

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

**LIST E**

S CI 2010

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

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

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs


Prepared by:

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This is the exhibit marked '**PWK10**' now produced and shown to PAUL WILLIAM KIRK at the time  
of swearing his affidavit on 22 December 2010.

Before me

  
\_\_\_\_\_  
**DANIELLE RUTH NAHUM**  
of 530 Collins Street, Melbourne  
Victoria 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

**Exhibit 'PWK10'**

**Copy of Sub-lease between  
Timbercorp and TSL dated 28  
April 2005**



Form: 07L  
 Licence: 04-11-037  
 Licensee: Kemp Strang

# SUB LEASE

New South Wales  
 Real Property Act 1900

## AB528479U

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any

### STAMP DUTY

Office of State Revenue use only

NEW SOUTH WALES DUTY

12-05-2005

0002653920-001

LEASE - GENERAL

DUTIABLE AMOUNT \$ \*\*\*\*\*50,139,630.00

DUTY \$ \*\*\*\*\*175,488.95

HEAD LEASE AB 528477

### (A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises  
 Lot 2 DP 1067588

### (B) LODGED BY

Delivery  
 Box

48T

Name, Address or DX and Telephone

48T 48310E

CITYLINK

Reference (optional):

KS / S. Dixon

CODE

L

### (C) LESSOR

TIMBERCORP LIMITED ACN 005 185 067

The lessor leases to the lessee the property referred to above.

### (D)

Encumbrances (if applicable): 1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

### (E) LESSEE

TIMBERCORP SECURITIES LIMITED ACN 092 311 469

### (F)

TENANCY:

### (G) 1. TERM:

2. COMMENCING DATE: 28 April 2005

3. TERMINATING DATE: 28 June 2020

4. With an OPTION TO RENEW for a period of \_\_\_\_\_ set out in \_\_\_\_\_

5. With an OPTION TO PURCHASE set out in \_\_\_\_\_

6. Together with and reserving the RIGHTS set out in Annexure A

7. Incorporates the provisions or additional material set out in ANNEXURE(S) A..... hereto.

8. Incorporates the provisions set out in \_\_\_\_\_ in the Department of Lands, Land and Property Information Division as No. \_\_\_\_\_

9. The RENT is set out in 5 \_\_\_\_\_ of Annexure A

DATE

28 April 2005

(H) I certify that the lessor, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness:

Gideon Meltzer

Signature of lessor:

Director

SEE PAGE 38 of Annexure A for execution

Name of witness:

Gideon Meltzer

Address of witness:

of Level 8, 461 Bourke Street, Melbourne  
a current practitioner within the meaning  
of the Legal Practice Act 1996.

Note: where applicable, the lessor must complete the statutory declaration below.

I certify that the lessee, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness:

Gideon Meltzer

Signature of lessee:

Director

Name of witness:

Gideon Meltzer

Address of witness:

of Level 8, 461 Bourke Street, Melbourne  
a current practitioner within the meaning  
of the Legal Practice Act 1996.

(I) STATUTORY DECLARATION \*

I, \_\_\_\_\_  
solemnly and sincerely declare that-

1. The time for the exercise of option to renew / option to purchase in expired lease No. \_\_\_\_\_ has ended;
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at \_\_\_\_\_ in the State of \_\_\_\_\_  
on \_\_\_\_\_ in the presence of -

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness [tick one]

☐ Justice of the Peace

☐ Practising Solicitor

☐ Other [specify] \_\_\_\_\_

\* NOTE: As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment of the form at Land and Property Information Division.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

2162

This is Annexure A referred to in the lease made between Timbercorp Limited (ACN 055 185 067), as Sub-lessor, and Timbercorp Securities Limited (ACN 092 311 469), as Sub-lessee, in respect of the land comprised in Lot 2 of DP 1067588 (Bella Vista #2).

## **Timbercorp Table Grape Projects (600 acre vineyard)**

### **Sub-Lease**

**Timbercorp Ltd**

**Timbercorp Securities Limited**

**Orchard Investments Management Limited**

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## Details of this Sub-Lease

### Date of this Sub-Lease:

This Deed is made on

### Parties to this Sub-Lease:

1. **Timbercorp Limited**  
ACN 055 185 067  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Sub-lessor)

2. **Timbercorp Securities Limited**  
ACN 092 311 469  
Level 8, 461 Bourke Street  
Melbourne, Victoria, 3000

(Sub-lessee)

3. **Orchard Investments Management Limited**  
ACN 105 684 231  
Level 2, 613 St Kilda Road  
Melbourne, Victoria, 3004

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

(Responsible Entity)

## Background

- A. Responsible Entity has entered into a contract of sale with the vendor of the Bella Vista Subdivided Land.
- B. Pending completion of the contract of sale, the Responsible Entity, as lessee, has entered into the Bella Vista (Interim) Lease, being an interim lease substantially in the form of the lease annexed to the Parent Lease.
- C. The Responsible Entity has pursuant to the Parent Lease leased Bella Vista to the Sub-lessor.

- D. Upon the Bella Vista Transfer being registered, the Responsible Entity will become the registered proprietor of Bella Vista.
- E. The Sub-lessor desires to sub-lease Bella Vista Land to the Sub-lessee under this Deed for use in the Table Grape Project that the Sub-lessee proposes to establish.
- F. The Responsible Entity as lessor under the Parent Lease consents to the Sub-lessor entering into this Deed and the Sub-lessee entering into the Occupancy Agreements with the Growers in the Table Grape Project.
- G. The Sub-lessor consents to the Sub-lessee entering into the Occupancy Agreements with the Growers in the Table Grape Projects.
- H. The Sub-lessee will pay rent in respect of Bella Vista in accordance with this Deed.
- I. Under the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement, the Responsible Entity has been granted rights to plant and grow the Licensed Vines on the Costa Land and the non-exclusive right to process and sell the Licensed Fruit in the Licensed Territory. Under the Lease, it has agreed to sub-licence these rights to Timbercorp who in turn has agreed to sub-licence those rights on the terms and conditions of this Sub-Lease.

## The Parties Agree as Follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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

<b>Administrator:</b>	has the same meaning as in the Corporations Act;
<b>Auditors:</b>	the auditors of the Timbercorp Group for the time being;
<b>Authority:</b>	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 Costa Land or any part of them or anything about them;
<b>Bella Vista:</b>	Lot 2 in DP 1067588 until title to the Bella Vista Subdivided Land is transferred as a discrete lot to the Responsible Entity, and from that time, Bella Vista Subdivided Land;
<b>Bella Vista Subdivided Land:</b>	the proposed lot of approximately 295 hectares to be carved out of Lot 2 in DP 1067588;
<b>Bella Vista Lease:</b>	the interim lease from the Costas to the Responsible Entity substantially in the form of the lease comprising Annexure A to the Parent Lease;
<b>Bella Vista Transfer:</b>	the transfer of: (a) if registration of the plan of subdivision of the proposed lot



	<p>of approximately 295 hectares (ie. the Bella Vista Subdivided Land) does not occur on or before 30 June 2007, the whole of Lot 2 in DP 1067588;</p> <p>(b) if registration of the said plan of subdivision occurs on or before 30 June 2007, the lot of approximately 295 hectares created by such registration;</p>
<b>Best Viticultural Practice:</b>	sound viticultural and environmental practices and industry practices that have been adopted in relation to similar vineyards;
<b>Business Day:</b>	any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Sydney, New South Wales;
<b>Capital Works:</b>	<p>(a) the infrastructure and capital works, including any Irrigation Infrastructure on the Vineyard as at the date of this Deed or which the Responsible Entity has agreed, at its cost, to carry out on the Bella Vista Subdivided Land;</p> <p>(b) any Sub-lessor's Works that the Sub-lessor may in its in absolute discretion carry out;</p>
<b>Commencement Date:</b>	the date of this Deed;
<b>Constitution:</b>	the constitution of a Table Grape Project;
<b>Controller:</b>	has the same meaning as in the Corporations Act;
<b>Corporations Act:</b>	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
<b>Costas:</b>	Carmel Costa and Paul Costa, both of Block 15 Kilpatrick Euston in the State of New South Wales;
<b>CPI:</b>	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 Sub-lessor 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;
<b>Encumbrance:</b>	<p>in relation to any property means anything which:</p> <p>(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or</p> <p>(b) prevents, restricts or delays the exercise of any right over the property or the registration by any person of any interest in or right over the property,</p> <p>and includes a Security Interest;</p>
<b>Financial Year:</b>	<p>the 12 month period ending on the last day of June with the exception of:</p> <p>(a) the first Financial Year which commences on the Commencement Date and ends on the day before the first day of the next Financial Year; and</p>

	(b) the last Financial Year which commences on the day after the last day of the last preceding Financial Year and ends on the day of termination of the 2005 Timbercorp Table Grape Project;
<b>Force Majeure:</b>	<p>(a) an event or circumstance (or a combination of events or circumstances) that is beyond the control of the Sub-lessor, including Acts of God, natural disasters, fire and explosions, riots, civil commotion, war, attack or other acts of hostility; acts of terrorism, revolution and radioactive contamination, but</p> <p>(b) not including a lack of funds on the part of the Sub-lessor or the inability of the Sub-lessor to use available funds resulting from an event or circumstance described in paragraph (a);</p>
<b>Government Body:</b>	<p>(a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;</p> <p>(b) any public authority constituted by or under a law of any country or political sub-division of any country; and</p> <p>(c) any person deriving a right directly or indirectly from any other Government Body;</p>
<b>Grapelot:</b>	an area of land which in total comprises 0.25 acres on the Vineyard on which a Grower in the Project carries on or will carry on a business of cultivating and growing table grapes;
<b>Grapelot Management Agreement:</b>	the agreement of that name for the management of the Grapelot operations conducted on the Grapelots between the Sub-lessee and the Grower;
<b>Grower:</b>	a "Participant Grower" as defined in the Constitution;
<b>GST:</b>	has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;
<b>Indexed:</b>	<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 (<b>the Adjustment Date</b>) in accordance with the following formula:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p><math>A_t</math> = the amount on the Adjustment Date;</p> <p><math>A_0</math> = the amount being adjusted;</p> <p><math>\text{CPI}_t</math> = the highest CPI for a full calendar quarter published between the date <math>\text{CPI}_0</math> is published and the Adjustment Date,</p>

	including CPI <sub>0</sub> ;  CPI <sub>0</sub> = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made ( <b>the Base Date</b> ), provided that if no Base Date is specified, "CPI <sub>0</sub> " 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.
<b>Irrigation Infrastructure:</b>	water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on, or on other lands for use in connection with the Bella Vista Subdivided Land;
<b>Lease or Parent Lease:</b>	the lease from the Responsible Entity to the Sub-lessor (and to which the Sub-lessee is a party) in relation to Bella Vista made on or about the date of this Deed;
<b>Licence Agreement:</b>	the agreement of that name between the Sub-lessee as licensor and a Grower as licensee in relation to the Grower's relevant Grapelots;
<b>Occupancy Agreements:</b>	the sub-leases, licences or other occupancy rights proposed to be granted by the Sub-lessee over parts of the Bella Vista Subdivided Land to Growers in a Table Grape Project, as they may from time to time be amended in accordance with their terms and conditions, provided that such agreements must not grant the Growers any greater rights than those that are granted to the Sub-lessee under this Deed;
<b>Orchard Trust:</b>	the Timbercorp Orchard Trust (ARSN 106 557 297);
<b>Orchard Trust Constitution:</b>	the trust deed of the Orchard Trust (as amended);
<b>Pre-Planting Capital Works</b>	the capital works described in clause 4.1(a)(i)-(vii) which have been or will be carried out on the Vineyard by the Responsible Entity;
<b>Quarter:</b>	the three month period ending on the last day of March, June, September or December with the exception of:  (a) the first Quarter which commences on the Commencement Date and ends on the day before the first day of the next Quarter; and  (b) the last Quarter which commences on the day after the last day of the last preceding Quarter and ends on the day of termination of this Deed;
<b>Rent:</b>	the amount specified in clause 6 as varied under this Deed;
<b>Required Water Licences:</b>	the water licences or water allocations that are, or will be, owned or acquired by the Responsible Entity and for use on the Bella Vista Subdivided Land as required from time to time and as specified in clause 5.1, that provide for a maximum entitlement specified in clause 5.1, as reduced by any variation in the maximum entitlement from time to time by the relevant water

	Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use;
<b>Responsible Entity:</b>	Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297), and which is, or will become entitled to be, the registered proprietor of Bella Vista Subdivided Land;
<b>Security Interest:</b>	an interest or right: (a) reserved over property; or (b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right, by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;
<b>Sub-lease:</b>	the lease granted under this Deed;
<b>Sub-lessor's Works:</b>	(a) the Vines planted in place of existing Vines; (b) the replacement of any infrastructure, including Irrigation Infrastructure; and (c) any other improvements of a structural nature, at the Sub-lessor's cost and expense in accordance with clause 25 of the Parent Lease;
<b>Table Grapes:</b>	the products, rights, benefits or credits derived from the Vines on the Bella Vista Subdivided Land;
<b>Table Grape Projects:</b>	the Timbercorp Table Grape Projects promoted or to be promoted by the Sub-lessee 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;
<b>Term:</b>	the term of this Deed, as described in clause 3;
<b>Timbercorp:</b>	Timbercorp Ltd (ACN 055 185 067);
<b>Timbercorp Group:</b>	Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts";
<b>Vines:</b>	the vines growing or to be grown on the Bella Vista Subdivided Land;
<b>Vineyard:</b>	all of the Grapelots.

## 1.2 Interpretation

In this Deed, 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 Deed;
- (i) if a party comprises two or more persons, this Deed binds them jointly and each of them severally; and
- (j) the word "include" or "includes" is to be read as if the expression "(but is not limited to)" immediately followed such word and the word "including" is to be read as if the expression "(but not limited to)" immediately followed such word.

## 1.2 Headings

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

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## 2. CAPACITY OF THE SUB-LESSEE

### 2.1 Capacity

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

### 2.2 Deed is not Scheme Property

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

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## 3. GRANT AND TERM OF SUB-LEASE

### 3.1 Grant and Term of Sub-Lease

- (a) Subject to the terms of this Deed, the Sub-lessor grants to the Sub-lessee a lease of Bella Vista and the Capital Works and a licence to use and exploit the Required Water Licences for a period commencing on the date of this Deed and, subject to clause 13, expiring on 28 June 2020.
- (b) The parties agree and acknowledge that:
  - (i) the Bella Vista (Interim) Lease will either be surrendered or will merge in the fee simple on or after completion of the purchase of the Bella Vista Subdivided Land by the Responsible Entity; and

- (ii) notwithstanding anything to the contrary in this Deed such surrender or merger will in no way affect the operation or validity of this Sub-lease which shall continue notwithstanding the surrender or merger of the Bella Vista (Interim) Lease on or after completion of the purchase of the Bella Vista Subdivided Land by the Responsible Entity.

### 3.2 Representations

The Sub-lessor represents and warrants that:

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

### 3.3 Termination of Bella Vista Lease

Notwithstanding anything to the contrary contained in this Deed, this Sub-lease is deemed to have come to an end if the Bella Vista (Interim) Lease comes to an end otherwise than as a result of the Responsible Entity completing its purchase of and becoming registered proprietor of Bella Vista.

## 4. ESTABLISHMENT OF VINEYARD

### 4.1 Agreement by Sub-lessor as to the Vineyard

- (a) The Sub-lessor agrees with the Sub-lessee that it must procure the Responsible Entity, at the Responsible Entity's own cost, to establish, or procure the establishment of the Vineyard on the Bella Vista Subdivided Land for Table Grape Projects in accordance with Best Viticultural Practice and must procure the Responsible Entity to construct the necessary infrastructure and carry out the necessary capital works, and without limiting the generality of this clause 4.1, the Sub-lessor must procure the Responsible Entity to:
  - (i) organise various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
  - (ii) prepare the Bella Vista Subdivided Land on which the Vineyard is or will be located to ensure that the Vines can grow satisfactorily subject to any Force Majeure;
  - (iii) acquire rights to or construct and install appropriate irrigation equipment and carry out the necessary irrigation works to ensure proper reticulation of water to the Vines on the Vineyard;
  - (iv) carry out drainage work and other works to help prevent soil erosion on all the Bella Vista Subdivided Land on which the Vineyard is to be located;
  - (v) eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Vines on the Vineyard;
  - (vi) rip and mound vine rows;
  - (vii) construct posts and trellising;  
(collectively, '*Pre-Planting Capital Works*')
    - (viii) have available sufficient labour and equipment to enable planting of

all the Vines as follows:

- (A) as to 60% of the Vineyard by 23 June 2005, subject to planting taking place in appropriate climatic and horticultural conditions; and
- (B) as to the balance of Vineyard 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 the Sub-lessor, are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.1(a)(i) to (vi) above.
- (b) The Sub-lessor will use its best endeavours to procure the Responsible Entity to complete the Pre-Planting Capital Works in full by 30 April 2005.
- (c) The Sub-lessor will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Sub-lessee arising from any delay in so doing caused for any reason other than the negligence of the Sub-lessor, its officers, employees or agents.
- (d) The Sub-lessee acknowledges that the Pre-Planting Capital Works (and therefore any grape production) will take place only on the Bella Vista Subdivided Land.

#### 4.2 Acknowledgments by the Sub-lessee

- (a) The Sub-lessee acknowledges that the Capital Works and Vines on, and the Required Water Licences for use on, the Grapelots are, and will at all times remain, the property of the Responsible Entity, subject to any rules or regulations made by any Authority and any Sub-Lessor's Works that are the property of the Sub-Lessor.
- (b) The Sub-lessee agrees and acknowledges that the Sub-lessor will not be liable for any loss or damage incurred by the Sub-lessee, including where such loss or damage arises out of, or is in connection with, any act or omission of the Sub-lessor or its officers, directors, employees, agents or agents under this Deed, whether or not constituting negligence, except that this paragraph 4.2(a) will not apply in the case of wilful default, dishonesty or fraud or breach of this Deed.

#### 4.3 Acknowledgments by the Sub-lessor

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

#### 4.4 Cultivation and maintenance obligations in relation to the Vineyard

The Sub-lessee, at its cost and expense, must cultivate, maintain and manage the Vines, the Grapelots, the Vineyard and the Bella Vista Subdivided Land, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practice including the following, having regard to good workmanlike and commercially responsible standards and Best Viticultural Practice:

- (a) **Irrigation and fertilisation:** provide the Vineyard with necessary irrigation water, irrigate the Vineyard and apply fertilisers and nutrients at the appropriate times. This includes efficient irrigation application management and salinity and groundwater monitoring and control;
- (b) **Weed control:** ensure no impediment to Vine development and Table Grape production, including impediments, such as weeds, brambles, briars, blackberries or other noxious growth;
- (c) **Vermin:** keep the Vineyard free from vermin;
- (d) **Insects and Diseases:** use its reasonable endeavours to keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines;
- (e) **Spray diaries:** prepare and provide the Sub-lessor upon request with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Vineyard and the Bella Vista Subdivided Land, which records must detail the types and quantities or concentrations applied and the times at which they were applied;
- (f) **Advise the Sub-lessor of deterioration or impurity:** promptly advise the Sub-lessor of any deterioration of or impurity in the Table Grapes or the Vines, which is apparent to the Sub-lessee;
- (g) **Destruction:** destroy any Vines which a reasonable horticulturist would destroy having regard to the best interests of the remaining unaffected Vines and promptly advise the Sub-lessor in writing of the Vines destroyed and the reasons for destroying the Vines;
- (h) **Fencing:** maintain any fencing, trellising, staking or netting used on the Vineyard in accordance with Best Viticultural Practice.
- (i) **Other Viticultural activities:** otherwise use the Vineyard and the Bella Vista Subdivided Land in accordance with the Constitution, the Grapelot Management Agreement and the Licence Agreements in respect of Table Grape Project.

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

- (a) At the end, or on termination, of this Deed, subject to the Growers' rights to continue to occupy the Bella Vista Subdivided Land in accordance with clause 12.5, the Sub-lessee must return the Bella Vista Subdivided Land and any Capital Works, and the relevant Grapelots, to the Sub-lessor in good condition in accordance with the obligations of the Sub-lessee under clause 4.4, but the Sub-lessee is not required to remove the Vines or restore the Capital Works and the relevant Grapelots to their original condition, including making good any reasonable wear and tear during the Term.
- (b) Any structures or plant and equipment of any description which belong to the Sub-lessee or the Grower must be removed from the relevant Grapelots within 30 days after the end, or on termination, of this Deed, subject to the Growers' rights to continue to occupy the Bella Vista Subdivided Land and clause 12.5. If the Sub-lessee does not comply, or procure the Grower to comply, with this requirement, then all structures and plant and equipment remaining on the relevant Grapelots at the time will become the absolute property of the Sub-lessor.
- (c) The Sub-lessor has no obligation to pay the Sub-lessee or the Grower any compensation at the end, or on termination, of this Deed, including for any structures and plant and equipment remaining on the relevant Grapelots that



4.5(b).

- (d) The Sub-lessee must ensure that the Required Water Licences in existence throughout the Term are preserved in full force and effect and on termination are returned to the Sub-lessor.

#### 4.6 Licence to Sub-lessor

For as long as Bella Vista comprises more than the Bella Vista Subdivided Land:

- (a) the Sub-lessee has no obligations to farm, crop, graze, develop or maintain that part of Bella Vista other than the Bella Vista Subdivided Land; and
- (b) the Sub-lessee grants the Sub-lessor a licence to come onto that part of Bella Vista other than the Bella Vista Subdivided Land to farm, crop, graze, develop or maintain it.

### 5. WATER LICENCES

#### 5.1 Required Water Licences

The required water licences 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: Bella Vista Subdivided Land – ML/acre	1.8	3.0	3.0	3.0
Vineyard: Bella Vista Subdivided Land – Total for 600 acres	1,080	1,800	1,800	1,800

#### 5.2 Use of Required Water Licences

The Sub-lessor must at its cost:

- (a) use all reasonable endeavours to ensure that its rights under the Required Water Licences (secured to the Sub-lessor under the Parent Lease) are maintained to enable the Sub-lessee to maximise the use and enjoyment of them by the Sub-lessee and the Growers;
- (b) take all reasonable steps to avoid interfering with the supply of water to the relevant Grapelots and to avoid any actions that would prejudice the Sub-lessee's rights under this Deed and the Growers' rights under the Occupancy Agreements; and
- (c) procure the Responsible Entity to purchase and maintain the Required Water Licences during the Term of this Deed, except where any Force Majeure or any action or requirement of any Authority prevents or inhibits the Responsible Entity from doing so.

#### 5.3 Acknowledgments

The Sub-lessee acknowledges that:

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

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## 6. RENT PAYMENTS

### 6.1 Rent

- (a) Each year, the Sub-lessee must pay to the Sub-lessor an amount of rent which is equal to the licence fees, (on a GST exclusive basis) the Sub-lessee receives from Growers under the Licence Agreements for the Table Grape Projects carried out on the Bella Vista Subdivided Land (Rent).
- (b) The Sub-lessee must pay to the Sub-lessor, the Rent when it receives the licence fees from the Growers, and by no later than 60 days after receiving the licence fees from Growers under the Licence Agreements.

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## 7. LESSOR'S OBLIGATIONS AND RIGHTS

### 7.1 Obligations

The Sub-lessor must:

- (a) maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership of all the Grapelots;
- (b) subject to the terms of this Deed, allow the Sub-lessee to peaceably and quietly hold and enjoy Bella Vista without any interruption by the Sub-lessor or any person claiming through or under the Sub-lessor;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Grapelots;
- (d) not create any Encumbrances over Bella Vista or the Grapelots or any part of Bella Vista or the Grapelots ranking in priority to the interests of the Sub-lessee or the Growers who may sub-lease, licence or otherwise occupy the Bella Vista or the Grapelots from the Sub-lessee in the future, except where required to do so by an Authority;
- (e) take all reasonable measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Sub-lessor are properly controlled and supervised;
- (f) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Sub-lessor; and
- (g) assist the Sub-lessee to obtain the benefit of the rights to the Sub-lessor under clause 6.1(h) of the Bella Vista (Interim) Lease.

## 7.2 Rights

The Sub-lessor:

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

## 8. RATES, TAXES AND CHARGES

- (a) The Sub-lessee must reimburse the Sub-lessor for or pay the Sub-lessor's liability for all taxes, charges and assessments levied upon Bella Vista, including local authority rates, sewerage rates and land tax and other State taxes as and when requested by the Sub-lessor, other than taxes, charges and assessments that are paid by the Costas to the Responsible Entity under the Bella Vista (Interim) Lease.
- (b) The Sub-lessor must promptly deliver to the Sub-lessee all rates and notices received by the Sub-lessor in respect of Bella Vista.

## 9. INSURANCE

### 9.1 Sub-lessee must maintain insurance

The Sub-lessee must:

- (a) in connection with Bella Vista, maintain with insurers and on terms approved by the Sub-lessor (which may not unreasonably withhold its approval) in the names of the Sub-lessee, the Sub-lessor, the Responsible Entity and any other person named by the Sub-lessor and the Sub-lessee:
  - (i) public liability insurance for at least \$10 million (as varied by notice from the Sub-lessor to the Sub-lessee);
  - (ii) the replacement value of the Capital Works, including the Vines and the Irrigation Infrastructure; and
  - (iii) other insurances required by law or that, in the Sub-lessor's reasonable opinion, a prudent lessee would take out having regard to the cost of such insurance;
- (b) give the Sub-lessor evidence when asked to do so that the Sub-lessee has complied with paragraph 9.1(a); and
- (c) notify the Sub-lessor immediately if an insurance policy required by this clause 9.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with Bella Vista.

## 9.2 Claims under insurance policies

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

## 9.3 Insurance proceeds

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

## 9.4 Parties not to affect rights under insurance

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

## 9.5 Damage to, or destruction of, of the Grapelots

Upon damage to, or destruction of, part or all of the Grapelots or Capital Works, the Sub-lessor and the Sub-lessee must use any insurance proceeds they receive in respect of such damage or destruction, to replace and reinstate the relevant Grapelots or Capital Works in accordance with any agreement or determination made under the Lease.

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# 10. USE OF BELLA VISTA

## 10.1 Permitted use

- (a) The Sub-lessee must only use Bella Vista in accordance with this Deed and Best Viticultural Practice, including:
  - (i) planting and tending Vines on the Bella Vista Subdivided Land and harvesting and processing the Table Grapes;
  - (ii) removing and selling or otherwise dealing in the Table Grapes and retaining all income from such sale or dealing.
- (b) Subject to paragraphs 10.1(c) and paragraph 4.6, the Sub-lessor agrees and acknowledges that:
  - (i) Sub-lessee may enter into Occupancy Agreements in its absolute discretion; and

- (ii) the Sub-lessee may grant sub-leases, licences or other occupancy rights to any other person over Bella Visa in its absolute discretion, provided that any such agreements do not grant any greater rights than those which are granted to the Sub-lessee under this Deed.
- (c) The Sub-lessee may only use Bella Vista in any other manner with the prior and express written consent of the Sub-lessor, which consent may be given or refused at the absolute discretion of the Sub-lessor.

## 10.2 Sub-lessee's duties

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

- (a) comply with Best Viticultural Practice and this Deed;
- (b) comply with all laws and regulations relating to the use and occupancy of the relevant Grapelots and Bella Vista;
- (c) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (d) maintain the relevant Grapelots in accordance with Best Viticultural Practice including, using soil management technique methods to reduce erosion and maintain soil quality;
- (e) repair and maintain all Capital Works to a standard equal to Best Viticultural Practice;
- (f) permit the Responsible Entity and the Sub-lessor and their employees, agents and contractors to enter upon the relevant Grapelots and Bella Vista from time to time with or without equipment for the purposes of observing the state of repair of the relevant Grapelots; and
- (g) permit the Responsible Entity and the Sub-lessor and their employees, agents and contractors to enter upon the relevant Grapelots and Bella Vista from time to time with or without equipment for the purpose of performing their obligations under this Deed and the Lease; and
- (h) preserve and do not do or omit to do anything which may affect in any way the Required Water Rights.

## 10.3 Indemnity

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

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

except where the loss of life and/or personal injury or damage to property is the result of an act of default or neglect by the Sub-lessor or the Sub-lessor's invitees.

## 10.4 Structural work

- (a) The Sub-lessee need not carry out structural work required to be undertaken on Bella Vista unless the work is required because of the negligence or default of:

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

## 11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

### 11.1 Assignment by Sub-lessee

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

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

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

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

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

### 11.4 Assignment or mortgage by Sub-lessor

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

- (a) the Sub-lessor gives the Sub-lessee 14 day's notice, before the Sub-lessor disposes of, or Encumbers, any interest in its rights under this document to a third party, or enters into any agreement to do so; and
- (b) the third party has agreed to, and acknowledged, the paramountcy of the Sub-lessee's and the Grower's rights, as described in paragraph 7.1(d) and clause 12.5.

### 11.5 Delegation

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

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

## 12. DEFAULT AND RE-ENTRY

### 12.1 Default by Sub-lessee

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

- to rectify any such default; and
- (2) taken all reasonable steps to implement such plan of remedial action; and
- (B) the Sub-lessee implements the whole plan of remedial action as soon as reasonably practicable.
- (b) The written notice referred to in paragraph 12.1(a) must specify the breach and request the breach to be remedied.

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

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

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

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

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

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

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

The Sub-lessor's rights under this clause 12 are subject to the rights granted by the Sub-lessee to the Growers under the Occupancy Agreements in accordance with this Deed.

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# **13. TERMINATION**

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

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

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

- (a) The Sub-lessee may terminate this Deed by notice in writing to the Sub-lessor immediately, if:
  - (i) the Sub-lessor goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Sub-lessor or any part of its undertaking;
  - (ii) the Sub-lessor ceases to carry on business;
  - (iii) the Sub-lessor fails or neglects to make a payment within the time



required under this Deed and such amount is not paid within 60 days after the Sub-lessee has served a written notice on the Sub-lessor requiring the Sub-lessor to pay the amount; or

- (iv) the Sub-lessor is in default of any material obligation under this Deed and such default continues for a period of 60 days after receipt by the Sub-lessor of written notice from the Sub-lessee specifying the default and requesting that the default be remedied, except where the Sub-lessor:

(A) has within the period of 60 days after receipt of the written notice from the Sub-lessee:

- (1) advised the Sub-lessee of a plan of remedial action to rectify any such default; and  
(2) taken all reasonable steps to implement such plan of remedial action; and

(B) the Sub-lessor implements the whole plan of remedial action as soon as reasonably practicable.

- (b) Damage to, or destruction of, part or all of the Grapelots, by fire or any other cause whatsoever, will not entitle the Sub-lessee to terminate this Deed, except as set out in clause 13.3.

- (c) Upon damage to, or destruction of, part or all of the Grapelots, the Sub-lessor and the Sub-lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Grapelots in accordance with any agreement or determination made under the Lease.

### 13.3 Damage to Vineyard

If, in respect of the Vineyard:

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

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

### 13.4 Effect of Termination

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

### 13.5 Attorneys

Upon termination of the whole this Deed under clauses 13.1 or 13.2, by the Sub-lessor or the Sub-lessee, as the case may be, the party terminating this Deed is hereby appointed by the other as its attorney to do all things and sign all documents necessary

to give effect to the termination under this clause 13 of the whole or part of this Deed, as the case requires.

### **13.6 Limited right of termination**

Except as expressly provided in this clause 13, a party may not terminate or rescind the whole or part of this Deed and the Sub-lessor will not be entitled to re-enter Bella Vista or forfeit this Deed at any time prior to the expiration of the Term.

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## **14. LEGAL COSTS**

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

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## **15. NOTICES**

### **15.1 Form of Notice**

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

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

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

### **15.2 Receipt of Notice**

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

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

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## **16. PROPER LAW**

This Deed is governed by and to be interpreted in accordance with the laws of New South Wales and the parties to this Deed 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 Deed or the transactions contemplated by this Deed.

## 17. SEVERANCE

This Deed, so far as possible, must be constructed to give validity to all of its provisions. Any provision found to be prohibited by law will be ineffective so far as it is prohibited without invalidating any other part of this Deed.

## 18. ENTIRE AGREEMENT

Each party acknowledges that this Deed is not entered into in reliance on any representation or warranty, expressed or implied, whether oral, in writing or contained in any brochure, advertisement or otherwise, except as may be specifically set out in this Deed.

## 19. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Deed is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply 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.
- (c) The GST payable under paragraph 19(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Deed.
- (d) The right of a Supplier to payment under this clause 19 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this 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 19(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Deed, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (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, 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 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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## **20. STATUTORY PROVISIONS**

### **20.1 General**

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

### **20.2 Conveyancing Act 1919 (NSW)**

Without limiting generality of clause 20.1, the parties acknowledge and agree that sections 84, 84A and 85 of the Conveyancing Act 1919 (NSW) do not apply to this Deed.

### **20.3 Agricultural Tenancies Act (NSW)**

Without limiting generality of clause 20.1,

- (a) the parties acknowledge and agree that in determining the Rent and other terms of this Deed they have taken into account improvements that may be made by the Sub-lessee to Bella Vista leased during the Term;
- (b) the Sub-lessee agrees that it will not make any claim in respect of any improvements effected by the Sub-lessee to Bella Vista leased during the Term.

### **20.4 Amendments required by the Land and Property Information Office (NSW)**

If the Land and Property Information Office (NSW) rejects this Deed, the parties authorise the Sub-lessor and the Sub-lessor's solicitors to amend this Deed so that registration of this Deed can be effected.

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## **21. FURTHER ASSURANCES**

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

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## **22. DISPUTES**

- (a) If any dispute, question or difference of opinion arises out of or in connection with this Deed then the party asserting the dispute must give the other parties a notice of dispute in writing adequately identifying and providing details of the dispute (the "Notice of Dispute").
- (b) Within 7 days after service of the Notice of Dispute the parties must confer on a "without prejudice" basis to attempt to resolve the dispute.
- (c) If the dispute is not settled promptly by the parties in accordance with paragraph 22(b), any party may by notice in writing to the other parties require that the matter be referred to a person nominated by the President for the time

being of Law Society of NSW at a place in Sydney and the nominee's determination will be final and binding and he must be deemed to be acting as an expert and not as an arbitrator.

## 23. PLANT BREEDERS' RIGHTS

### 23.1 The licence grant

- (a) The Sub-lessor grants the Sub-lessee the following rights, subject to the terms of this Deed and the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement:
  - (i) the right to plant and grow the Licensed Vines on the Bella Vista Subdivided Land;
  - (ii) the non-exclusive right to process and sell the Licensed Fruit in the Licensed Territory.
- (b) The Sub-lessee 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 23 are subject to the rights granted by Andriske to 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 Andriske Exclusive Licence Agreement to the Responsible Entity 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 Sub-lessee agrees and acknowledges that the Sub-lessor specifically withholds from the Sub-lessee the following:
  - (i) any right or licence to Propagate the Licensed Vines;
  - (ii) the ownership of the PBRs and intellectual property in the protected product,
 as these rights are retained by Andriske.
- (d) The Sub-lessor consents to:
  - (i) the Sub-lessee in its absolute discretion sub-licensing the rights granted to it by the Sub-lessor under the Occupancy Agreements; and
  - (ii) the Sub-lessee in its absolute discretion granting sub-licences or other rights in relation the rights granted to the Sub-lessee under this clause 23 to any other person who uses or occupies the Bella Vista Subdivided Land,

provided that any such agreements do not grant any greater rights than those which are granted to the Sub-lessee under this clause 23.

## 23.2 Marketing

The Sub-lessee must use the cultivar name of the Licensed Vines and Licensed Fruit given by Andriske to the Responsible Entity in its marketing.

## 23.3 Quality assurance

- (a) The Sub-lessee agrees to ensure that all Licensed Fruit it or Growers sell to others:
  - (i) is true to cultivar;
  - (ii) has been grown and handled in a manner consistent with good 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 the 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 the Sub-lessor giving the Sub-lessee reasonable notice in writing, the Sub-lessee agrees that the Responsible Entity's, the Sub-lessor's and Andriske's designated employees or agents may inspect any or all growing facilities, fields and/or storage facilities on the Bella Vista Subdivided Land 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 23.3(a).
- (c) The Sub-lessor, the Responsible Entity or Andriske and their authorised agents have the right to seek and discover and examine all the Licensed Vines or Licensed Fruit, and while accompanied by the Sub-lessee 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 the Sub-lessor, the Responsible Entity or Andriske giving the Sub-lessee reasonable notice in writing, the Sub-lessor, the Responsible Entity or Andriske is authorised to enter the Bella Vista Subdivided Land, but must take reasonable care in so doing.
- (d) The Sub-lessee must abide by all mandatory local, regional and national government laws, rules and regulations that govern the growing of the Licensed Vines and sale and distribution of the Licensed Fruit.

## 23.4 Intellectual property rights

- (a) The Sub-lessee 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 Sub-lessee must not challenge the validity of any intellectual property rights, including PBRs, in relation to the Licensed Vines or Licensed Fruit.
- (c) The Sub-lessee 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 Sub-lessee 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 fruit demonstrating Essential Characteristics of the Protected Product; or

(iii) any Hybrid of the items specified in paragraphs 23.4(d)(i) and (ii),

will be the property of Andriske notwithstanding that the same may constitute a new cultivar.

(e) The Sub-lessee must notify the Sub-lessor, the Responsible Entity and Andriske immediately it becomes aware of the existence of any item specified in paragraph 23.4(d).

### 23.5 Labelling and packaging

(a) The Sub-lessee must, before the delivery of Licensed Fruit sold to any third party, attach in a form reasonably approved by Andriske, to each package, bundle or container of fruit, a durable and legible label or tag denoting:

(i) the correct cultivar name;

(ii) any plant variety protection number or identifier (if applicable); and

(iii) a warning that unlicensed sale or propagation is prohibited.

(b) The Sub-lessee must give notice to the Sub-lessor, the Responsible Entity 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.

(c) The Sub-lessee 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 may be nominated by the Sub-lessor, the Responsible Entity and Andriske, in consultation with the Sub-lessee.

### 23.6 Turnover Rent

(a) The Sub-lessee must pay the Turnover Rent to the Sub-lessor for each Quarter within 21 days of the end of the Quarter.

(b) Without prejudice to the Sub-lessor's rights to terminate this Deed under clause 13.1 of this Deed, in the event payment of the total amount of the Turnover Rent is not received by the Sub-lessor when due, and such delay in payment is not due to any act or fault of the Sub-lessor, the Sub-lessee must pay interest at the Default Rate on the unpaid Turnover Rent from the date such unpaid Turnover Rent was due for payment until paid.

(c) The Sub-lessee must submit a signed and dated Gross Sales report to the Sub-lessor at the end of each Quarter, in the form reasonably specified by the Sub-lessor from time to time.

### 23.7 Planting and re-planting of Vines

The Sub-lessee agrees and acknowledges that all planting and re-planting of the Licensed Vines must be undertaken in accordance with the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement.

### 23.8 Sales agents

(a) The Sub-lessee nominates Grapecorp Management Pty Ltd (ACN 105 995 195), and through Grapecorp Management Pty Ltd, The Grape House Pty Ltd (ACN 084 438 951), as the initial sales agents of the Sub-lessee for all

Licensed Fruit grown by the Sub-lessee or Growers.

- (b) The Sub-lessee must notify the Sub-lessor immediately of any change in the appointment of a Sale Agent.

## 23.9 Books and Records

- (a) The Sub-lessee must 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 the 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 Sub-lessee's Records, including those of any Subsidiary or Related Body Corporate, must be made available for inspection and audit by the Sub-lessor, the Responsible Entity or Andriske or their designated employees or agents during regular business hours for the purpose of verifying the accuracy of Sub-lessee's gross sales of the Licensed Fruit in accordance with paragraph 23.9(c).
- (c) Upon giving reasonable notice, the Records must be made available for inspection by the Sub-lessor, the Responsible Entity and Andriske or their designated employees or agents.
- (d) The Sub-lessee must provide such verification of any matter disclosed in the Records as may be reasonably required by the Sub-lessor, the Responsible Entity and Andriske or their designated employees or agents.
- (e) The Sub-lessee must cause the books and records of any manager employed by it and any Sales Agent, including those of any Subsidiary or Related Body Corporate which relate to the sale of Licensed Fruit, and the price received for such sale, under this Deed (**Third Party Records**), to be made available for inspection and audit by the Sub-lessor, the Responsible Entity and Andriske or their designated employees or agents during regular business hours for the purpose of verifying the accuracy of the Sub-lessee's gross sales of the Licensed Fruit.
- (f) Upon giving reasonable notice, the Third Party Records must be made available for inspection by the Sub-lessor or its designated employees or agents.
- (g) The manager and or any Sales Agent must provide such verification of any matter disclosed in the Third Party Records as may be reasonably required by the Sub-lessor, the Responsible Entity and Andriske or their designated employees or agents.
- (h) The Sub-lessee must provide the Sub-lessor, the Responsible Entity and Andriske or their representatives or agents, upon receiving prior and reasonable written notice, with the location of each of the greenhouses, screen houses, laboratories, cold storage and field plantings used by or for the benefit of the Sub-lessee containing the Licensed Vines or Licensed Fruit and agrees to use its best endeavours to procure the manager of the relevant facility or field to permit the Sub-lessor and its designated employees or agents, during ordinary business hours, to inspect and audit such facilities and plantings for the purpose of verifying the Sub-lessee's reports, books and records concerning the Licensed Vines and Licensed Fruit.



## 23.10 Indemnity and infringement

- (a) The Sub-lessee agrees to indemnify and keep indemnified, hold harmless, and defend the Sub-lessor and its officers, employees and agents against any and all claims, suits, losses, damages, costs, fees and expenses suffered by the Sub-lessor resulting from or arising out of any act or omission by the Sub-lessee under this clause 23.
- (b) Without limiting the generality of paragraph 23.10(a), the Sub-lessee:
  - (i) must not make or publish or cause to be made or published any false, misleading, deceptive or mis-descriptive statement or information in relation to the Licensed Vines or Licensed Fruit which may give rise to liability of the Sub-lessor;
  - (ii) indemnifies the Sub-lessor against any claim, liability, cost and expense which may be incurred or sustained by the Sub-lessor arising or by reason of any false, misleading, deceptive or mis-descriptive statement or information made by the Sub-lessee in relation to the Licensed Vines or Licensed Fruit.
- (c) The Sub-lessor will at all times indemnify and keep indemnified the Sub-lessee and its sub-licensees and the officers, employees and agents of the Sub-lessee and its sub-licensees (in this paragraph 23.10(c) referred to as "those indemnified") from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of in connection with or in respect of:
  - (i) any breach of this clause 23 by the Sub-lessor;
  - (ii) any of the warranties given by the Sub-lessor under paragraph 23.15(a) proving to have been false, misleading or inaccurate when made.
- (d) The Sub-lessee and the Sub-lessor each agree to notify each other promptly of any suspected propagation, sale or use of the Licensed Vines or Licensed Fruit, or any use of the Licensed Vines or Licensed Fruit from Essentially Derived Varieties, by firms or persons not duly licensed to Propagate or sell or use such material. Notification of any such suspected infringement must include all details known to the party providing the information, such as name and address of the suspected infringer, location, size of area planted, number of plants propagated or sold or any other information that would enable the other party to investigate and terminate such infringement.
- (e) The Sub-lessee agrees to co-operate with the Sub-lessor in any infringement proceedings instituted by the Sub-lessor provided the Sub-lessor pays or reimburses the Sub-lessee's costs and expenses of doing so.
- (f) Nothing this clause 23 is to be construed as conferring upon the Sub-lessee any right to bring proceedings for infringement relating to the Licensed Vines or Licensed Fruit, and Sub-lessee acknowledges that it does not have any rights in relation to the control of any such proceedings.
- (g) Nothing this clause 23 is to be construed as an obligation for the Sub-lessor, the Responsible Entity or Andriske to bring or prosecute actions or proceedings against third parties for infringement of the Sub-lessor's, the Responsible Entity's or Andriske's rights.
- (h) Where proceedings are commenced against the Sub-lessee in respect of any

matter involving any breach of the warranties referred to in paragraph 23.10(c)(ii), the Sub-lessee may, on leave being granted, withdraw from the proceedings and the Sub-lessor, the Responsible Entity and/or Andriske will, in their own name and at their own expense, conduct the proceedings.

### 23.11 Further assurances

The Sub-lessee must:

- (a) sign such documents and do all such acts, matters and things as may be reasonably required by the Sub-lessor to enable the Sub-lessor to comply with its obligations under the Lease;
- (b) not by act or omission cause the Sub-lessor to be in breach of its obligations under the Lease.

### 23.12 Use of Names

- (a) The use of the names designated by Andriske, variations of such names or reference to such names by the Sub-lessee in any advertisement, labelling or publicity release relating to the Licensed Vines or the Licensed Fruit will only be allowed in the following manner:
  - (i) "Name of Sub-lessee" is licensed in Licensed Territory by Andriske for the sale of the Licensed Fruit variety "Name of Variety";
  - (ii) in respect of describing the origin and characteristics of the Licensed Vines or Licensed Fruit for advertising purposes, the Sub-lessee must use the Andriske's name only to provide factual and truthful information and must not use the name to imply endorsement by the Andriske of either the Sub-lessee nor endorsement of the performance of the Licensed Vines or Licensed Fruit.
- (b) To ensure Andriske's approval of proposed wording of the Sub-lessee's advertising text or use of Andriske's name, the Sub-lessee may submit such text to the Sub-lessor for prior written approval.
- (c) Should the Sub-lessee use any advertisement relating to the Licensed Vines or Licensed Fruit or to the Sub-lessor, the Responsible Entity or Andriske, which the Sub-lessor, the Responsible Entity or Andriske, in good faith, finds objectionable on reasonable grounds, the Sub-lessee agrees promptly to stop the use of such advertisement upon written notification by the Sub-lessor or Andriske.
- (d) If any trade mark of or 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 Sub-lessee uses the trade mark under licence from Andriske.
- (e) All use of the Andriske trade marks will inure to Andriske.

### 23.13 Undertakings of the Sub-lessee

- (a) The Sub-lessee must:
  - (i) well and truly cultivate manure farm and irrigate all the Licensed Vines in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practices and industry practices for similar vines;

- (ii) in all cases adopt and pursue in the most prompt and careful manner a most effectual means for arresting combating reducing or eradicating pests or diseases having regard to Best Viticultural Practices;
  - (iii) undertake all necessary trellising and pruning of the Licensed Vines at proper times and develop and protect and care for the Licensed Vines;
  - (iv) 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;
  - (v) exercise diligence in the growing of and sale of the Licensed Fruit in the Licensed Territory;
  - (vi) deliver all statements and reports required by this clause 23;
  - (vii) not use the Licensed Vines or Licensed Fruit for purposes not expressly contemplated by this Deed;
  - (viii) not violate or fail to keep or perform any obligation imposed under this clause 23;
  - (ix) 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 the Licensed Vines or Licensed Fruit as may be in force in Licensed Territory.
- (b) Termination of this Deed will not relieve the Sub-lessee from its obligation to pay any Turnover Rent then due and owing or Turnover Rent that may accrue subsequent to such cancellation upon the Sub-lessee's disposition of existing inventory of Licensed Fruit pursuant to this clause 23.

### 23.14 Disposition of Inventory and Forfeiture of Other Rights

- (a) Upon the lawful termination of this Deed by either party, the Sub-lessee must provide the Sub-lessor with a written inventory listing the quantity of the Licensed Vines and Licensed Fruit in the possession of the Sub-lessee and Growers.
- (b) The Sub-lessee and Growers must dispose by sale or otherwise of the existing inventory of such Licensed Fruit within 3 calendar months from the date of notice of cancellation provided however that such disposition will be subject to this clause 23.
- (c) Should this Deed be lawfully terminated by either the Sub-lessor or the Sub-lessee, the Sub-lessee forfeits all right to use, and agrees to cease all such use, of Andriske's name and forfeit all other rights granted under this clause 23 other than for the purpose of complying with paragraphs 23.14(a) and 23.14(b).

### 23.15 Warranty and Acknowledgments

- (a) The Sub-lessor warrants to the Sub-lessee that:
  - (i) it has the right, authority and capacity to grant the licence and rights granted under this clause 23;
  - (ii) the exercise by the Sub-lessee of its rights under this clause 23 will

not infringe the rights of any other person.

- (b) To the extent permitted by law, the Sub-lessor 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 the Sub-lessor will have no liability to the Sub-lessee or the Sub-lessee's or Growers' customers on account of any defect or failure of the Licensed Vines or Licensed Fruit.
- (c) All other conditions and warranties which would, or may, but for this paragraph 23.15(c), be implied (whether by statute, law, trade usage or otherwise) into this Deed are expressly excluded.
- (d) Nothing in this Deed 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, the Responsible Entity or the Sub-lessor other than such limited rights granted to the Sub-lessee in this Deed; or
  - (ii) an obligation to furnish any know-how in relation to the Licensed Vines or Licensed Fruit, save as expressly provided in this clause 23.
- (e) The Sub-lessee agrees and acknowledges that:
  - (i) it has relied on its own viticultural knowledge and has taken expert advice as to the suitability, fitness of the Licensed Vines or the Licensed Fruit, the suitability of the district and soil in which the Licensed Vines are to be planted or otherwise and that no representations whatsoever other than are set out in this Deed, have been made by the Sub-lessor 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 23 have not been viticulturally assessed and the genetic stability of such cultivars has not been established.

## 23.16 Further Restrictions

- (a) The Sub-lessee must not:
  - (i) Propagate or asexually reproduce the Licensed Vines or Licensed Fruit; and
  - (ii) sell, transfer, lease or otherwise dispose of the Licensed Vines or Licensed Fruit other than on the terms imposed on the Sub-lessee under this clause 23.
- (b) The Sub-lessor must not create any Encumbrances over the rights granted to the Sub-lessee under this clause 23 ranking in priority to the interests of the Sub-lessee, TSL or the Growers who may sub-lease, licence or otherwise occupy the Bella Vista Subdivided Land or the Grapelots, as the case may be, in the future, including the rights and interests of the Sub-lessee and the Growers under:
  - (i) this Deed; and
  - (ii) the Occupancy Agreements,

whether those rights exist as at date of this Deed or arise subsequently.

### 23.17 Expiry of Term

The rights granted under this clause 23 remain in full force and effect for the Term, after which the Sub-lessee and Growers must immediately discontinue selling the Licensed Fruit.

### 23.18 Definitions

In this clause 23, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

<b>Andriske:</b>	Andriske Research Pty Ltd (ACN 006 565 260);
<b>Andriske Exclusive Licence Agreement:</b>	means the exclusive licence agreement between Andriske as licensor and the Responsible Entity and Timbercorp as licensees made on 9 October 2003 (as varied by a deed of variation made on 12 November 2004);
<b>Andriske Non-Exclusive Licence Agreement:</b>	means the non-exclusive licence agreement between Andriske as licensor and the Responsible Entity and Timbercorp as licensees made on 12 November 2004;
<b>Essential Characteristics:</b>	has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ;
<b>Default Rate:</b>	the rate from time to time prescribed by the <i>Penalty Interest Rates Act 1983 (Vic)</i> ;
<b>Gross Sales:</b>	the gross price charged (exclusive of GST) for the Licensed Fruit sold on an arms' length basis at the Shed Door Price, whether by the Sub-lessee or a Grower;
<b>Hybrid:</b>	has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ;
<b>Licensed Fruit:</b>	all Table Grapes grown on the Licensed Vines whether by the Sub-lessee or Growers, processed or unprocessed;
<b>Licensed Products:</b>	<p>(a) White Seedless Grape Cultivar known as "Stanley Seedless" Vines and Table Grapes from such "Stanley Seedless" Vines (Plant Breeder's Rights Application No. 1996/046 and granted 25th May, 2002, and Numbered 2010);</p> <p>(b) Red Seedless Grape Cultivar known as "Red Rob" Vines and Table Grapes from such "Red Rob" Vines (Plant Breeder's Rights Application No. 1998/144 and granted 11th June, 2003 and Numbered 2263).</p> <p>(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);</p>
<b>Licensed Territory:</b>	<p>(a) <u>For planting of Licensed Vines:</u> The Costa Land.</p> <p>(b) <u>For Sale of Licensed Fruit:</u> (i) For export quality - The World;</p>

	(ii) For less than export quality – Australia;
<b>Licensed Vines:</b>	all Vines which are Licensed Products;
<b>PBRs:</b>	plant breeders rights;
<b>Propagate:</b>	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;
<b>Protected Products:</b>	<p>(a) Plant Breeders Rights Application No. 1996/046 in respect of the White Seedless Grape Cultivar known as "Stanley Seedless" and granted 25th May, 2002, and Numbered 2010;</p> <p>(b) Plant Breeders Rights Application No. 1998/144 in respect of the Red Seedless Grape Cultivar known as "Red Rob" and granted 11th June, 2003, and Numbered 2263; and</p> <p>(c) Plant Breeders Rights Application No. 1996/018 in respect of the "Golden Globe" Grape cultivar and granted 27th March, 2002, and Numbered 1910;</p>
<b>Related Body Corporate:</b>	has the same meaning as in the Corporations Act;
<b>Sales Agents:</b>	a sales agent nominated by the Sub-lessee in accordance with clause 23.8;
<b>Shed Door Price:</b>	<p>(a) the sale price of the Licensed Fruit; less</p> <p>(b) any cost incurred by the Sub-lessee, TSL or the Grower, as the case requires, 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 by the Sub-lessee or the Grower, as the case requires, at an invoice price less than that charged to persons negotiating at arms' length, there will be substituted for the purpose of calculation of payments due under this Deed, such invoice price (exclusive of GST) as would be charged in any arms' length transaction;</p>
<b>Subsidiary:</b>	has the same meaning as in the Corporations Act;
<b>Turnover Rent:</b>	3% of the Gross Sales of the Licensed Fruit for which the Sub-lessee or the Grower, as the case requires, has received payment during the Quarter.

## 24. THE RESPONSIBLE ENTITY

### 24.1 Capacity of the Responsible Entity

The parties acknowledge that:

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

## 24.2 Benefit to the Responsible Entity

The parties to this Lease acknowledge and agree that every agreement and condition in this Deed for the benefit of the Responsible Entity benefits the Responsible Entity personally and in its capacity as trustee under the Orchard Trust Constitution.

## 24.3 Limitation of Liability

The parties agree that the Responsible Entity will in no circumstances be required to satisfy any liability owed to the Sub-lessor or Sub-lessee or to any party claiming through the Sub-lessor or Sub-lessee for breach of any obligation pursuant to, or in respect of, this Deed out of any funds, property or assets other than the assets held as the trustee under the Orchard Trust Constitution under the Responsible Entity's control and in its possession and available to be properly resorted to by the Responsible Entity, except that the limitation contained in this clause 24.3 does not apply in the case of any fraud or breach of trust on the part of the Responsible Entity.

## 24.4 Rights of access

The Responsible Entity:

- (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 Bella Vista along any road or track or any neighbouring land owned or occupied by the Responsible Entity, the Sub-lessor, the Sub-lessee or Growers which gives access to the Citrus Land and Vacant Land;
- (b) is entitled to full and free access with or without vehicles to Bella Vista for the purpose of accessing neighbouring land owned or occupied by the Responsible Entity, the Sub-lessor, the Sub-lessee or Growers; and
- (c) may at its own expense erect and maintain a sign on Bella Vista detailing such matters as the Responsible Entity reasonably considers appropriate.

## 25. SURRENDER

The Sub-lessee agrees with the Sub-lessor to execute a surrender of lease ("Surrender of Lease") in accordance with the following provisions:

- (a) the Surrender of Lease is to be prepared by the solicitor for the Sub-lessor and submitted to the solicitor for the Sub-lessee for approval and, if approved, for execution by the Sub-lessee;
- (b) the Surrender of Lease must be submitted to the solicitor for the Sub-lessee within 28 days after registration of a plan of subdivision to create the Bella Vista Subdivided Land of approximately 295 hectares in terms of the Plan comprising Schedule 1;
- (c) the land to be the subject of the Surrender of Lease must be all of those lands leased hereunder with the exception of the Bella Vista Subdivided Land of approximately 295 hectares;
- (d) all of the costs and disbursements of both the Sub-lessor and Sub-lessee in

connection with the preparation and execution and registration of the Surrender of Lease must be paid by the Sub-lessor;

- (e) to the extent that it is appropriate to vary the terms of this Sub-Lease (otherwise than in respect of the description of the leased property) the parties must execute and register a Variation of Sub-Lease, such document to be prepared by the Sub-lessor and approved by the Sub-lessee with all costs and disbursements relating to the preparation, execution and registration of the Variation of Sub-Lease being met by the Sub-lessor.

## **26. PAYMENTS**

### **26.1 Interest**

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

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

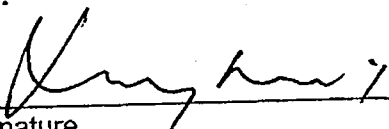
### **26.2 Set-off**

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

**Executed as a Deed:**



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

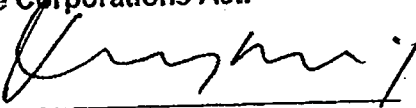
  
\_\_\_\_\_  
Signature  
John Vaughan

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

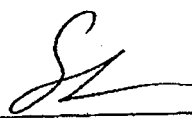
  
\_\_\_\_\_  
Signature  
Sol Rabinowicz

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

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

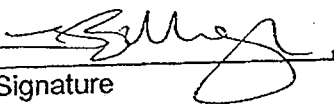
  
\_\_\_\_\_  
Signature  
John Vaughan


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

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

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

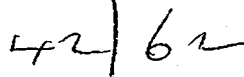
EXECUTED by ORCHARD  
INVESTMENTS MANAGEMENT  
LIMITED in its capacity as  
responsible entity for the  
TIMBERCORP ORCHARD TRUST  
in accordance with section 127 of  
the Corporations Act:

  
\_\_\_\_\_  
Signature  
TRISTAN MOTT  
\_\_\_\_\_  
Full Name  
Director

  
\_\_\_\_\_  
Signature  
Sol Rabinowicz  
\_\_\_\_\_  
Full Name  
Director/~~Secretary~~

## SCHEDULE 1

### Plan (Clause 26)



## ANNEXURE A

## BELLA VISTA LEASE

This is Annexure A referred to in the lease made between Carmelo Costa and Paul Costa,  
as Lessor, and Orchard Investments Management Limited (ACN 105 684 231)

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# LEASE – 2005 SUBDIVISION LAND (600 plantable acres)

## Lease

The Parties Agree as Follows:

## 1. BACKGROUND, DEFINITIONS AND INTERPRETATION

### 1.1 Background

- (a) The Lessor is the registered proprietor of the Land.
- (b) The Lessor wishes to grant a lease of the Land to the Lessee on the terms and conditions contained in this Lease pending settlement of the acquisition of part of the Land by the Lessee in accordance with the Contract of Sale.
- (c) The Lessor consents to the Lessee entering into the Occupancy Agreements.

### 1.2 Definitions

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

<b>Best Horticultural Practice:</b>	sound horticultural and environmental practices and industry practices for similar vineyards;
<b>Business Day:</b>	any day other than a Saturday, Sunday or a public holiday in Sydney, New South Wales;
<b>Capital Works:</b>	means the infrastructure and capital works erected or to be erected on the Land including, without limitation, an internal irrigation system, trellis infrastructure, vines and Irrigation Infrastructure;
<b>Commencement Date:</b>	the date of this Lease;
<b>Constitution:</b>	the constitution of a Project;
<b>Contract of Sale:</b>	means the contract of sale between the Lessor as vendor and the Lessee as purchaser for the sale of Lot 2 of approximately 295 hectares to be created from a sub-division of Lot 2 DP 1067588, as shown in the plan attached as Schedule 2;
<b>Contract Land:</b>	means the land the subject of the Contract of Sale together with the Capital Works and other improvements installed on that land from time to time;
<b>Corporations Act:</b>	the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations;
<b>Encumbrance:</b>	in relation to any property means anything which: <ul style="list-style-type: none"> <li>(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or</li> </ul>



	<p>(b) prevents, restricts or delays the exercise of any right over the property or the registration by any person of any interest in or right over the property,</p> <p>and includes a Security Interest;</p>
<b>Financial Year:</b>	<p>the 12 month period ending on the last day of June with the exception of:</p> <p>(a) the first Financial Year which commences on the Commencement Date and ends on the day before the first day of the next Financial Year; and</p> <p>(b) the last Financial Year which commences on the day after the last day of the last preceding Financial Year and ends on the day of termination of the Project;</p>
<b>Government Body:</b>	<p>(a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;</p> <p>(b) any public authority constituted by or under a law of any country or political sub-division of any country; and</p> <p>(c) any person deriving a right directly or indirectly from any other Government Body;</p>
<b>Grower:</b>	each several person who becomes a member of a Project from time to time and "Growers" has a corresponding meaning.
<b>GST:</b>	has the same meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Law:</b>	the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended);
<b>GST Rate:</b>	the rate of GST under the GST Law;
<b>Irrigation Infrastructure:</b>	water pumps, mainlines, dams and other irrigation infrastructure situated, constructed or to be situated, constructed or installed on the Contract Land or on other land for the purpose of servicing the Contract Land;
<b>Land:</b>	the whole of the land described in Schedule 1 of this Lease together with the Capital Works and other improvements installed on the land from time to time;
<b>Occupancy Agreements:</b>	<p>the leases, sub-leases, licences or other occupancy rights proposed to be granted over the Land by:</p> <p>(a) the Lessee to Timbercorp;</p> <p>(b) Timbercorp to a responsible entity (in their personal capacity) or manager of a Project;</p> <p>(c) a responsible entity (in their personal capacity) or manager of a Project to Growers in the Project,</p> <p>as they may from time to time be amended in accordance with their terms and conditions;</p>
<b>Orchard Trust:</b>	the Timbercorp Orchard Trust (ARSN 106 557 297);

<b>Orchard Trust Constitution:</b>	the constitution of the Orchard Trust;
<b>Project:</b>	one or more table grape managed investment schemes to be conducted by a sub-lessee or licensee of the Lessee or Timbercorp on the Land, whether registered or unregistered, including table grape managed investment schemes promoted by Timbercorp Securities Limited;
<b>Responsible Entity:</b>	means the responsible entity for the time being of the Orchard Trust;
<b>Security Interest:</b>	<p>an interest or right:</p> <p>(a) reserved over property; or</p> <p>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</p> <p>by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;</p>
<b>Term:</b>	<p>means the period of this Lease commencing on the Commencement Date and ending on the earlier of:</p> <p>(a) the date on which the Lessee becomes the registered proprietor of the Contract Land;</p> <p>(b) 30 June 2020; and</p> <p>(c) the exercise by Timbercorp of the option described in clause 3.3;</p>
<b>Timbercorp:</b>	means Timbercorp Limited ACN 055 185 067;
<b>Vinelot:</b>	each separate identifiable area of the Contract Land comprising part of a Grapelot which is an area of approximately 0.25 acres of Vines (and comprising approximately of 270 vines) on the Contract Land;
<b>Vines:</b>	the Vines growing or to be grown on the Contract Land; and
<b>Vineyard:</b>	the table grape vineyard or vineyards established or to be established on the Contract Land.

## 1.2 Interpretation

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

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;

- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;
- (e) a reference to a person includes a firm, body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes the person's legal personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns and transferees;
- (g) a reference to a gender includes the other genders;
- (h) a reference to a clause, recital or schedule is to a clause, recital or schedule in or to this Lease;
- (i) if a party comprises two or more persons, this Lease binds them jointly and each of them severally; and
- (j) the word "**include**" or "**includes**" is to be read as if the expression "**(but is not limited to)**" immediately followed such word and the word "**including**" is to be read as if the expression "**(but not limited to)**" immediately followed such word.

### 1.3 Headings

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

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## 2. CAPACITY AND LIABILITY OF THE LESSEE

### 2.1 Capacity of Lessee

The parties acknowledge that:

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

### 2.2 Benefit to Lessee

The parties to this Lease acknowledge and agree that every agreement and condition in this Lease is for the benefit of the Lessee and benefits the Lessee personally and in its capacity as Responsible Entity under the Orchard Trust Constitution.

### 2.3 Limitation of Liability

The parties agree that the Lessee will in no circumstances be required to satisfy any liability owed to the Lessor or to any party claiming through the Lessor for breach of any obligation pursuant to, or in respect of, this Lease out of any funds, property or assets other than the assets held as the Responsible Entity under the Orchard Trust Constitution under the Lessee's control and in its possession and available to be properly resorted to by the Lessee, except that the limitation contained in this clause 2.3 does not apply in the case of any fraud or breach of trust on the part of the Lessee.

---

### 3. GRANT AND TERM OF LEASE

#### 3.1 Grant and Term of Lease

The Lessor grants to the Lessee a lease of the Land together with all Capital Works erected on the Land from time to time for the Term in accordance with the terms and conditions of this Lease.

#### 3.2 Representations

The Lessor represents and warrants that:

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

#### 3.3 Exercise of Timbercorp option

The parties agree that this Lease shall ipso facto terminate on the exercise of the option granted on or about the date hereof between the Lessors and Timbercorp.

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### 4. MAINTENANCE OF LAND AND VINEYARD

#### 4.1 Use of the Land

The Lessee may:

- (a) procure the establishment of a Vineyard on the Contract Land and use the Contract Land or any part of the Contract Land for the growing of table grapes;
- (b) sub-lease or licence the Contract Land or any part of the Contract Land in accordance with clause 9.2 for use in a Project or consent to any such transaction.

#### 4.2 Cultivation and maintenance obligations in relation to the Vineyard

To the extent that the Lessee uses the Contract Land or any part of it for the cultivation of table grapes, the Lessee, at its cost and expense, must cultivate, maintain and manage the Vines, the Vinelots and the Vineyard on the Contract Land in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice including the following, having regard to good workmanlike and commercially responsible standards and Best Horticultural Practice:

- (a) **Irrigation and fertilisation:** provide the Vineyard with necessary irrigation water, irrigate the Vineyard and apply fertilisers and nutrients at the appropriate times. This includes efficient irrigation application management and salinity and groundwater monitoring and control;
- (b) **Weed control:** ensure no impediment to Vine development and table grape production;
- (c) **Vermin:** keep the Vineyard free from Vermin;

(d) **Insects and Diseases:** use its reasonable endeavours to keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines;

(e) **Destruction:** destroy any Vines which a reasonable horticulturist would destroy having regards to the best interests of the remaining unaffected Vines.

**Other horticultural activities:** The Lessee may otherwise use and maintain the Vines, the Vinelots, the Vineyard and the Contract Land in accordance with the constitution, the occupancy agreements and any management agreements relating to a Project.

#### 4.3 Licence to the Lessor

For as long as the Land comprises more than the Contract Land, the Lessee shall have no obligations to farm, crop, graze, develop or maintain that part of the Land other than the Contract Land and the Lessee licences the Lessor to come onto such land to farm, crop, graze, develop or maintain it.

#### 4.4 Acknowledgments by the Lessor

The Lessor acknowledges and agrees with the Lessee that during Term of this Lease the table grapes growing on the Contract Land and all rights, benefits and credits derived from the table grapes will be, and will remain, the property of one or more of:

- (a) the Lessee
- (b) Timbercorp;
- (c) any manager or responsible entity of a Project;
- (d) any sub-lessee or licensee of all or part of the Contract Land;
- (e) the Growers; or
- (f) any other person or entity deriving title to the table grapes through any of the persons described in paragraphs 4.4(a) to (e).

---

### 5. RENT PAYMENTS

#### 5.1 Rent

- (a) The Lessee must pay to the Lessor as rent an amount of \$1.00 per annum for each Financial Year during the Term.
- (b) The Lessor acknowledges receipt of the full amount of the rent payable under this Lease.

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### 6. LESSOR'S OBLIGATIONS AND RIGHTS

#### 6.1 Obligations

The Lessor must:

- (a) procure and maintain for the benefit of the Lessee for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and management of the Vineyard;
- (b) allow the Lessee to peaceably and quietly hold and enjoy the Land without

any interruption by the Lessor or any person claiming through or under the Lessor;

- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Vineyard;
- (d) take all steps to avoid interfering with the supply of water to Vinelots and to avoid any actions that would prejudice Growers' rights under Occupancy Agreements and where it is able to do so assist the Lessee at the cost of the Lessee to supply water to the Vinelots;
- (e) not create any Encumbrances over the Land or the Vineyard or any part of the Land or the Vineyard without the prior consent in writing of the Lessee, which may be given or withheld in its absolute discretion, and if given by the Lessee will be subject to the interests of the Lessee, any sub-lessee or licensee of the Lessee or the Growers;
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Lessor are properly controlled and supervised;
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor; and
- (h) permit the Lessee to use as and when the Lessee deems fit and for such purposes in connection with its operations on the Land as the Lessee determines, any land of the Lessor nominated by the Lessee and structures of the Lessor thereon which are owned by the Lessor at the date of this Lease (whether or not such land and/or structures are sold after the date of this Lease) AND must if so requested by the Lessee grant or procure the grant to the Lessee, at the cost of the Lessor, easements in registrable form for such uses and purposes appurtenant to the land or part thereof as specified by the Lessee, and procure the registration of such easements on the titles to the relevant lands. This paragraph, for the avoidance of doubt, is also for the benefit of all those persons taking under the Lessee.

## 6.2 Rights

The Lessor:

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

## 7. RATES, TAXES AND CHARGES

- (a) The Lessee must pay all taxes, charges and assessments levied upon or in respect of the Contract Land including:

- (i) local authority rates;
  - (ii) sewerage rates; and
  - (iii) land tax and other State taxes (assessed on a single holding basis).
- (b) The Lessor must promptly deliver to the Lessee all rates and notices received by the Lessor in respect of the Land.
- (c) If any taxes charges and assessments are issued for an area of land of which the Contract Land forms part, the Lessee's payment must be calculated on a pro-rata basis according to area.

## **8. INSURANCE**

### **8.1 Lessee must maintain insurance**

The Lessee must:

- (a) in connection with the Land, maintain with insurers in the names of the Lessee, the Lessor and any other person named by the Lessee:
  - (i) public liability insurance for at least \$10 million (as varied by notice from the Lessor to the Lessee);
  - (ii) insurance for the replacement value of the Capital Works on the Contract Land, including the Vines and the Irrigation Infrastructure<sup>1</sup>; and
  - (iii) other insurances required by law or that, in the Lessor's reasonable opinion, a prudent Lessee would take out having regard to the cost of such insurance;
- (b) give the Lessor evidence when asked to do so that the Lessee has complied with paragraph 8.1(a); and
- (c) notify the Lessor immediately if an insurance policy required by this clause 8.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the Land or the Contract Land.

### **8.2 Parties not to affect rights under 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 as aforesaid, including the Vinelots or the Vines or result in the premiums for such insurances being increased.

### **8.3 Indemnity**

- (a) The Lessee must indemnify the Lessor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Lessor may suffer or incur in connection with the loss of life and/or personal injury to any person or damage to any property wheresoever occurring arising from an occurrence at the Contract Land or the use by the Lessee of the Contract Land except where the loss of life and/or personal injury or damage to property is the result of an act of default or neglect by the Lessor or the Lessor's invitees.
- (b) The Lessor must indemnify the Lessee from and against all claims, demands,

proceedings, judgments, damages, costs and losses of any nature which the Lessee may suffer or incur in connection with the loss of life and/or personal injury to any person or damage to any property wheresoever occurring arising from an occurrence at the Land, other than the Contract Land, or the use by the Lessor of the Land, other than the Contract Land, except where the loss of life and/or personal injury or damage to property is the result of an act of default or neglect by the Lessee or the Lessee's invitees.

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

### **9.1 Assignment by Lessee**

The Lessee may assign its interest under this Lease:

- (a) to any incoming Responsible Entity of the Orchard Trust without the consent of the Lessor; and
- (b) to any other person with the consent of the Lessor which must not be unreasonably withheld.

### **9.2 Lessor consents to Lessee, leasing, sub-letting and licensing**

The Lessor consents and authorises the Lessee and any person deriving title from the Lessee to enter into the Occupancy Agreements in respect of the Land or any part of the Land.

### **9.3 Assignment by Lessor**

The Lessor must not dispose of, or Encumber, any interest in the Lessor's rights under this Lease without the prior written consent of the Lessee which may be given or withheld in its absolute discretion.

### **9.4 Delegation**

The Lessor and the Lessee are each entitled to:

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

its employees, agents and contractors, but any delegation by the Lessor or the Lessee does not release the Lessor or the Lessee, as the case requires, from liability under this Lease, except as set out in this Lease.

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

### **10.1 Termination by Lessor**

Notwithstanding anything herein contained or any right under statute or general law the Lessor is not entitled to terminate this Lease but any breach by the Lessee shall only sound in damages.

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## 11. TERMINATION

### 11.1 Termination of Lease by the Lessee

The Lessee may terminate this Lease by notice in writing to the Lessor immediately, if the Lessor commits or permits to occur any material breach or default in the due and punctual performance of any of its obligations under this Lease, and fails to remedy the breach or make reasonable compensation in money within 90 days after the Lessee has served a written notice on the Lessee requiring the Lessee to remedy the breach or make reasonable compensation in money.

### 11.2 Effect of Termination

- (a) Termination of the whole of this Lease under clause 11.1 is without prejudice to any rights and obligations that may have accrued prior to the date of termination.
- (b) The termination of this Lease will terminate the rights and obligations of the parties under this Lease except to the extent that those rights and obligations are expressed to survive termination.

### 11.3 Attorneys

Upon termination of the whole of this Lease by the Lessee, the Lessee is hereby appointed by the Lessor as its attorney to do all things and sign all documents necessary to give effect to the termination under this clause 11 of the whole or part of this Lease, as the case requires.

---

## 12. RISK

- (a) The Lessee is to assume all risk of loss, damage or injury by fire or otherwise to person or the Lessee's property by reason of the condition of the Contract Land or any plant, equipment, fixtures or fittings on the Contract Land.
- (b) The Lessor is to assume all risk of loss, damage or injury by fire or otherwise to person or the Lessor's property by reason of the condition of the Land, other than the Contract Land, or any plant, equipment, fixtures or fittings on the Land, other than the Contract Land.

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## 13. LEGAL COSTS

Each party will bear its own costs of and incidental to the preparation, execution, stamping and registration of this Lease.

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## 14. NOTICES

### 14.1 Form of Notice

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

- (a) hand delivery;

- (b) post or registered or certified mail, or
- (c) fax,

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

## 14.2 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.

## 15. PROPER LAW

This Lease is governed by and to be interpreted in accordance with the laws of New South Wales and the parties to this Lease 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 Lease or the transactions contemplated by this Lease.

## 16. SEVERANCE

This Lease, so far as possible, must be constructed to give validity to all of its provisions. Any provision found to be prohibited by law will be ineffective so far as it is prohibited without invalidating any other part of this Lease.

## 17. ENTIRE AGREEMENT

Each party acknowledges that this Lease is not entered into in reliance on any representation or warranty, expressed or implied, whether oral, in writing or contained in any brochure, advertisement or otherwise, except as may be specifically set out in this Lease.

## 18. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Lease (other than the supply of the Land by the Lessor to the Lessee) is a taxable supply (according to GST Law) so that the Lessor 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 Lease, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate.

- (c) The GST payable under paragraph 18(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 Lease.
- (d) The right of a Supplier to payment under this clause 18 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 Lease, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 18(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 Lease, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Lease for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Lease and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

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## 19. STATUTORY PROVISIONS

### 19.1 Conveyancing Act 1919 (NSW)

The parties acknowledge and agree that sections 84, 84A and 85 of the *Conveyancing Act 1919 (NSW)* do not apply to this Lease.

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## 20. CAVEAT

- (a) The Lessee may at its own expense lodge a caveat or caveats at the Land Titles Office in respect of its interests under this Lease.
- (b) The Lessor agrees to provide to the Lessee on the Commencement Date all plans and other details reasonably necessary to enable the Lessee to lodge such caveats.

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## 21. FURTHER ASSURANCES

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

## 22. DISPUTES

- (a) If any dispute, question or difference of opinion arises out of or in connection with this Lease then the party asserting the dispute must give the other parties a notice of dispute in writing adequately identifying and providing details of the dispute (the "Notice of Dispute").
- (b) Within 7 days after service of the Notice of Dispute the parties must confer on a "without prejudice" basis to attempt to resolve the dispute.
- (c) If the dispute is not settled promptly by the parties in accordance with paragraph 22(b), any party may by notice in writing to the other parties require that the matter be referred to a person nominated by the President for the time being of Law Society of NSW at a place in Sydney and the nominee's determination will be final and binding and he must be deemed to be acting as an expert and not as an arbitrator.

## 23. SURRENDER OF LEASE

The Lessee agrees with the Lessor to execute a Surrender of Lease in accordance with the following provisions:

- (a) the Surrender of Lease shall be prepared by the solicitor for the Lessor and submitted to the solicitor for the Lessee for approval and, if approved, for execution by the Lessee;
- (b) the Surrender of Lease shall be submitted to the solicitor for the Lessee within 28 days after registration of the plan of subdivision to create Lot 2 being the Contract Land;
- (c) the land to be the subject of the Surrender of Lease shall be all of those lands leased hereunder with the exception of the Contract Land;
- (d) all of the costs and disbursements of both the Lessor and Lessee in connection with the preparation and execution and registration of the Surrender of Lease shall be paid by the Lessor; and
- (e) to the extent that it is appropriate to vary (consistently with the terms of this clause) the terms of this lease (otherwise than in respect of the description of the demised premises) the parties shall execute and register a Variation of Lease, such document to be prepared by the Lessor and approved by the Lessee with all costs and disbursements relating to the preparation, execution and registration of the Variation of Lease being met by the Lessor.

## Executed as a Deed:

EXECUTED by CARMELO COSTA in the  
presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Carmelo Costa

\_\_\_\_\_  
Print Name of Witness

EXECUTED by PAUL COSTA in the presence  
of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Carmelo Costa

\_\_\_\_\_  
Print Name of Witness

EXECUTED by ORCHARD  
INVESTMENTS MANAGEMENT  
LIMITED in accordance with  
section 127 of the Corporations  
Act:

)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

\_\_\_\_\_  
Position Held

\_\_\_\_\_  
Position Held

## SCHEDULE 1

### DESCRIPTION OF THE LAND

(Clause 1.1)

1. The "Land" is Lot 2 in DP 1067588.

PLAN OF PROPOSED SUBDIVISION  
OF LOT 2 IN D.P.1067588  
AT EUSTON

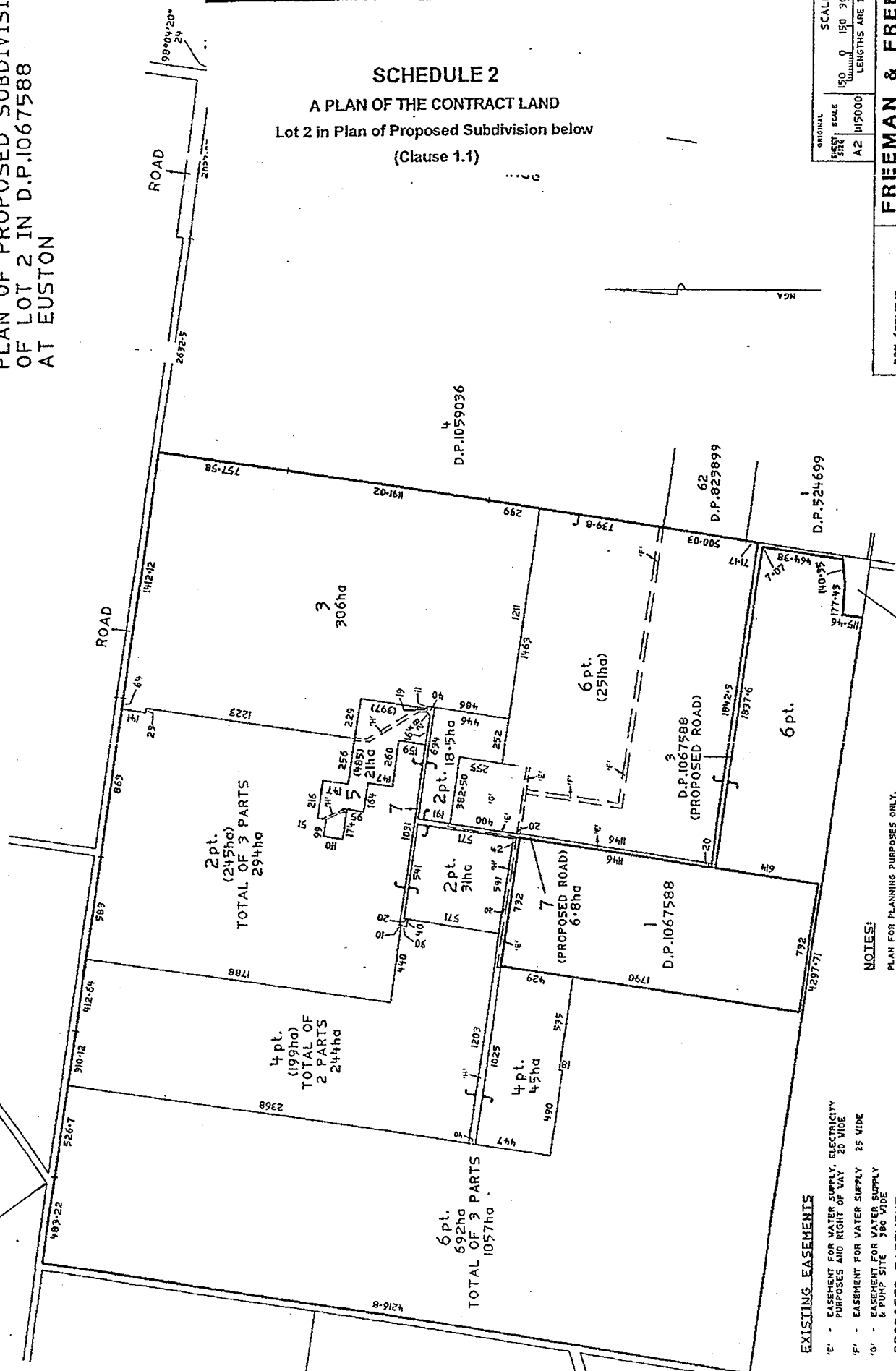
SCHEDULE 2

A PLAN OF THE CONTRACT LAND  
Lot 2 in Plan of Proposed Subdivision below  
(Clause 1.1)

ORIGINAL SHEET SITE	SCALE	SCALE
A2	1:50000	1:50000

**FREEMAN & FREEMAN**  
LAND SURVEYORS  
PO BOX 2135 MILDURA VIC 3502  
TELEPHONE: (03) 50236239

REF 6851/5/P  
DATE APRIL 2005  
VERSION 4



NOTES:

PLAN FOR PLANNING PURPOSES ONLY.

DIMENSIONS AND DETAILS SHOWN ARE APPROXIMATE ONLY  
AND ARE SUBJECT TO FINAL SURVEY & APPROVAL.

EXISTING EASEMENTS

- 'E' - EASEMENT FOR WATER SUPPLY, ELECTRICITY PURPOSES AND RIGHT OF WAY 20 WIDE
- 'F' - EASEMENT FOR WATER SUPPLY 25 WIDE
- 'G' - EASEMENT FOR WATER SUPPLY & PUMP SITE 380 WIDE

PROPOSED EASEMENT

- 'H' - EASEMENT FOR WATER SUPPLY, ELECTRICITY PURPOSES AND RIGHT OF WAY VARIABLE WIDTH

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