that it will not do or permit or suffer to be done any act, manner or thing which may prejudice or render void or voidable any insurances in respect of the Grapelots or the Table Grape Vines taken out by Timbercorp Securities, OIM #2, Timbercorp or any Participant Grower or result in the premiums for such insurances being increased.

24. FURTHER ASSURANCES

Each party agrees to sign such documents and do all such acts, matters and things as may be reasonably required by any other party to give effect to this Agreement.

25. SEVERABILITY

If any provision of this Agreement is or becomes void or unforeseeable, that provision will be severed from this Agreement to the intent that the remaining provisions of this Agreement will continue in full force and effect.

Executed as an Agreement

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

Signature

Full Name

Position Held

Signature

Full Name

Position Held

**EXECUTED by TIMBERCORP)
SECURITIES LIMITED as agent)
and attorney for and on behalf of)
each several Participant Grower)
by authority of its directors in)
accordance with section 127 of)
the Corporations Act:)**

Signature

Full Name

Position Held

Signature

Full Name

Position Held

EXECUTED by OIM #2 PTY LTD in)
accordance with section 127 of)
the Corporations Act:)
)

Signature

Full Name

Position Held

Signature

Full Name

Position Held

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

Signature

Full Name

Position Held

Signature

Full Name

Position Held

SCHEDULE

Participant Growers' Details

FOURTH SCHEDULE

GRAPELOT STATEMENT

(As at [Month] 20 [])

Date & Name of PDS:

Name of Participant Grower:

Address of Participant Grower:

Chargee (if any):

Date of Charge:

Anticipated date of Redemption of Charge:

Application Amount:

Date of Payment of Application:

Date Participant Grower Registered:

Date Participant Grower ceased being registered:

Description of Grapelots:

As at the [Month] [] the above particulars were registered in the Register of Participant Growers at Level 8, 461 Bourke Street, Melbourne Victoria pursuant to clause 10.3 of the Constitution of the Project and replaces all previous statements sent to you.

Issued by:

TIMBERCORP SECURITIES LIMITED
ACN 092 311 469
(Responsible Entity)
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

This Grapelot Statement is not a Certificate of Title to any Grapelot but merely a Statement from the Responsible Entity as to the registration particulars of the Register of Participant Growers as at the date of this Statement.

FIFTH SCHEDULE

Item 1:

NOTICE OF CHARGE

To: Timbercorp Securities Limited (ACN 092 311 469)
Level 8
461 Bourke Street
MELBOURNE VIC 3000

PARTICULARS OF CHARGE:

Participant Grower:

Grapelot Details:

Date of Charge:

I/We (Participant Grower)

of (Address of Participant
Grower)

REQUEST that (Chargee) of
..... (Address of Chargee)

be registered as Chargee of the above Grapelots pursuant to Charge dated day of
made between the Participant Grower as Chorgor and the Chargee.

Dated this day of

.....
Participant Grower

.....
Witness

Item 2:

NOTICE OF DISCHARGE OF CHARGE

To: Timbercorp Securities Limited (ACN 092 311 469)
Level 8
461 Bourke Street
MELBOURNE VIC 3000

PARTICULARS OF CHARGE:

Participant Grower:

Address of Participant Grower:

Grapelot Details:

Date of Charge:

I/We

of

DISCHARGE the above Grapelots from the whole of the principal, interest or other moneys secured by Charge dated day of 20 made between the Participant Grower as Chargor and ourself/ourselves as Chargee.

Dated this day of 20 .

.....
Chargee

.....
Witness

SIXTH SCHEDULE

DEED OF ASSIGNMENT

I/We
of
in consideration of the sum of \$ paid to me/us by
..... of

("the Assignee") assign to the Assignee all my/our right title and interest in the Grapelots detailed in the Schedule and relevant to those Grapelots all my/our right title and interest in the Constitution of the Project dated [] made between Timbercorp Securities Limited ACN 092 311 469 as Responsible Entity ("the Responsible Entity") and each several Participant Grower; the relevant Licence Agreement and the relevant Grapelot Management Agreement; AND all the rights and obligations under or incurred pursuant to them.

The Assignee accepts the assignment and acknowledges and agrees to be bound by the terms and conditions of the Constitution; the relevant Licence Agreement and the relevant Grapelot Management Agreement; AND all the rights and obligations under or incurred pursuant thereto as if the Assignee were named as one of the original parties to each of the Constitution and the Agreements.

The Responsible Entity acknowledges and confirms the terms of this Deed of Assignment.

Words and expressions used in this Deed of Assignment have the same meanings as in the Constitution unless the contrary requires.

SCHEDULE

Grapelot Details:

Dated this day of 20.....

EXECUTED as a Deed

.....
Signature of Assignors

Witness: Witness:

.....
Signature of Assignees

Witness: Witness:

EXECUTED for and on behalf of

TIMBERCORP SECURITIES LIMITED

(ACN 092 311 469) by

Witness:

SEVENTH SCHEDULE

INSTRUMENT OF TRANSMISSION

To: Timbercorp Securities Limited (ACN 092 311 469)
Level 8
461 Bourke Street
MELBOURNE VIC 3000

Participant Grower:

Address of Participant Grower:

Grapelot Details:

Date of Death of Participant Grower:

Administrator/Executor:

Address of Administrator/Executor:

I/We (Representative)

REQUEST that:

A. I/We be registered as the Participant Grower of the above Grapelots pursuant to Grant of Probate/Letters of Administration dated day of 20

OR

B. of ("New Participant Grower")

be registered as Participant Grower pursuant to Grant of Probate/Letters of Administration dated day of 20

The Administrator/Executor and/or the New Participant Grower acknowledges and agrees to be bound by the terms and conditions of the Constitution of the Project dated [] made between Timbercorp Securities Limited ACN. 092 311 469 as Responsible Entity and each Participant Grower; the relevant Licence Agreement and the relevant Grapelot Management Agreement; AND all the rights and obligations under or incurred pursuant thereto as if the Assignee were named as one of the original parties to each of those Agreements.

Dated this day of 20

.....
Administrator/Executor

.....
Witness

New Participant Grower

Witness

- A. Grant of Probate or Letters of Administration (or Certified Office Copy of same) AND
- B. Death Certificate must accompany Transmission Application.

2005 009A
First Supplemental Deed

for

**2005 Timbercorp Table Grape
Project
(ARSN 113 512 226)**

by the responsible entity being

**Timbercorp Securities Limited
(ACN 092 311 469)**

[EXECUTION COPY]

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

Details of this First Supplemental Deed

Date of the Deed:

This Deed is made on 20 April 2005.

Party to the Deed:

1. **Timbercorp Securities Limited**
ACN 092 311 469
Level 8, 461 Bourke Street
MELBOURNE VIC 3000

(Responsible Entity)

Background to the Deed

- A. The 2005 Timbercorp Table Grape Project (ARSN 113 512 226) (**Project**) is governed by a Project Deed dated 22 March 2005 executed by the Responsible Entity with the intent that it be legally enforceable as between the Responsible Entity and each Grower (**Project Deed**).
 - B. Section 601GC(1)(b) of the Corporations Act provides that the Responsible Entity may modify the Project Deed if the Responsible Entity reasonably considers that the change will not adversely affect members' rights.
 - C. At the date of this Deed, no Grapelots have been issued and, therefore, there are currently no Growers in the Project.
 - D. At the date of this Deed, the Licence Agreement and the Grapelot Management Agreement have not been entered into by the parties.
 - E. The Responsible Entity wishes to modify the Project Deed and has satisfied itself that, as there are currently no Growers in the Project, the amendments contained in this Deed will not adversely affect the Growers' rights.
-

Operative Provisions:

1. INTERPRETATION

1.1 Definitions

Words and expressions defined in the Project Deed have the same meanings when used in this Deed, as modified or inserted by the First Schedule to this Deed.

1.2 Construction

In this Deed:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing but nothing in this paragraph 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a paragraph, clause or schedule is a reference to a paragraph and clause of, and schedule to, this Deed and a reference to this Deed includes any schedule;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assigns; and
- (j) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind.

2. AMENDMENTS

2.1 Deed is Supplemental

This Deed is supplemental to the Project Deed and, except as otherwise provided in this Deed, the Project Deed remains in full force and effect.

2.2 Amendments to the Project Deed

The Responsible Entity modifies, alters, amends and adds to the provisions of the Project Deed as provided in the Schedules to this Deed.

2.3 Ratification and Confirmation


In all other respects, the Responsible Entity confirms and ratifies the terms and conditions of the Project Deed.

2.4 Operative Date

The alterations made by this Deed take effect on and from the date of lodgement of this Deed with the Australian Securities and Investments Commission.

Executed as a Deed

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



Signature

Robert Hance

Full Name

Director

Position Held



Signature

Mark H Pryn

Full Name

SECRETARY

Position Held

FIRST SCHEDULE PROJECT DEED AMENDMENTS

1. In the **Project Deed**:
 - (a) the following definition in **paragraph 1.1** is deleted:

“ **Land Owner:** the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which at the date of this Deed is OIM #2 Pty Ltd (ACN 112 691 997) as trustee for the Timbercorp Orchard #2 Trust;”
 - (b) the following definition in **paragraph 1.1** is inserted in its place:

“ **Land Owner:** the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which at the date of this Deed is Orchard Investments Management Limited (ACN 105 684 231) as responsible entity for the Timbercorp Orchard Trust;”
2. The **Grapelot Management Agreement** attached to the Project Deed is replaced with a new Grapelot Management Agreement as set out in the Second Schedule to this Deed.
3. The **Licence Agreement** attached to the Project Deed is replaced with a new Licence Agreement as set out in the Third Schedule to this Deed.

**SECOND SCHEDULE
GRAPELOT MANAGEMENT AGREEMENT**

**Grapelot Management
Agreement**

Timbercorp Securities Limited

**Each Several Participant Grower
named in the First Schedule to
this Agreement**

2005 Timbercorp Table Grape Project

NM TAYLOR
L A W Y E R S

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Grapelot Management Agreement

Date of the Agreement:

In respect of each several Participant Grower means the date on which Timbercorp Securities has accepted the Participant Grower's application for Grapelots being offered under the PDS as specified in the Schedule to the Licence Agreement.

Parties to the Agreement:

1. Each several Participant Grower named in the Schedule to the Licence Agreement.
(Participant Grower)
2. **TIMBERCORP SECURITIES LIMITED**
ACN 092 311 469
Level 8, 461 Bourke Street
MELBOURNE VICTORIA 3000
(Timbercorp Securities)

Background to the Agreement

- A. Timbercorp Securities intends to establish a project for the management of a table grape vineyard, the cultivation of table grape vines and harvesting and processing of table grapes for commercial gain. The Participant Grower will participate in the Project.
 - B. Each Participant Grower has been, or will be, granted a licence by Timbercorp Securities in respect of one or more Grapelots under the Licence Agreement.
 - C. The Licence Agreement permits each several Participant Grower to use its relevant Grapelots for the purpose of growing and cultivating table grape vines and the harvesting of the table grapes and the Participant Grower intends to use the relevant Grapelots for this purpose.
 - D. The Participant Grower wishes to engage Timbercorp Securities to cultivate and maintain Table Grape Vines on, and generally manage, the relevant Grapelots in accordance with the Management Plan and to carry out and perform each Participant Grower's obligations under the Licence Agreement.
 - E. The Participant Grower further wishes to engage Timbercorp Securities to harvest the Table Grapes, procure the processing of the Table Grapes and to sell the Product on behalf of the Participant Grower and for that purpose has authorised Timbercorp Securities under the Constitution and this Agreement to enter into the Project Documents subject to the terms and conditions of this Agreement.
-

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context is clearly to the contrary, the following words have the meanings set out opposite them:

2005 Bella Vista Land:	those parts of the land in an unregistered plan of proposed subdivision of Lot 2 in DP 1067588 (a copy of which is attached to the Sub-lease) on which a new vineyard of 600 acres will be established by the Land Owner on or before 30 June 2005;
Accounts:	receipt and expenditure statements and financial statements together with statements, reports and notes (including any notes of Timbercorp Securities) attached to or intended to be read with any of those statements or financial statements;
Administrator:	has the meaning given to it in section 9 of the Corporations Act;
Agency Account:	the bank account or bank accounts kept and operated by the Responsible Entity as agent for the Participant Grower in carrying out its duties under the Constitution with a bank nominated by the Responsible Entity;
ASIC:	the Australian Securities and Investments Commission;
Authority:	includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Land or any part of them or anything about them;
Best Viticultural Practice:	sound viticultural and environmental practices and industry practices that have been adopted in relation to similar vineyards;
Business Day:	a day other than a Saturday or Sunday or a public holiday on which all trading banks are open for general banking business in Melbourne, Victoria;
Capital Works:	<ul style="list-style-type: none">(a) the infrastructure and capital works on the Vineyard as at the date of this Agreement; and(b) the infrastructure and capital works that Timbercorp Securities has agreed to procure the Land Owner to carry out, and any other works that Timbercorp Securities, Timbercorp or the Land Owner may be required in future to carry out, at their cost respectively, on the Vineyard;
Commencement Date:	in respect of each several Participant Grower, the date of this Agreement;

Constitution:	the deed entered into by the Responsible Entity and all the Participant Growers and which governs the Project;
Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 11.6;
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2005 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Grapelot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of the Land comprising approximately 0.25 acres (established or to be established by the Land Owner on or before 30 June 2005) on which a Participant Grower will conduct the Grapelot Operations and which includes the Table Grape Vines, the Capital Works and the Required Water Licences attributed to the Project;
Grapelot Operations:	the growing and cultivation of Table Grapes on, and management of, the relevant Grapelots for the production of Product for commercial gain;
Gross Proceeds:	Proceeds, less the costs and expenses of processing the Table Grapes into Product and marketing and selling the Product and any Table Grapes;
GST:	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:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Incentive Fee Threshold:	the Net Proceeds for Participant Growers specified in the PDS as the incentive fee threshold for that Financial Year;
Indexed:	the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula: $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$

	<p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;</p>
Joint Venture:	the Participant Grower that is a joint venture, as constituted in accordance with the Constitution;
Joint Venturers:	participants in a Joint Venture;
Land:	the land on which the Project will be conducted as described in the PDS or such other land which is used for the Project;
Land Owner:	the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which at the date of this Agreement is Orchard Investments Management Limited (ACN 105 684 231) as responsible entity of the Timbercorp Orchard Trust;
Licence Agreement:	the agreement of that name between Timbercorp Securities as licensor and the Participant Grower as licensee in relation to the Participant Grower's relevant Grapelots;
Management Fees:	the fees payable to Timbercorp Securities under clause 11;
Management Plan:	the management plan for a Financial Year prepared by, or on behalf of, Timbercorp Securities and attached as the Second Schedule to this Agreement;
month:	a calendar month;
Net Proceeds:	the proceeds to which a Participant Grower is entitled in a Financial Year under clause 13.7 of the Constitution;
Participant Grower:	<p>(a) a several person (or if more than one person, those persons jointly) who is named or otherwise described in the Schedule; and</p> <p>(b) the term "Early Grower" refers to a Participant Grower whose application under the PDS is accepted on or before 30 June 2005; and</p>

	(c) the term " Post 30 June Grower " refers to a Participant Grower whose application under the PDS is accepted on or after 1 July 2005 and before the offer period closes;
Participating Interest:	<p>(a) the entitlement of the Participant Grower to the Project assets, the Table Grapes, the Product and the Proceeds calculated in accordance with the formula :</p> <p style="text-align: center;">A/B</p> <p>where:</p> <p>A: is the area of Grapelots licensed to the Participant Grower under the Licence Agreement and used in the Project Operations; and</p> <p>B: is the total area of Grapelots licensed to all of the Participant Growers under the Licence Agreements and used in the Project Operations, including all Grapelots of Participant Growers that have ceased to participate in the Project and which have not been excluded from the Project by Timbercorp Securities in accordance with the Constitution.</p> <p>(b) In the event that there is a reduction in the area of a Participant Grower's Grapelot or Grapelots under clause 10.4 of the Licence Agreement, the Participating Interest of each Participant Grower will be recalculated in accordance with the formula in paragraph (a) of this definition. The recalculated Participating Interest will be applied from the date of the reduction in the area;</p>
party:	any one or more of the Participant Grower and Timbercorp Securities, as the context requires;
Part A Grapelot:	means that part of a Participating Grower's Grapelot that will be fully planted by 23 June 2005, representing no less than 60% of the Participating Grower's Grapelot;
PDS:	the product disclosure statement (as defined in section 761 of the Corporations Act) in relation to the Project;
Pre-Planting Capital Works:	the capital works described in paragraphs 2.1(a)(i)-(vii) of the Licence Agreement which have been, or will be, carried out on the Vineyard by the Land Owner;
process:	means sort, grade, package and store and " processing " has a corresponding meaning;
Proceeds:	<p>(a) interest received on moneys in the Agency Account;</p> <p>(b) any moneys payable to the Participant Growers under any policy of insurance in relation to the relevant Grapelots, the Table Grapes the Product or the Project;</p> <p>(c) proceeds from the sale of Table Grapes;</p> <p>(d) proceeds from the sale of Product; and</p>

	(e) any other monies payable to a Participant Grower, from or in relation to, the Project;
Product:	Table Grapes produced in a saleable condition from the relevant Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Production Period:	has the same meaning as in the Constitution;
Project:	the 2005 Timbercorp Table Grape Project promoted by Timbercorp Securities involving the management of a table grape project, the cultivation and harvesting of table grape vines and the processing of table grapes for commercial gain;
Project Documents:	the agreements entered into by Timbercorp Securities in accordance with clauses 13.3 and 13.4 of the Constitution and clause 7.2 of this Agreement;
Project Operations:	the growing, cultivation and management of a commercial table grape vineyard on behalf of all the Participant Growers and includes the Vineyard Services, the harvesting and processing of the Table Grapes, delivery of the Table Grapes for distribution to or on behalf of all the Participant Growers in accordance with their Participating Interests and procuring the sale of Table Grapes;
Required Water Licences:	<p>(a) the water licences that are, or will be, leased by Timbercorp Securities under the Sub-lease and that are attributed to the Land as required from time to time, and</p> <p>(b) that provide for a maximum licence entitlement specified in paragraph 3.2(a) of the Licence Agreement, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;</p>
Responsible Entity:	the responsible entity for the time being of the Project;
Special Resolution:	a resolution passed at a meeting of Participant Growers duly convened and held in accordance with this Agreement by a majority of Participant Growers in number present in person or by representative, attorney or proxy whose aggregate number of Grapelots on issue is at least 75%;
Sub-lease:	the deed made between Timbercorp Securities, as sub-lessee, and Timbercorp, as sub-lessor, whereby Timbercorp Securities has been, or will be, granted a sub-lease of the Land;
Table Grapes:	the table grapes grown or growing on the relevant Grapelots of the Participant Grower or the Vineyard, whichever is applicable and whether harvested or unharvested and any other products,

	rights, benefits or credits derived from the Table Grape Vines;
Table Grape Vines:	the table grape vines planted or to be planted on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Term:	the term of this Agreement under clause 2.1;
Timbercorp:	Timbercorp Limited (ACN 055 185 067);
Vineyard:	all of the Grapelots;
Vineyard Services:	the services described in clauses 5 and 6;

1.2 Construction

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other agreement includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to "\$" or "dollars" is a reference to Australian dollars;
- (i) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;
- (j) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;
- (k) if any of the persons comprising the Participant Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
- (l) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word.

1.3 Headings

Headings are for convenience of reference only and do not affect the interpretation of this Agreement.

1.4 Participant Grower and Agreement

- (a) The term "**Participant Grower**" in this Agreement is a reference to the particular Participant Grower named in the First Schedule to this Agreement in

relation to the relevant Grapelots allocated to it from time to time.

- (b) The term "**Participant Growers**" in this Agreement is a reference to all Participant Growers that hold Grapelots in the Project and according to the context, the term "**Participant Growers**" may also include the particular Participant Grower.
- (c) This Agreement is entered into in respect of the Participant Grower's Grapelots referred to in the First Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of the relevant Grapelots held by the Participant Grower.

1.5 Delegation

Timbercorp Securities is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement, through

its employees, agents and contractors but any delegation by Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

1.6 Payments under this Agreement

The Participant Growers that are Joint Venturers agree and acknowledge that Timbercorp Securities granting time, waiver or other indulgence to, compounding or compromising with, or wholly or partially releasing, one of the Joint Venturers in any way, from any obligation under this Agreement does not:

- (a) cause the other Joint Venturer's obligations and liabilities under this Agreement to be reduced or avoided;
- (b) prejudicially affect Timbercorp Securities' rights against the other Joint Venturers under this Agreement.

1.7 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.8 Grapelot Management Agreement is not Project Property

This Agreement does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.

2. COMMENCEMENT AND TERM OF THIS AGREEMENT

2.1 Term

- (a) This Agreement will commence on the Commencement Date.
- (b) Subject to clauses 15.1 to 15.3, this Agreement will continue until the earlier of:
 - (i) termination of the Participant Grower's participation in the Project;
 - (ii) 30 June 2020;
 - (iii) termination of the Licence Agreement; and

-
- (iv) termination of the Project.
-

3. RELATIONSHIP OF THE PARTIES

3.1 No Partnership etc

The relationship amongst the Participant Growers and between the Participant Growers and Timbercorp Securities is not, is not intended to be, is not deemed to be and is not to be treated as, a partnership association or a joint venture, other than the Joint Venture which may comprise a Participant Grower.

3.2 Project

The parties expressly agree and acknowledge that:

- (a) each party is an independent contracting party; and
 - (b) no party has any authority or power for or on behalf of any other party to enter into any contract, to pledge any credit, to incur any liabilities, to assume any obligations or to make any warranties or representations whatsoever except as specifically provided by this Agreement.
-

4. APPOINTMENT OF TIMBERCORP SECURITIES

4.1 Engagement of Timbercorp Securities

The Participant Grower engages Timbercorp Securities on the terms and conditions set out in this Agreement generally to manage and administer the Project, manage, direct and conduct the Project Operations on behalf of the Participant Grower and perform the Vineyard Services.

4.2 Timbercorp Securities to Carry out Vineyard Services as Independent Contractor

The Parties agree that Timbercorp Securities will carry out the Vineyard Services as an independent contractor and not as agent of the Participant Grower.

4.3 Authority to Act

Timbercorp Securities does not have any authority to act for, or to assume any obligation or liability on behalf of, the Participant Grower except such authority as is conferred on Timbercorp Securities by this Agreement or the Constitution.

4.4 Performance of Obligations

- (a) Subject to this Agreement, Timbercorp Securities must use reasonable endeavours to perform all its functions, exercise its powers under this Agreement and conduct the Project Operations:
 - (i) in a commercially reasonable manner;
 - (ii) honestly;
 - (iii) generally in accordance with Best Viticultural Practice which is generally recognised and adopted in Australia and is known and

acceptable to Timbercorp Securities and suitable for use on the Vineyard; and

- (iv) in the best interests of all the Participant Growers and not in the interests of Timbercorp Securities if those interests are not the same as those of the Participant Growers.
- (b) The phrase "commercially reasonable manner" means, in any particular circumstances, a manner which Timbercorp Securities honestly believes is commercially reasonable in those circumstances (having regard where appropriate to the fact that Timbercorp Securities has to meet the costs of conducting the Project Operations out of the fees paid to it). Subject to paragraph 4.4(a)(iv), the phrase does not require Timbercorp Securities to have regard to the interests of any person other than itself.

4.5 Additional Services

In addition to the activities set out in clause 4.1 and without limiting the generality of clause 4.1, Timbercorp Securities must, at its own expense, provide all necessary administrative, supervisory and consulting services.

4.6 Acceptance of Engagement

Timbercorp Securities accepts its engagement on the terms of this Agreement.

5. VINEYARD MANAGEMENT

5.1 Management Plan and Good Practices

Timbercorp Securities must cultivate and manage the Vineyard in accordance with:

- (a) the Management Plan; and
- (b) Best Viticultural Practice.

The initial Management Plan for the Financial Year ending 30 June 2005 will be prepared on or about the Commencement Date or before 30 June 2005, whichever date is earlier and attached to this Agreement as the Second Schedule. The Management Plan must include the following:

- (c) a horticultural plan for the Vineyard;
- (d) a horticultural program for the Financial Year ending 30 June 2005;
- (e) an operational plan including human resources requirements, machinery requirements and farm programs; and
- (f) annual financial and operational budgets in relation to these horticultural matters.

5.2 Services for period ending 30 June 2005

Without limiting the generality of clause 5.1, Timbercorp Securities will carry out the following services in the period ending 30 June 2005. Timbercorp Securities may determine the most appropriate time to carry out the services provided that the services must be completed on or before 30 June 2005:

Infrastructure Management Services

These services commence from the later of the Commencement Date and completion of the Pre-Planting Capital Works on the Participating Grower's Grapelots and are

carried out until 30 June 2005:

- (a) undertake a comprehensive internal quality assurance audit in respect of the Pre-Planting Capital Works carried out by the Land Owner under clause 2.1 of the Licence Agreement, including but not limited to all irrigation infrastructure, valves, pumps, moisture monitoring equipment;
- (b) keep the following in good repair and condition:
 - (i) any access road or roads within the Vineyard, all waterways, dams, irrigation and pumping equipment within the Vineyard, as necessary;
 - (ii) all fences, fire-breaks and other improvements within the Vineyard, as necessary;
 - (iii) all farm equipment, plant and equipment, tractors, vehicles, protective gear and other things used to perform the services described in this clause;
- (c) as permitted by law, control or eradicate rabbits and other vermin which have caused or may cause damage to the Vineyard by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments), and any other statutes, rules, regulations and by-laws relating to or affecting the Grapelots or the Participant Grower;
- (d) to the extent that any fertilisers, nutrients and other chemicals are used, keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Vineyard and store the chemicals in accordance with all legal requirements;
- (e) use and apply appropriate soil management techniques and undertake or procure the carrying out of drainage works to reduce soil erosion, maintain soil quality and carry out or procure the carrying out of drainage work and other works to control salinity levels; and
- (f) carry out any other activity that may be required to generally maintain the Vineyard in accordance with Best Viticultural Practice or in respect of the provision of the services listed in paragraphs (a)-(e) above including:
 - (i) training of staff in use of equipment, infrastructure and performance of duties;
 - (ii) supervision of contractors performing any of the services; and
 - (iii) obtaining professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the services.

Administrative and other Management Services

The following services will also be carried out by Timbercorp Securities from the Commencement Date until 30 June 2005:

- (g) prepare a market report to the Participating Grower detailing the following:
 - (i) world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
 - (ii) the Australian supply situation (covering the expected crop size for Australia);
 - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or other relevant periods);

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- (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or other relevant periods);
 - (v) information on project crop (covering new or potential supply contracts and markets, key customers, promotional activities, and other relevant matters);
 - (vi) 12-month outlook (covering available information on the expected supply/demand and price trends over the upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters); medium-term outlook (covering a 2-5 year period);
 - (vii) any new articles in relation to the supply, consumption and pricing of table grapes; and
 - (viii) any other relevant market information.
- (h) carry out any other obligation to be performed by Timbercorp Securities pursuant to the terms of any agreement entered into by Timbercorp Securities;
 - (i) procure on behalf of the Participant Grower and keep current with a reputable insurer the insurance policies described in clause 12 and all other activities in respect of arranging insurance of the Table Grapes and the Grower's table grape growing activities;
 - (j) prepare the reports and statements described in clauses 8 and 13 and provide the administrative services required to perform the above services;
 - (k) comply with the Participant Grower's obligations under the Licence Agreement by ensuring that the Participant Grower carries out on the Land only those activities he or she is entitled to carry out under the Licence Agreement and then only subject to the terms of the Licence Agreement; and
 - (l) review the Management Plan and, if necessary, make amendments to it in accordance with this Agreement; and
 - (m) in accordance with clause 7, undertake all marketing activities in respect of the future sale of Table Grapes, including without limitations entering into forward sales agreements in respect of Table Grapes and foreign exchange hedging agreements, as required and monitor and supervise the performance of all contractors in that regard.

Part A Grapelot – Table Grape Vines Management Services

These services will be carried out by Timbercorp Securities from the completion of planting of Part A of the Grower's Grapelots until 30 June 2005. By their very nature, the services relate to the maintenance of established Table Grape Vines and, therefore, for the avoidance of doubt it is provided expressly that they will not be carried out, nor are they capable of being carried out, on the unplanted part of the Participant Grower's Grapelots. The services are:

- (n) undertake a comprehensive internal quality assurance audit in respect of the Table Grape Vines, stakes, and all infrastructure associated with the application of fertiliser and water to the Table Grape Vines including valves, dripper lines and other things;
- (o) obtain a formal verification by 30 June 2005 from an expert that Part A of the Grapelots is of an appropriate standard and all required services have been performed are to an appropriate standard;
- (p) cultivate, tend, cull, replant, spray and otherwise care for the Table Grape Vines, as necessary;

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- (q) undertake pest control, fungicide control and other Table Grape Vines disease measures, as necessary;
 - (r) operate the irrigation system at various times in order to irrigate the Grapelots;
 - (s) fertilise the relevant Grapelots as required, in accordance with Best Viticultural Practice, to maintain satisfactory rates of growth and productivity of the Table Grape Vines;
 - (t) in its absolute discretion and without needing the Participant Grower's consent, destroy any of the Table Grape Vines which are damaged or which have contracted an exotic, noxious or incurable disease;
 - (u) as far as reasonably possible, keep the relevant Grapelots free from competitive weeds or other vegetation which may affect the growth or yield of the Table Grape Vines;
 - (v) protect the Table Grape Vines from insect infestation, disease and other things using Best Viticultural Practice, including (as necessary) applying herbicides or pesticides to the relevant Grapelots and spraying the Table Grape Vines as permitted by law;
 - (w) regularly inspect and repair all stakes, fences and other equipment including plant and machinery such as tractors and other vehicles used during the period ending 30 June 2005 to carry out tree maintenance services on the Grapelots;
 - (x) inspect and, where appropriate, retie and attach the Table Grape Vines to trellising in accordance with Best Viticultural Practice; and
 - (y) any other activity that may be required to generally maintain the Vineyard in accordance with Best Viticultural Practice or in respect of the provision of the services listed in paragraphs (n)-(x) above including:
 - (i) training of staff in use of equipment, infrastructure and performance of duties;
 - (ii) supervision of contractors performing any of the services; and
 - (iii) obtaining professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the services.

5.2A Subsequent Year Services

Without limiting the generality of clause 5.1, commencing on the later of 1 July 2005 and completion of the planting of Table Grape Vines on the Participating Grower's Grapelots, and during each subsequent Financial Year during the term of the Project, Timbercorp Securities will carry out the following services on the Participant Grower's Grapelots. Timbercorp Securities may determine the most appropriate time to carry out the services. The services are:

- (a) intentionally left blank;
- (b) prepare a market report to the Participating Grower detailing the following:
 - (i) world market situation (covering crop positions in major producing countries and general supply/demand dynamics);
 - (ii) the Australian supply situation (covering the expected crop size for Australia);
 - (iii) the domestic market situation (covering the Australian market and prices achieved over the past 3, 6 and 12 months or any other relevant periods);

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- (iv) the export market situation (covering each of the main export markets and prices achieved over the past 3, 6 and 12 months or any other relevant periods);
 - (v) information on project crop (covering new or potential supply contracts and markets, key customers, promotional activities and other relevant matters);
 - (vi) 12-month outlook (covering expected supply/demand and price trends over upcoming 12 month period having regard to exchange rate fluctuations, CPI movements and other relevant matters); medium-term outlook (covering a 2-5 year period);
 - (vii) any new articles in relation to the supply, consumption and pricing of table grapes; and
 - (viii) other relevant market information.
 - (c) in respect of the 2006 Financial Year only, following the completion of planting of all Table Grape Vines:
 - (i) undertake a further internal quality assurance audit in respect of the Table Grape Vines, stakes, and all infrastructure associated with the application of fertiliser and water including valves, pumps, dripper lines, moisture monitoring equipment; and
 - (ii) obtain a formal verification from an expert that the remaining part or all of the Grapelots (as the case may be) are of an appropriate standard and all required services have been performed and to an appropriate standard
 - (d) prune the Table Grape Vines by mechanical or other methods;
 - (e) as permitted by law, control or eradicate rabbits and other vermin which have caused or may cause damage to the Table Grape Vines or the relevant Grapelots by fumigating and poisoning and complying with the provisions of all relevant statutes, regulations and by-laws (and all amendments), and any other statutes, rules, regulations and by-laws relating to or affecting the Grapelots or the Participant Grower;
 - (f) undertake pest control, fungicide control and other Table Grape Vines disease measures, as necessary;
 - (g) operate the irrigation system at various times in order to irrigate the relevant Grapelots;
 - (h) at its discretion, conduct tests to ascertain the availability of nutrients in the soil on the Grapelots and, based on the results, take whatever action is required to maintain the growth rate and productivity of the Table Grape Vines;
 - (i) fertilise the relevant Grapelots as required, in accordance with Best Viticultural Practice;
 - (j) in its absolute discretion and without needing the Participant Grower's consent, destroy any of the Table Grape Vines or Table Grapes which have contracted an exotic, noxious or incurable disease;
 - (k) as necessary, keep in good repair and condition all fences, irrigation and adequate fire-breaks and other improvements within the Vineyard;
 - (l) keep the improvements on the Grapelots in good and substantial repair;
 - (m) maintain fire breaks in accordance with regulatory and insurance requirements and Best Viticultural Practice;

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- (n) maintain the relevant Grapelots in accordance with Best Viticultural Practice including using soil management technique methods to reduce erosion and maintain soil quality;
 - (o) as far as reasonably possible, keep the relevant Grapelots free from competitive weeds or other vegetation which may affect the growth or yield of the Table Grape Vines;
 - (p) protect the Table Grape Vines from insect infestation, disease and competition from competing growth using Best Viticultural Practice, including applying herbicides or pesticides to the relevant Grapelots and spraying under the Table Grape Vines as permitted by law;
 - (q) keep proper and accurate records of all fertilisers, nutrients and other chemicals applied to the relevant Grapelots or Table Grape Vines;
 - (r) regularly inspect and repair all stakes, fences and irrigation equipment on the relevant Grapelots;
 - (s) properly maintain all plant and machinery used in the performance of the services;
 - (t) inspect and, where appropriate, retie the Table Grape Vines to stakes and attach Table Grape Vines to trellising in accordance with Best Viticultural Practice;
 - (u) replant any of the Table Grape Vines in need of replacement in accordance with the terms of any agreement made with suppliers of the Table Grape Vines;
 - (v) comply with the Participant Grower's obligations under the Licence Agreement (except for those relating to payment of fees);
 - (w) keep current with a reputable insurer the insurance policies described in clause 12 and carry out all other activities in respect of arranging insurance of the Table Grapes;
 - (x) carry out any other obligation to be performed by Timbercorp Securities pursuant to the terms of any agreement entered into by Timbercorp Securities;
 - (y) not discriminate between Participant Growers in the supply of water under the Required Water Licences;
 - (z) if water in excess of that available under the Required Water Licences is required from time to time in order to irrigate the Vineyard and such additional water can be reasonably procured by way of temporary water rights, procure such additional water and supply it to all Participant Growers, at a cost to the Participant Growers under clause 11.3 of this Agreement, calculated and to be taken into account as Timbercorp Securities' reasonable costs of procuring the additional water in operating the relevant Grapelots;
 - (aa) review and update the Management Plan for the Project, including a horticultural plan for the Vineyard, horticultural program, operational plan and annual financial and operational budgets in relation to these horticultural matters, review the Management Plan and, if necessary, make amendments to it;
 - (bb) obtain professional services and advice which Timbercorp Securities may consider necessary or desirable in connection with the maintenance of the Grapelots and the Table Grape Vines;
 - (cc) prepare the reports and statements described in clauses 8 and 13 and provide the administrative services required to perform the above services;

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- (dd) in accordance with clause 7, undertake all marketing activities in respect of the sale or future sale of Table Grapes, including without limitations entering into forward sales of Table Grapes and foreign exchange hedging agreements, as required, and monitor and supervise the performance of contractors in that regard;
 - (ee) provide any other service or thing which, in the reasonable opinion of Timbercorp Securities, is incidental or ancillary to the ongoing management of the relevant Grapelots; and
 - (ff) comply with all laws and regulations relating to the use of the relevant Grapelots.

5.3 No Unlawful Acts

Timbercorp Securities must not do or allow any unlawful act to be done on or adjacent to the Vineyard and nothing in this Agreement or in the Management Plan for any Financial Year will require Timbercorp Securities to do so.

5.4 Notify Land Owner or Timbercorp of Notices

Timbercorp Securities must give the Land Owner or Timbercorp, as the case requires, a copy of any notice (other than rates notices), which it receives from any Authority with respect to the relevant Grapelots or the Vineyard within seven days after receipt of the notice.

6. HARVESTING

6.1 Harvesting

Each year during the Term Timbercorp Securities will, in accordance with Best Viticultural Practice, test the maturity of the Table Grapes to determine whether the Table Grape Vines are ready for harvesting and, having done so, will harvest the mature Table Grape Vines.

6.2 Harvesting Method

Harvesting must be done by Timbercorp Securities in accordance with Best Viticultural Practices by any method (including machine harvesting) deemed appropriate by Timbercorp Securities.

6.3 Delivery

Timbercorp Securities will promptly deliver all harvested Table Grapes to a delivery point or points to enable the Table Grapes to be processed and sold.

6.4 Storage

- (a) Until the harvested Table Grapes are delivered, Timbercorp Securities will store the Participant Grower's Participating Interest in the Table Grapes in an appropriate manner to minimise the deterioration of the Table Grapes' quality.
- (b) The Participant Grower's Participating Interest in the Table Grapes may be stored on the Vineyard or any other premises whether or not owned or operated by Timbercorp Securities.

6.5 Early Harvests

The Participant Grower agrees that until the relevant Grapelots enter commercial production, Timbercorp Securities may harvest immature Table Grapes from those Grapelots and use them for promotional and marketing purposes.

7. PROCESSING AND SALE

7.1 Processing of Table Grapes

Timbercorp Securities will procure the processing of the Participant Grower's Participating Interest in the Table Grapes into Product and will enter into a Project Document as agent and attorney for the Participant Grower.

7.2 Marketing and Sale

Timbercorp Securities will:

- (a) sell the Participant Grower's Participating Interest in the Product, using its reasonable endeavours to seek to maximise returns, and on such terms and conditions as Timbercorp Securities in its absolute discretion determines and, for this purpose, it is authorised to and will enter into a Project Document for the sale of the Participant Grower's Participating Interest in the Product as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower; and
- (b) in the event that Responsible Entity determines that any part of the Participant Grower's Participating Interest in the Table Grapes should not or could not be sold as Product, put such Table Grapes to commercial use, using its reasonable endeavours to seek to maximise returns, on such terms and conditions as Timbercorp Securities determines in its absolute discretion and, for this purpose, is authorised to and will enter into any agreement as agent and attorney for the Participant Grower and/or the Responsible Entity on behalf of the Participant Grower.

7.3 Acknowledgement by the Participant Grower

The Participant Grower acknowledges and agrees that the Table Grapes and the proceeds of sale of all the Product or Table Grapes will be divided pro rata according to the Participating Interest of each of the Participating Growers in the Project in the Product or Table Grapes.

- (a) The Participating Grower authorises and directs Timbercorp Securities to:
 - (i) gather in the Participant Grower's Participating Interest in the Table Grapes;
 - (ii) procure the processing of the Participant Grower's Participating Interest in the Table Grapes; and
 - (iii) then store, market and sell the Participant Grower's Participating Interest in the any unprocessed Table Grapes and the Product,with those of other Participating Growers in the Project without having regard to the quantity or quality of the particular Table Grapes or Product from the particular Grapelots of any Participating Growers in the Project, and the Participating Grower authorises Timbercorp Securities to do so.

7.4 Lien

- (a) The Participant Grower acknowledges and agrees with Timbercorp Securities that Timbercorp Securities can call for a first and paramount lien at any time in respect of the Participant Grower's Participating Interest in the Table Grapes and Product until such time as any outstanding fees or expenses due and payable to Timbercorp Securities under this Agreement have been paid.
- (b) Timbercorp Securities is authorised to sell or cause to be sold any of the Participant Grower's Participating Interest in the Table Grapes and Product over which Timbercorp Securities has the lien for the purpose of applying the sale proceeds in payment of any outstanding fees or expenses due to Timbercorp Securities.
- (c) Nothing in this clause 7.4 is intended to create a charge.

7.5 Action for Recovery of Sale Proceeds

In the event that a payment due by a purchaser of the Product or Table Grapes under an agreement for the sale of the Product or Table Grapes is overdue, the Participant Grower authorises Timbercorp Securities to take any action which it reasonably considers to be necessary for the purpose of recovering any such outstanding payments or any Product or Table Grapes from the purchaser.

8. ADMINISTRATIVE SERVICES

8.1 Services

Timbercorp Securities agrees to provide the following administrative services throughout the Term of the Agreement:

- (a) prepare reports to Participant Growers on the allocation and location of Participant Growers' Grapelots;
- (b) prepare reports to Participant Growers detailing the work to be done on each Participant Grower's Grapelot;
- (c) prepare reports to Participant Growers on the matters described in clauses 13.5 and 13.6;
- (d) prepare a statement to the Participant Grower in each Financial Year to assist with the preparation of income tax returns;
- (e) record the Participant Grower's transactions and make payments on behalf of the Participant Grower;
- (f) provide general administrative management of the Project;
- (g) review the sales and marketing plan for the Project; and
- (h) co-ordinate visits of Participant Growers to inspect their Grapelots.

9. ACCESS TO VINEYARD

9.1 Timbercorp Securities has Access

Timbercorp Securities and its invitees will be entitled to such access to the Grapelots and Table Grape Vines as is necessary or desirable to perform Timbercorp Securities'

obligations under this Agreement, the Constitution and the Project Documents relating to the relevant Grapelots of all Participant Growers in the Project.

9.2 Removal of Timbercorp Securities' Property after Termination

Timbercorp Securities may remove from the relevant Grapelots such plant and equipment, implements, furniture and other items brought onto the Grapelots within one month after the termination of this Agreement and may enter the Grapelots for the purpose of removing such items.

9.3 Roads and Tracks

- (a) Timbercorp Securities is entitled (but has no obligation) to construct and maintain roads and tracks on the Grapelots primarily and principally to provide access to and from the Vineyard from a public road for the:
 - (i) cultivation, maintenance and tending of the Table Grape Vines and the Table Grapes;
 - (ii) harvesting of the Table Grapes; and
 - (iii) removal of the Table Grapes.
- (b) Where Timbercorp Securities has removed any material for road building purposes, Timbercorp Securities must use reasonable endeavours to return the surface of the land to an appearance as close as possible to the appearance of the surface of surrounding land.

9.4 Participant Grower's Access

Provided the Participant Grower first gives Timbercorp Securities 7 days' prior notice in writing, Timbercorp Securities must permit the Participant Grower or its duly authorised representatives to have access, at the Participant Grower's expense and risk, at all reasonable times to the relevant Grapelots and the facilities located on them.

9.5 Warranty as to Access

The Participant Grower warrants that:

- (a) it has the right to grant access to the relevant Grapelots for the performance by Timbercorp Securities of its obligations under this Agreement, the Constitution and the Project Documents in respect of the relevant Grapelots of all Participant Growers in the Project; and
- (b) the exercise by Timbercorp Securities of its rights under this Agreement will not constitute a trespass against, or an interference with the rights of, the Land Owner, any of the other Participant Growers in the Project or any person who derives title through or under the owner or any of the Participant Growers in the Project.

9.6 Failure to Perform if Access Denied

Timbercorp Securities will not be liable for any failure to perform its obligations under this Agreement, which arises because it is denied access to, or possession or occupation of, the Vineyard or any part of it by any Participant Growers in the Project.

10. NO LEASE OR LICENCE

This Agreement does not create or confer any leasehold or proprietary interest or licence in favour of Timbercorp Securities concerning the relevant Grapelots.

11. TIMBERCORP SECURITIES' FEES

11.1 Annual Fee and Charges Payable by Participant Growers

Where the Participant Grower is an **Early Grower**, the Participant Grower must pay Timbercorp Securities the following management fees and charges in respect of the Vineyard Services and all other services to be provided under this Agreement:

- (a) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2005 an amount of \$6,363.63 per relevant Grapelot payable in advance on or before the Commencement Date; and
- (b) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period 1 July 2005 to 30 June 2006:
 - (i) an amount of \$1,363.63 per relevant Grapelot payable on 31 October 2005; and
 - (ii) an amount equal to 2.25% of the Participant Grower's Participating Interest of the Gross Proceeds from the sale of Table Grapes and Product in each Financial Year of the Project payable out of and at the time the Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Licence Agreement and the Project Documents);
- (c) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period 1 July 2006 to 30 June 2007:
 - (i) an amount of \$1,363.63 per relevant Grapelot payable on 31 October 2006; and
 - (ii) an amount equal to 2.25% of the Participant Grower's Participating Interest of the Gross Proceeds from the sale of Table Grapes and Product in that Financial Year payable out of, and at the time Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Licence Agreement and the Project Documents); and
- (d) thereafter, in consideration of the Vineyard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees specified in clauses 11.3 and 11.5.

11.2 Annual Fee and Charges Payable by Post 30 June Participant Growers

Where the Participant Grower is a Post 30 June Grower, the Participant Grower must pay Timbercorp Securities the following management fees and charges in respect of the Vineyard Services and all other services to be provided under this Agreement:

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- (a) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period commencing on the Commencement Date and ending on 30 June 2006 an amount of \$7,727.27 per relevant Grapelot payable in advance on or before the Commencement Date; and
 - (b) in consideration of the Vineyard Services and all other services to be provided under this Agreement in the period 1 July 2006 to 30 June 2007:
 - (i) an amount of 1,363.63 per Grapelot payable on 31 October 2006; and
 - (ii) for each relevant Grapelot an amount equal to 4.5% of the Gross Proceeds of the sale of Table Grapes and Product in each Financial Year of the Project payable out of and at the time any Proceeds are received by Timbercorp Securities as the Responsible Entity (less any deductions and adjustments permitted under this Agreement, the Constitution, the Licence Agreement and the Project Documents); and
 - (c) thereafter, in consideration of the Vineyard Services and all other services to be provided under this Agreement in each subsequent Financial Year during the Term, the fees and costs specified in clause 11.3.

11.3 Management Fees Payable by all Participant Growers

- (a) Timbercorp Securities will be entitled to be paid in respect of all Participant Grower's relevant Grapelots the following management fees in consideration of the Vineyard Services and all other services to be provided under this Agreement for each Financial Year after 30 June 2007 on 31 October 2007 and each subsequent 31 October, the estimated costs of operating the relevant Grapelots (which will include an allocation of overhead costs incurred by Timbercorp Securities or its contractors that will not exceed \$20 per relevant Grapelot Indexed (adopting 30 June 2005 as the base date), as adjusted under paragraph 11.3(b);
- (b) Timbercorp Securities will:
 - (i) when notifying the Participant Grower under paragraph 11.3(a) of the estimated costs of operating the relevant Grapelots, notify the Participant Grower of its Participating Interest of the actual costs of Timbercorp Securities operating the relevant Grapelots for the preceding Financial Year, including overhead costs incurred by Timbercorp Securities or its contractors,
 - (ii) adjust the estimated costs of operating the relevant Grapelots of operating the relevant Grapelots for the current Financial Year by the difference between the actual costs and the costs estimated by Timbercorp Securities under paragraph 11.3(a) for the preceding financial year unless the surplus per relevant Grapelot has been added, or the excess per relevant Grapelot has been deducted, from any distribution of Proceeds made to the Participant Grower following the end of the preceding Financial Year.

11.4 Responsible Entity to make certain payments

The Participant Grower agrees and acknowledges that the Responsible Entity is authorised to:

- (a) deduct from the Proceeds to which the Participant Grower is entitled, any amounts payable by the Participant Grower under this Agreement, the Licence

Agreement, the Project Documents and the Constitution including any amounts which are outstanding and in arrears; and

- (b) pay the deducted amounts to the persons entitled to them.

11.5 Incentive Fee

- (a) Timbercorp Securities will be entitled to be paid as an incentive fee in a Financial Year by the Participant Grower out of, and immediately prior to, any distribution 25% of so much of the annual Net Proceeds received by the Participant Grower in a Financial Year as exceeds the Incentive Fee Threshold.
- (b) But, if in the immediately preceding Financial Year, the Net Proceeds received by the Participant Grower were less than the Incentive Fee Threshold the amount of the deficit must be deducted from the Net Proceeds when calculating the fee payable to Timbercorp Securities under this clause 11.5 in respect of the Financial Year to which reference is first made.

11.6 Discontinuance or suspension of CPI

- (a) If the Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities) is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between Timbercorp Securities and the Participant Grower will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause must be borne equally between Timbercorp Securities and the Participant Grower.

11.7 Capacity

All Management Fees and other amounts to be paid to Timbercorp Securities under this Agreement are paid to Timbercorp Securities in its personal capacity.

12. INSURANCE

12.1 Timbercorp Securities to Keep Insurance

Timbercorp Securities will be responsible for obtaining and keeping or procuring some other person to procure and keep policies of insurance, on behalf of the Participant Growers in the Project with a reputable insurer against damage to the Vineyard, which is caused by fire or other insurable risks, including public risk and occupier's liability provided that the cost of any such insurance is economically justified and it does not include crop insurance (unless specifically agreed between Timbercorp Securities and the Participant Grower from year to year).

12.2 Names of Policies

All policies of insurance obtained by Timbercorp Securities in accordance with clause 12.1 must be in the names of or note the interests of Timbercorp Securities, the Land Owner, Timbercorp and all the Participant Growers.

12.3 No party may Prejudice Insurance Policies

No party will at any time during the Term permit or suffer to be done (and nothing in this Agreement will require Timbercorp Securities to permit or suffer to be done) any act, matter or thing upon the Vineyards whereby any insurances in respect of the Vineyard or any Participant Grower's Grapelots (or any part thereof) may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

13. MANAGEMENT PLAN AND REPORTS

13.1 Management Plan

- (a) In performing its obligations under this Agreement, Timbercorp Securities must observe, and act in accordance with, the Management Plan.
- (b) Despite the preceding paragraph, Timbercorp Securities is not required to follow or comply with the Management Plan to the extent that a written recommendation or direction from the Participant Grower under clause 13.2 requires Timbercorp Securities to do something which is not in accordance with the Management Plan.

13.2 Recommendation or Direction by the Participant Grower

Timbercorp Securities must consider any recommendation or direction made by a Participant Grower and where it is satisfied that any such recommendation or direction is in the interests of the Participant Growers and the Project generally, Timbercorp Securities must use its best endeavours to carry out the recommendation or direction in accordance with the terms and conditions set out in this Agreement.

13.3 Changes to Management Plan

At any time during the Financial Year to which a Management Plan relates, Timbercorp Securities may make changes to that Management Plan.

13.4 Performance of Management Services

Timbercorp Securities will have complete discretion as to the manner and method of conducting the Project Operations, subject to the express terms of this Agreement.

13.5 Reports

Within 4 months after the end of each Financial Year during this Agreement Timbercorp Securities will send a report to the Participant Grower that addresses and contains information concerning the following matters:

- (a) the results of the harvest of Table Grapes;
- (b) the condition of the Vineyard, the Participant Grower's Grapelots and Table Grape Vines;
- (c) any other matters which Timbercorp Securities considers material concerning the Vineyard, the relevant Grapelots or the Project and which ought reasonably to be made known to the Participant Grower; and
- (d) any other matter reasonably requested by the Participant Grower.

13.6 Statements of Income and Expenses

Within 4 months after the end of each Financial Year, commencing at the end of the Financial Year in which the Table Grape Vines start to produce Table Grapes, Timbercorp Securities will send to the Participant Grower an annual statement of income and expenses relating to the management of the relevant Grapelots and the sale of the Participant Grower's Participating Interest in the Product or Table Grapes during the relevant Financial Year.

14. DISTRIBUTIONS

14.1 Distribution of Proceeds to the Participant Growers

Subject to this Agreement, Timbercorp Securities as the Responsible Entity must pay to the Participant Grower the amount of Proceeds standing to the credit of the Participant Grower in the Agency Account in accordance with the Constitution.

15. TERMINATION AND DEFAULT

15.1 Termination by the Participant Grower

The Participant Grower may terminate this Agreement by notice in writing to Timbercorp Securities:

- (a) immediately, if Timbercorp Securities:
 - (i) goes into liquidation other than for the purposes of reconstruction or amalgamation or a Controller or Administrator is appointed in relation to the undertaking of Timbercorp Securities or any part of its undertaking;
 - (ii) ceases to carry on business; or
 - (iii) fails or neglects to pay any moneys due to the Participant Grower, or is in default of any material obligation under this Agreement and such default continues for a period of 3 months after receipt by Timbercorp Securities of written notice from the Participant Grower specifying the default and requesting that the default be remedied (except where Timbercorp Securities has advised the Participant Grower of a plan of remedial action to satisfy any such duty and has substantially completed such plan); or
- (b) 6 months (or such shorter period as Timbercorp Securities and the Participant Growers agree) after the Participant Growers by Special Resolution at a meeting of Participant Growers resolve to terminate the engagement of Timbercorp Securities under the Agreement.

15.2 Termination by Timbercorp Securities

- (a) Timbercorp Securities may terminate this Agreement, with immediate effect in respect of all the Grapelots of the Participant Grower, if the Participant Grower fails to make a payment within the required time under this Agreement in relation to any Grapelot of the Participant Grower or the Constitution or commits a material breach of this Agreement in relation to any Grapelot of the Participant Grower or the Constitution and fails to remedy the breach or make

reasonable compensation in money within 30 days after Timbercorp Securities has served a written notice on the Participant Grower specifying the breach and requiring the Participant Grower to remedy the breach.

- (b) If this Agreement is terminated under paragraph 15.2(a) then:
- (i) the Participant Grower loses all rights as a participant in the Project;
 - (ii) the Participant Grower remains liable for payment of all fees in respect of work done by Timbercorp Securities, and
 - (iii) the procedure for the consequences of termination as set out in clause 18 of the Constitution must be followed.

15.3 Termination of Licence Agreement

This Agreement terminates in respect of the relevant Grapelots immediately if the Licence Agreement is terminated in respect of the relevant Grapelots for any reason.

15.4 Relinquish Property and Books and Records

Provided that the Participant Grower has paid all of the fees and other moneys due to Timbercorp Securities and it is not otherwise in breach of any of its obligations under this Agreement, Timbercorp Securities must relinquish custody and control to the Participant Grower or as the Participant Grower direct, of all property of the Participant Grower held by Timbercorp Securities under this Agreement and all books and records and documents kept under this Agreement upon cancellation of the engagement of Timbercorp Securities or termination of this Agreement, other than those which Timbercorp Securities is required by law to keep.

15.5 Effect of Termination

- (a) The termination of this Agreement (whether under this clause 15 or under any other clause) will terminate the rights and obligations of the parties under this Agreement except to the extent that those rights and obligations are expressed to survive termination.
- (b) The termination of this Agreement will not prejudice any right, power or remedy to the extent that it accrued prior to or on termination.

16. EXCUSES FOR NON PERFORMANCE

16.1 Force Majeure

Timbercorp Securities will not have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

16.2 Lack or unavailability of funds

Performance or fulfilment of an obligation is not to be taken to be prevented by Force Majeure if it is prevented by lack of funds or by inability to use available funds resulting from Force Majeure.

16.3 Liability

Timbercorp Securities' failure to observe or comply with the terms of this Agreement will not give rise to any liability to the Participant Grower for any direct or indirect

consequential or special loss or damage of any kind to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.

16.4 Definition of Force Majeure

For the purposes of this Agreement, "**Force Majeure**" means any event or circumstance not reasonably within the control of Timbercorp Securities or which Timbercorp Securities is not reasonably able to prevent. It includes:

- (a) pestilence, vermin, disease, fire, acts of God, landslide, earthquake, flood, washout, lightning, storm, drought, seasonal and climatic conditions and the elements;
- (b) strikes, lock-outs, bans, work limitations, boycotts and industrial disturbances or action;
- (c) act of the enemies, wars, blockades, insurrection, riots and civil disturbances;
- (d) orders of any court or the order, act or omission or failure to act of any government or governmental authority or instrumentality (including any failure to grant or any withdrawal of any licences, consent or authority);
- (e) epidemic or quarantine;
- (f) shortage or unavailability of equipment, materials or labour or any restriction on equipment, materials or labour or on the use of equipment, materials or labour;
- (g) delays in transportation or communication; and
- (h) breakage or breakdown of, or damage to, equipment or machinery, or the necessity to repair equipment or machinery to prevent its breakdown.

Each of these paragraphs and each of the terms within each paragraph are to be construed separately and independently. None of them is to limit the generality of any other.

17. LIMITATION OF THE PARTICIPANT GROWER'S LIABILITY

17.1 No obligation beyond Fees and Expenses

Despite anything else contained in this Agreement the Participant Grower is not obliged to contribute any money in respect of the Project Operations beyond the fees and other amounts payable by the Participant Grower under the Constitution, the Licence Agreement and this Agreement.

17.2 Limitation of Liability

Despite anything else contained in this Agreement, the liability of the Participant Grower is absolutely limited to the fees and other amounts paid or payable to Timbercorp Securities under the Constitution, the Licence Agreement and this Agreement and to any Proceeds to which the Participant Grower is entitled.

17.3 Timbercorp Securities to disclose

In any contract which Timbercorp Securities enters into on behalf of the Participant Grower, to the extent practicable, Timbercorp Securities must disclose that:

- (a) it is contracting as agent for the Participant Grower;

-
- (b) the liability of the Participant Grower in respect of the Project Operations and the Licence Agreement is limited to the amount of money contributed by the Participant Grower as provided in clause 17.1; and
 - (c) the Participant Grower is under no liability to the other party to the contract or to any of its servants or agents, whether in contract or otherwise, beyond the money contributed by the Participant Grower as provided in clause 17.1 and to any Proceeds to which the Participant Grower is entitled.
-

18. DISPUTES

18.1 Referral by the Participant Grower

- (a) Any dispute or difference whatsoever in connection with this Agreement must be dealt with by the Participant Grower as follows in the event that the dispute or difference is unable to be resolved by Timbercorp Securities to the Participant Grower's satisfaction:
 - (i) if the dispute or difference falls within the rules of the Financial Industry Complaints Service Limited (FICS) or Insurance Brokers Disputes Limited (IBD), the Participant Grower may refer the dispute or difference to FICS or IBD, for determination in accordance with FICS' or IBD's rules, as the case requires; or
 - (ii) if:
 - (A) the dispute or difference does not fall within the rules of FICS or IBD; or
 - (B) the Participant Grower does not wish to refer the dispute or difference to FICS or IBD in accordance with paragraph 18.1(a)(i),the dispute or difference must be submitted by the Participant Grower to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:
 - (C) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (D) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
 - (i) subject to any right of appeal contained in the rules of FICS or IBD, agree to accept the determination of FICS, IBD or the arbitrator, as the case requires, in accordance with paragraph 18.1(a) as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.

18.2 Timbercorp Securities

- (a) Clause 18.1 is for the benefit of Timbercorp Securities only, and it does not prevent Timbercorp Securities from:
 - (i) commencing proceedings against the Participant Grower in any relevant jurisdiction;
 - (ii) submitting any dispute or difference whatsoever with a Participant Grower in connection with this Agreement to arbitration in accordance with, and subject to, the Institute of Arbitrators and Mediators of

Australia Expedited Commercial Arbitration Rules, and to the extent permitted under those rules:

- (A) the Arbitrator will be a person recommended by the Victorian Chapter of the Institute of Arbitrators and Mediators of Australia; and
 - (B) the arbitration will be conducted in Melbourne, Victoria.
- (b) The Participant Grower and Timbercorp Securities:
- (i) agree to accept the determination of the arbitrator in relation to any dispute or difference referred to arbitration in accordance with paragraph 18.2(a), as final and binding; and
 - (ii) submit to the non-exclusive jurisdiction of the Courts in Victoria for the enforcement of any such determination.
- (c) Timbercorp Securities must ensure that it has an internal complaints handling procedure that conforms where reasonably possible to the procedure set out in clauses 25.2, 25.3 and 25.4 of the Constitution.
-

19. COUNTERPARTS

- (a) This Agreement may consist of a number of counterparts and if so the counterparts taken together will constitute the one instrument.
 - (b) The Participant Grower covenants with Timbercorp Securities that it will at the request of Timbercorp Securities execute any further counterparts in the form or to the effect of this Agreement, which counterparts may include a lesser or greater number of Participant Growers to those executing this instrument so long as in no circumstances will the rights or entitlement of any Participant Grower be diminished.
 - (c) The Participant Grower and Timbercorp Securities agree that by their execution of any counterpart of this Agreement they will be and remain liable to each other despite that any other person intended to be a party does not sign or execute this or any other counterpart of the Agreement.
-

20. MISCELLANEOUS

20.1 Further Assurances

The Participant Grower and Timbercorp Securities must execute all agreements and take all other action necessary or desirable to give full effect to this Agreement.

20.2 Entire Understanding

This Agreement contains the entire understanding between the Participant Grower and Timbercorp Securities concerning the subject matter contained in it. All previous representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect, other than the PDS and any agreement executed by the Participant Grower and Timbercorp Securities that is clearly intended to be supplemental to this Agreement or in substitution for it.

20.3 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right to exercise of any other right.
- (b) No party is liable for any loss or expense of another party caused or partly caused by the waiver, exercise or failure to exercise a right.

20.4 Parties to Give Effect to the Agreement

- (a) The Participant Grower and Timbercorp Securities must exercise all powers as are available to it, do all such acts and things and sign, execute and deliver all documents as may be necessary or reasonably required to give full effect to this Agreement.
- (b) If the Participant Grower immediately after being requested by Timbercorp Securities fails to do the act or thing, the Participant Grower irrevocably appoints Timbercorp Securities as its attorney for the purpose of giving effect to this clause.
- (c) The Participant Grower indemnifies Timbercorp Securities and holds it harmless from and against all actions, suits, demands and claims consequent upon the exercise of the power granted under this clause 20.4.

20.5 Stamp Duty

- (a) Timbercorp Securities will pay the stamp duty payable in relation to this Agreement.
- (b) The Participant Grower will pay any duty payable in proportion to its Participating Interest in relation to any agreement executed pursuant to this Agreement, including all Project Documents.

20.6 Amendments

- (a) This Agreement may be amended by another document in writing and duly signed by the parties to this Agreement.
- (b) Subject to paragraph 20.6(c), Timbercorp Securities may amend the provisions of this Agreement to such extent as may be required to:
 - (i) satisfy the requirements of any statute, ordinance, rule, regulation or by-law which may be passed and which affects the Project;
 - (ii) comply with the effect of any judicial decision; or
 - (iii) enable the provisions of this Agreement, or the Project, to be more conveniently, advantageously, profitably or economically administered or managed.
- (c) Before Timbercorp Securities may amend the Agreement as provided under paragraph 20.6(b), the Responsible Entity must be reasonably satisfied that the amendment does not adversely affect the rights of the Participant Growers.
- (d) Timbercorp Securities may make the amendments on behalf of itself, and the Responsible Entity on behalf of the Participant Growers. To give effect to this clause, each of the Participant Growers appoints the Responsible Entity as its attorney to make amendments to this Agreement.
- (e) If the Responsible Entity cannot be satisfied that the amendments can be made in accordance with paragraph 20.6(c), then amendments may only be made in accordance with paragraph 20.6(a).

20.7 Constitution

The rights and obligations of the parties under this Agreement are subject to the terms and conditions of the Constitution.

20.8 GST

- (a) If any supply made by a party ("**Supplier**") to the other ("**Recipient**") under this Agreement is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Agreement, 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 in force from time to time.
- (c) The GST payable under paragraph 20.8(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Agreement.
- (d) The right of a Supplier to payment under this clause is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Agreement, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 20.8(b).
- (f) If an Authority orders that a payment be made to a party to satisfy a claim under or in connection with this Agreement, and such payment will give rise to a liability to pay GST, the parties authorise the Authority to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

20.9 Proper Law

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

21. NOTICES

21.1 Form of Notice

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

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

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

21.2 Receipt of Notice

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

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

22. ASSIGNMENT

22.1 Assignment by Timbercorp Securities

Subject to clause 22.2, Timbercorp Securities may freely assign any of its rights and interests under this Agreement so long as Timbercorp Securities does not assign its interest in this Agreement in any way without first entering a deed with the person with whom Timbercorp Securities is dealing ("**the Grantee**"). The deed must contain a covenant by the Grantee in favour of the Participant Grower to observe and perform all or any of the covenants:

- (a) contained or implied in this Agreement and the Licence Agreement; and
- (b) required to be observed or performed by Timbercorp Securities.

22.2 Agreements with Contractors

Timbercorp Securities may only assign its rights and interests in this Agreement to the Grantee if, at the same time, it assigns to the Grantee all its rights and interests in any contract under which Timbercorp Securities has delegated some or all of its obligations under this Agreement, and for this purpose, Timbercorp Securities has obtained the written consent to the assignment from the contractor.

22.3 Payment for deed

The cost of any deed required under clause 22.1 must be paid by Timbercorp Securities or the Grantee, but not the Participant Grower.

22.4 Assignment by the Participant Grower

- (a) Subject to the requirements of the Constitution, the Participant Grower may only assign its rights under this Agreement if the Participant Grower:
- (i) first obtains a deed of covenant signed by the proposed assignee in favour of Timbercorp Securities and the Responsible Entity stating that the assignee will at all times during the remainder of the Term observe and perform all and any of the terms and conditions of this Agreement, the Constitution and the Licence Agreement applying to the Participant Grower's Grapelots being assigned; and
 - (ii) is not in default of any of its obligations under this Agreement, the Constitution and the Licence Agreement applying to the relevant Grapelots or any other agreement to which the Participant Grower is a party in respect of the Project.
- (b) The proposed assignee is deemed to have entered into a Grapelot Management Agreement and Licence Agreement, with the same terms and conditions as those applying to the Grapelots being assigned to it by the Participant Grower immediately before the date of the assignment, on and from the date of the assignment.

22.5 Release of liability of the Participant Grower

Once the Participant Grower has perfected an assignment of its interest in this Agreement in accordance with clause 22.4, the Participant Grower no longer remains liable under this Agreement in respect of any act done or omitted to be done after the assignment is effected in respect of the Grapelots assigned.

Executed as an Agreement

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

Signature

Full Name

Position Held

Signature

Full Name

Position Held

EXECUTED by TIMBERCORP)
SECURITIES LIMITED as agent)
and attorney for and on behalf of)
each several Participant Grower in)
accordance with section 127 of)
the Corporations Act:)
)

Signature

Full Name

Position Held

Signature

Full Name

Position Held

FIRST SCHEDULE

GROWERS AND GRAPELOTS

	Name of the Participant Grower	Date Application Accepted	Address, Phone/Fax Number	Grapelot No.
	eg. John Smith			

SECOND SCHEDULE

**INITIAL MANAGEMENT PLAN
(Clause 5.1)**

**THIRD SCHEDULE
LICENCE AGREEMENT**

Licence Agreement

Timbercorp Securities Limited

**Each several Participant Grower
named in Schedule to this
Agreement**

**Orchard Investments
Management Limited**

Timbercorp Limited

2005 Timbercorp Table Grape Project

NM TAYLOR
LAWYERS

Level 7
350 Collins Street
MELBOURNE VIC 3000

Telephone: 9600 3525
Facsimile: 9600 3527

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Details of this Licence Agreement

Date of the Agreement:

In respect of each several Participant Grower means the date on which Timbercorp Securities has accepted the Participant Grower's application for Grapelots being offered under the PDS as specified in the Schedule.

Parties to the Agreement:

1. **TIMBERCORP SECURITIES LIMITED**

ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Timbercorp Securities)

2. The Participant Grower named in the Schedule to this Agreement in relation to Grapelots allocated to the Participant Grower.

(Participant Grower)

3. **Orchard Investments Management Limited**

ACN 105 684 231
Level 5, 605 St Kilda Road
MELBOURNE VIC 3004

in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297)

(OIML)

4. **TIMBERCORP LIMITED**

ACN 055 185 067
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Timbercorp)

Background to the Agreement

- A. Timbercorp Securities has established a project for the management of a table grape vineyard, the cultivation of table grape vines and harvesting and processing of table grapes for commercial gain.
- B. Timbercorp Securities will sub-lease from Timbercorp the Land and the Table Grape Vines, the Required Water Licences and the Capital Works and any other capital works that may be established on the Land under the Sub-lease. Timbercorp's rights to use the Land and the Table Grape Vines including the plant breeders' rights, the Required Water Licences and the Capital Works are granted to it by OIML under the Lease.

-
- C. Under the Sub-lease Timbercorp also grants Timbercorp Securities a sub-licence of the necessary plant breeders' rights to plant and grow the Table Grape Vines on the Grapelots and to process and sell the Licensed Fruit. The plant breeders' rights are owned by Andriske who has granted a licence of those rights to OIML under the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement, as defined in clause 22.
- D. Timbercorp Securities has agreed to grant a licence to the Participant Grower to use the Grapelots for the cultivation of Table Grape Vines and the harvesting and processing of Table Grapes, subject to the terms and conditions of this Agreement.
- E. OIML and Timbercorp have entered into this Licence Agreement for the purpose of the agreements in paragraph 10.6.
-

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires or implies, the following expressions have the meanings set opposite each of them:

2005 Bella Vista Land:	means those parts of the land in an unregistered plan of proposed subdivision of Lot 2 in DP 1067588 (a copy of which is attached to the Sub-lease) on which a new vineyard of 600 acres will be established by the Land Owner on or before 30 June 2005;
Administrator:	has the meaning given to it in section 9 of the Corporations Act;
ASIC:	the Australian Securities and Investments Commission;
Authority:	includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Land or any part of them or anything about them;
Best Viticultural Practice:	sound viticultural and environmental practices and industry practices that have been adopted in relation to similar vineyards;
Business Day:	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Melbourne;
Capital Works:	<p>(a) the infrastructure and capital works on the Vineyard as at the date of this Agreement; and</p> <p>(b) the infrastructure and capital works that Timbercorp Securities has agreed to procure OIML to carry out, and any other works that Timbercorp Securities, Timbercorp or OIML may be required in future to carry out, at their cost respectively, on the Vineyard;</p>

Commencement Date:	in respect of each Participant Grower, the date of this Agreement;
Constitution:	the deed entered into by the Responsible Entity and all the Participant Growers, which governs the Project;
Controller:	has the meaning given to it in section 9 of the Corporations Act;
Corporations Act:	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
CPI:	the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics or should it be discontinued or suspended such other index as determined in accordance with clause 7.2;
Encumbrance:	any mortgage, pledge, charge, lien or assignment by way of security (excluding any such thing arising by operation of law);
Financial Year:	a period of 12 months ending on 30 June in any year and includes the period commencing on the date of this Agreement and ending on 30 June 2005 and the period ending on the termination of this Agreement and commencing on the preceding 1 July;
Force Majeure:	has the meaning given to it in clause 11.4;
Grapelot:	an interest in the Project held by the Participant Grower, including its interest in, and rights in relation to, each separate identifiable area of the Land comprising approximately 0.25 acres on which a Participant Grower will conduct the Grapelot Operations and its interest in, and rights in relation to the Table Grape Vines, the Capital Works and the Required Water Licences attributed to the Project;
Grapelot Management Agreement:	the agreement of that name for the management of the Grapelot Operations conducted on the Grapelots between Timbercorp Securities and the Participant Grower;
Grapelot Operations:	the growing and cultivation of Table Grapes on, and management of, the Grapelots for the production of Product for commercial gain;
GST:	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:	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
GST Rate:	the rate of GST under the GST Law;
Indexed:	the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the

	<p>following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date;</p>
Irrigation Infrastructure:	means the pipeline (including the mainline), dam, pump and other equipment which are installed and owned, or are to be installed and owned by the Land Owner or to which the Land Owner has rights under and which already services or will be able to service adequately that part of the Vineyard situated on the Land by enabling and facilitating the irrigation and delivery of the necessary water to the Grapelots;
Land:	the land on which the Project will be conducted as described in the PDS or such other land that is used for the Project;
Land Owner:	the registered proprietor or the person entitled to become the registered proprietor for the time being of the Land, which at the date of this Agreement is Orchard Investments Management Limited (ACN 105 684 231) as responsible entity of the Timbercorp Orchard Trust;
Lease:	the Lease made between Timbercorp, as lessee, and OIML, as lessor, whereby OIML has granted Timbercorp a lease of the Land;
Licence Fees:	the licence fees payable under clause 7 of this Agreement;
Licensed Fruit:	all Table Grapes and Product derived from the Licensed Vines grown on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Licensed Vines:	all Table Grape Vines which are licensed under this Agreement;
OIML:	Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust;
Participant Grower:	(a) a several person (or if more than one person, those persons jointly) who is named or otherwise described in

	the Schedule; and
	(b) the term " Early Grower " refers to a Participant Grower whose application under the PDS is accepted on or before 30 June 2005; and
	(c) the term " Post 30 June Grower " refers to a Participant Grower whose application under the PDS is accepted on or after 1 July 2005 and before the offer period closes;
Participating Interest:	has the same meaning as in the Grapelot Management Agreement;
Part A Grapelot:	means that part of a Participating Grower's Grapelot that will be fully planted by 23 June 2005, representing no less than 60% of the Participating Grower's Grapelot;
PDS:	has the same meaning as in the Constitution;
Pre-Planting Capital Works:	the capital works described in clause 2.1(a)(i)-(vii) which have been, or will be, carried out on the Vineyard by the Land Owner;
Proceeds:	has the meaning given in the Grapelot Management Agreement;
Product:	Table Grapes produced in a saleable condition from the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Project:	the 2005 Timbercorp Table Grape Project promoted by Timbercorp Securities involving the management of a table grape vineyard, the cultivation and harvesting of table grape vines and the processing of table grapes for commercial gain;
Required Water Licences:	<p>(a) the water licences that are, or will be, licensed to Timbercorp Securities under the Sub-lease and that are attributed to the Land as required from time to time and as specified in clause 3.2; and</p> <p>(b) that provide for a maximum licence entitlement specified in paragraph 3.2(a), as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;</p>
Responsible Entity:	means the responsible entity of the Project from time to time;
Royalty Fees:	The royalty fees payable under clause 7 of this Agreement;
Shed Door Price:	<p>(a) the sale price of the Licensed Fruit; less</p> <p>(b) any cost incurred in respect of the Licensed Fruit after the Licensed Fruit leaves the installation where the Licensed Fruit is packed, including costs such as freight,</p>

	insurance, agents' fees, cold storage charges, import duty and AQIS (other than any amount or amounts payable to Sales Agents), except in the case of any sale of Licensed Fruit at an invoice price that is less than that which would have been charged to persons negotiating at arms' length, there will be substituted for the purpose of calculation of payments due under this Agreement, such invoice price (exclusive of GST) as would be charged in an arms' length transaction;
Shed Door Proceeds:	the gross price charged (exclusive of GST) for Licensed Fruit sold on an arms' length basis at the Shed Door Price;
Sub-lease:	the Sub-lease made between Timbercorp Securities, as sub-lessee, and Timbercorp, as sub-lessor, whereby Timbercorp Securities has been, or will be, granted a sub-lease of the Land;
Table Grapes:	the table grapes grown or growing on the Grapelots of the Participant Grower or the Vineyard, whichever is applicable and whether harvested or unharvested and any other products, rights, benefits or credits derived from the Table Grape Vines;
Table Grape Vines:	the table grape vines planted or to be planted on the Participant Grower's Grapelots or the Vineyard, whichever is applicable;
Term:	the term of this Agreement set out in clause 4.1;
Timbercorp:	Timbercorp Limited (ACN 055 185 067);
Timbercorp Securities:	Timbercorp Securities Limited (ACN 092 311 469);
Vineyard:	all of the Grapelots.

1.2 Interpretation

In this Agreement, unless expressed or implied to the contrary:

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Agreement;

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- (i) if a party comprises two or more persons, this Agreement binds them jointly and each of them severally unless a contrary intention is expressed in the Agreement;
 - (j) if any of the persons comprising the Participant Grower is a trustee, this Agreement binds that person in its capacity as a trustee and personally; and
 - (k) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word.

1.3 Headings

Headings are for convenience only and do not affect the interpretation of this Agreement.

1.4 Grower and Agreement

- (a) The term "**Participant Grower**" in this Agreement is a reference to the particular Participant Grower named in the Schedule to this Agreement in relation to the Grapelot.
- (b) Each set of "**Joint Venturers**", as defined in the Constitution, comprise a particular "**Participant Grower**" under this Agreement and any Project Documents.
- (c) The term "**Participant Growers**" in this Agreement is a reference to all several Participant Growers that hold Grapelots in the Project and according to the context, the term "**Participant Growers**" may also include the particular Participant Grower.
- (d) This Agreement is entered into in respect of Participant Growers' Grapelots referred to in the Schedule and, must be read as if it were a separate Agreement on the terms and conditions of this Agreement in respect of the Grapelots held by each Participant Grower in the Project.

1.5 Delegation

Timbercorp Securities is entitled to:

- (a) delegate any of its obligations under this Agreement to; and
- (b) exercise any of its rights under this Agreement through, its employees, agents and contractors, but any delegation by Timbercorp Securities does not release Timbercorp Securities from liability under this Agreement.

1.6 Capacity of Timbercorp Securities

Timbercorp Securities enters into this Agreement in its personal capacity.

1.7 Licence Agreement is not Scheme Property

This Agreement does not form part of "scheme property", as defined in section 9 of the Corporations Act, of the Project.
