

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

LIST E

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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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
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This is the exhibit marked '**PWK30**' 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 'PWK30'**

**Copy of IMA with Costa Holdings  
dated 21 December 2009**

# **Interim Management Agreement**

**Bella Vista**

**Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) in its capacity as responsible entity for the 2004 Timbercorp Table Grape Project (ARSN 108 648 086) and 2005 Timbercorp Table Grape Project (ARSN 113 512 226)**

**Timbercorp Limited (In Liquidation) (ACN 055 185 067)**

**Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity for the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers appointed)**

**Grapecorp Management Pty Ltd (In liquidation) (ACN 105 995 195)**

**Mark Anthony Korda and Leanne Kylie Chesser**

**Stephen Graham Longley and Paul William Kirk**

**Costa Holdings Investments Pty Ltd (ACN 140 921 053)**

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# Interim Management Agreement

Allens Arthur Robinson



Date	21 December 2009
Parties	<ol style="list-style-type: none"><li>1. <b>Timbercorp Securities Limited (In liquidation)</b> (ACN 092 311 469) of Level 8, 461 Bourke Street, Melbourne Victoria 3000 in its capacity as responsible entity for the 2004 Timbercorp Table Grape Project (ARSN 108 648 086) and 2005 Timbercorp Table Grape Project (ARSN 113 512 226) (<i>TSL</i>).</li><li>2. <b>Timbercorp Limited (In Liquidation)</b> (ACN 055 185 067) of Level 8, 461 Bourke Street, Melbourne, Victoria (<i>Timbercorp</i>).</li><li>3. <b>Align Funds Management Limited</b> (ACN 105 684 231) of Level 33, 360 Collins Street, Melbourne, Victoria 3000 in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (<b>Receivers &amp; Managers Appointed</b>) (<i>TOT RE</i>).</li><li>4. <b>Grapecorp Management Pty Ltd (In liquidation)</b> (ACN 105 995 195) of Level 8, 461 Bourke Street, Melbourne Victoria 3000 (<i>Grapecorp</i>).</li><li>5. <b>Mark Anthony Korda and Leanne Kylie Chesser</b> in their capacity as joint and several liquidators of Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469), Timbercorp Limited (In Liquidation) (ACN 055 185 067) and Grapecorp Management Pty Ltd (In Liquidation) (ACN 105 995 195) (<i>Liquidators</i>).</li><li>6. <b>Stephen Graham Longley and Paul William Kirk</b> in their capacity as joint and several Receivers and Managers of TOT RE (<i>Receivers</i>).</li><li>7. <b>Costa Holdings Investments Pty Ltd</b> (ACN 140 921 053) of 234 Deakin Avenue, Mildura Victoria 3500 (<i>the Purchaser</i>).</li></ol>
Recitals	<ol style="list-style-type: none"><li>A The TSL is the responsible entity for the Projects, which are conducted on the Land.</li><li>B The Land is an asset of the Timbercorp Orchard Trust.</li><li>C TOT RE is the registered proprietor of the Land.</li><li>D TOT RE has leased the Land to Timbercorp pursuant to the Head Lease.</li><li>E Timbercorp has sub-leased the Land to TSL pursuant to the Sub Lease.</li><li>F Pursuant to the Licences, each Participant Grower was granted a licence to use and occupy the Grapelots together with the Land.</li></ol>

- G Pursuant to the Constitutions, TSL was authorised and requested as the agent, representative and attorney of the Participant Growers to enter into the Grapelot Management Agreement.
- H TSL appointed Grapecorp, pursuant to the Management Agreement, to provide certain management services in respect of the Projects.
- I On 23 April 2009, Mark Anthony Korda and Leanne Kylie Chesser were appointed as voluntary administrators to each Company pursuant to section 436A of the Corporations Act.
- J At a meeting of creditors of each of the Companies on 29 June 2009, the creditors of each Company voted to wind up each Company and Mark Anthony Korda and Leanne Kylie Chesser were appointed as liquidators of each Company.
- K On 22 October 2009, the Receivers were appointed by Permanent Nominees (Aust.) Limited as joint and several receivers and managers of all the assets charged by TOT RE pursuant to a fixed and floating charge registered with the Australian Securities and Investments Commission as charge 994221.
- L The Receivers are entering into this Agreement only in their capacity as receivers and managers of the relevant assets charged by TOT RE and, other than as set out in this Agreement, assume no personal liability as a consequence.
- M The Receivers are undertaking a market sale process in respect of the Table Grape Assets and the Water Licences. As at the date of this Agreement the Purchaser is the preferred bidder for the Table Grape Assets and is in negotiations with the Receivers over the terms of sale of the Table Grape Assets.
- N The Purchaser agrees to provide the Services to maximise the Crop and the return from the Crop for the Term and on the terms and conditions set out in this Agreement.

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**2004 Project** means the 2004 Timbercorp Table Grape Project (ARSN 108 648 086).

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

**Agreement** means this Interim Management Agreement.

**Andriske Research** means Andriske Research Pty Limited (ACN 006 565 260), Level 10, 600 St Kilda Road, Melbourne Victoria 3000.

**Bella Vista Costs** means all Outgoings and Repair and Maintenance Costs incurred by the Purchaser during the Term.

**Bella Vista Sale** means a sale of the Table Grape Assets by TOT RE.

**Best Viticulture Practice** means sound viticultural and environmental practices and industry practices that are adopted in relation to similar Vines and the Vineyards.

**Budget** means the budget prepared by the Purchaser and approved by the Receivers in accordance with clause 4.1.

**Business Day** means any day except Saturday or Sunday or a day that is a public holiday in the State of Victoria.

**BV Management** means Grape Exchange Management Euston Pty Ltd (ACN 116 769 870) of Level 1, 170 Little Malop Street, Geelong Victoria 3220.

**Capital Works** means the infrastructure and capital works carried out on the Vines and Vineyard and all infrastructure and capital works that will in future be carried out on the Vines and Vineyard.

**Claim** means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, in respect of any rights (including but not limited to Growers and secured creditors rights) (whether legal or equitable) to all or any part of the proceeds of the Bella Vista Sale.

**Claimant** means the person making the Claim.

**Commencement Date** means the date this Agreement is signed by the parties.

**Company** means each of TSL, Timbercorp and Grapecorp.

**Confidential Information** means all information, regardless of its form, relating to the business or affairs of a party which:

- (a) is proprietary or confidential in nature or which is treated by that party as confidential; and
- (b) is not lawfully in the public domain.

**Constitutions** means the deeds entered into by TSL dated 5 April 2004 (in respect of the 2004 Project) and 22 March 2005 (in respect of the 2005 Project).

**Contract of Sale** means a contract of sale between TOT RE and the Purchaser in respect of the Table Grape Assets.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court Order** means a Court order or determination made in respect of a Claim.

**Crop** means the Table Grapes grown or growing on or taken from the Vines.

**Cultivars** means the vines cultivated on the Vineyard that are propagated from or grafted with varieties or cultivars of table grapes known as "Stanley Seedless" and "Golden Globe" or any other variety that is used in the Vineyards during the Term and in which PBR exists.



**Direct Costs and Expenses** means all costs and expenses incurred by the Purchaser in relation to or in connection with providing all or any of the Restricted Services, and the Services in accordance with the Management Plan.

**Encumbrance** means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance, right, title or interest.

**Excluded Services** means:

- (a) removal or destruction of any Vines (which, for the removal of doubt, include the vine cultivars the subject of the PBR Agreement) or Table Grapes without the prior permission of TOT RE;
- (b) undertaking additional plantings of Vines; and
- (c) top-grafting another variety of vine cultivars onto the existing Vines (which, for the removal of doubt, include the scion wood the subject of the PBR Agreement) without the prior permission of TOR RE.

**Expert** means a person appointed under this Agreement to resolve a dispute between parties.

**Expiry Date** means 31 January 2010 or such other date as may be agreed in writing between the Purchaser, TOT RE, Timbercorp, TSL and Grapecorp, which must be no later than 3 months after the Commencement Date.

**Force Majeure** means act of God, lock out or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition, intervention, direction, embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining government or quasi-governmental approvals, consents, permits, licences, authorities or allocation, or any other cause which is not reasonably within the control of the person relying on the force majeure.

**Government Agency** means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**Grapelots** has the meaning given in the Constitutions.

**Grapelot Management Agreements** means the agreements between TSL and each several Participant Grower named in the first schedule to the Licences.

**GST** has the meaning given to that term in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**Head Lease** means the leases of land by TOT RE to Timbercorp dated 15 April 2004 (in connection with the 2004 Project) and 28 April 2005 (in connection with the 2005 Project).

**Interested Party** means Permanent Nominees (Aust.) Limited (ACN 000 154 441).

**Land** means the Bella Vista property described in Folio Identifier 1 / 1067588 and Folio Identifier 22 / 1093662 (previously part of the land described in cancelled Folio Identifier 2 / 1067588), and the Costa's Crest property described in Folio Identifier 2 / 1046695.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

**Licences** means the licence agreements between TSL, TOT RE and each Participant Grower in relation to the Projects.

**Management Agreement** means the management agreement between TSL and Grapecorp in relation to the Projects.

**Management Plan** means the plan for management of the Vineyard agreed by the Purchaser and the Receivers pursuant to clause 4.1.

**Months** means calendar months.

**Outgoings** mean:

- (a) All rates, taxes, charges and assessments levied upon the Land (including Capital Works and Water Licences), or upon the owner as a consequence of its ownership of the property (but not on income made or derived by the owner from the property), including (without limitation):
  - (i) local authority rates;
  - (ii) sewerage rates;
  - (iii) land tax (if any) on a multiple holding basis, and other State taxes.
- (b) All insurances that need to be paid in connection with the Land (including Capital Works and Water Licences) in accordance with clause 9 of this Agreement.

**Participant Grower** means a participant in a Project.

**Payment Date** means:

- (a) 20 Business Days after payment by the Third Party Purchaser of all amounts payable at or after completion of the Bella Vista Sale; or
- (b) in the event a Claim is made or brought prior to the date in clause (a) above, the earlier of 10 Business Days after:
  - (i) notice is given that the Claim is settled, resolved or withdrawn; or
  - (ii) a Court Order is made in respect of the Claim, TSL, the Receivers and the Claimant give notice that no appeal, further action or proceeding will be made or brought in respect of the Court Order.

**PBR** means the planter breeder rights granted to the PBR Licensor in respect of the Cultivars, on the various dates set out in the PBR Agreement and being rights granted under the *Plant Breeders Rights Act 1994 (Cth)*.

**PBR Agreement** means the agreements between the PBR Licensor granting TOT RE and Timbercorp the right to plant and grow the vine Cultivars dated 9 October 2003 (as

amended) ('Stanley Seedless') and 12 November 2004 ("Golden Globe"). It includes any downstream agreements permitted by the PBR Agreement granting the PBR to Grapecorp.

**PBR Licensor** means the licensors of the plant breeders rights for the Cultivars cultivated on the Vineyard, being the registered owners, namely Andriske Research.

**Projects** means any or all of the following managed investment schemes:

- (a) 2004 Project; and
- (b) 2005 Project.

**Propagating Material** means any plant material of the Cultivars received from the PBR Licensors from which, whether alone or in combination with other parts of the plant or another plant, a further plant with the same essential characteristics, or bearing fruit consistent with the Cultivars, can be produced. This includes grafted vines and budwood.

**Repairs and Maintenance** means the repair and maintenance services specified in clause 3.2(a).

**Repair and Maintenance Costs** means all reasonable costs and expenses incurred by the Purchaser pursuant to clause 3.2(a).

**Restricted Services** means applying the necessary irrigation water, fertilisers and nutrients to the Vines at the appropriate times to maintain satisfactory rates of growth and productivity of the Vines, and such other activities or undertakings as may be agreed in writing between the Purchaser and the Receivers.

**Services** means any activity or undertaking necessary to maximise the Crop and the return from the Crop but does not include the Excluded Services.

**Sub Lease** means the sub leases of land between TOT RE, Timbercorp and TSL dated 15 April 2004 (in connection with the 2004 Project) and 28 April 2005 (in connection with the 2005 Project).

**Table Grapes** means all table grapes produced on the Vineyards whether harvested or unharvested.

**Table Grape Assets** means some or all of any right, title or interest in or to the Land, Vines, Vineyard, Capital Works and Crop, but excludes the Water Licences.

**Tax Invoice** means a tax invoice from the Purchaser to the Receivers for the Term, itemising all Bella Vista Costs and attaching all tax invoices for any Bella Vista Costs incurred from any third party.

**Term** means the period commencing on and including the Commencement Date and ending on the earlier of and including;

- (a) the Expiry Date; and
- (b) the Termination Date.

**Termination Date** means the date this Agreement is terminated in accordance with clause 2.2.

**Third Party Purchaser** has the meaning given in clause 10(b).

**Timbercorp Group** means Timbercorp and its controlled entities.

**Timbercorp Orchard Trust** means the Timbercorp Orchard Trust (ARSN 106 557 297).

**Timbercorp Orchard Trust Constitution** means the trust deed governing the Timbercorp Orchard Trust originally dated 15 September 2003 and as amended by virtue of the first (dated 16 December 2005), second (dated 21 December 2005) and third (dated 18 August 2008) supplemental deeds amending the constitution.

**Vines** means the vines planted on the Land.

**Vineyard** means the vineyard situated on the Land.

**Warranties** means the representations and warranties set out in clause 12.

**Water Licences** means any water licences, water entitlements issued under water access licences, and water rights generally and any other authorisations acquired or held beneficially by the TOT RE, the Companies or their agents for the purposes of enabling irrigation of the Vines.

## 1.2 Words and expressions

In this document, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this document;
- (e) a reference to this document includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to \$, A\$ or *dollar* is a reference to Australian currency;
- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:

- (i) any modification or re-enactment of the legislation;
- (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
- (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or any part of it;
- (o) a reference to this document is a reference to this deed; and
- (p) the words *including, for example, such as* or other similar expressions (in any form) are not words of limitation.

## 1.3 Other rules of interpretation

In this document, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;
- (b) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this document is given by them or for their benefit jointly and severally;
- (c) **(Business Days)** if:
  - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
  - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period); and
- (d) **(inconsistency within document)** if a clause of this document is inconsistent with a schedule or annexure of this document, the clause prevails to the extent of the inconsistency.

## 2. Term

### 2.1 Commencement Date

This Agreement will commence on the Commencement Date.

### 2.2 Termination Date

This Agreement will terminate on the earlier of:

- (a) the Expiry Date; or
- (b) the date this Agreement is validly terminated under the terms of this Agreement or at law.

## 2.3 Immediate Termination

This Agreement terminates with immediate effect:

- (a) upon completion of the Bella Vista Sale to the Purchaser;
- (b) upon the Contract of Sale being lawfully terminated or rescinded prior to its completion date; or
- (c) upon the agreement of the Receivers and the Purchaser in writing to terminate this Agreement with immediate effect.

## 2.4 Termination by the Purchaser

- (a) Subject to clauses 2.3(b) and 2.3(c), after the Contract of Sale has been executed, the Purchaser may only terminate this Agreement in accordance with clause 2.4(b) if the Receivers are in breach of this Agreement or the Contract of Sale.
- (b) Subject to clause 2.4(a), the Purchaser may at any time terminate this Agreement by giving 5 Business Day's notice in writing to the Receivers.

## 2.5 Termination by the Receivers

- (a) If the Budget and the Management Plan are not prepared and agreed by the Purchaser and the Receivers within the time specified in clause 4.1, the Receivers may at any time thereafter terminate this Agreement immediately by notice in writing to the Purchaser.
- (b) Subject to clauses 2.3(b), 2.3(c) and 2.5(a), after the Contract of Sale has been executed, the Receivers may only terminate this Agreement in accordance with clause 2.5(c) if the Purchaser is in breach of this Agreement or the Contract of Sale.
- (c) Subject to clause 2.5(a) and 2.5(b), the Receivers may at any time terminate this Agreement by giving 5 Business Day's notice in writing to the Purchaser.

## 2.6 Consequences of Termination

Upon termination of this Agreement (whether through default or expiry or otherwise) the rights and obligations of the parties will cease except for:

- (c) any obligations arising or rights or remedies accrued as a result of an existing breach of this Agreement; and
- (d) any obligations which are expressed to continue in accordance with the terms of this Agreement.

# 3. Management Services

## 3.1 Restricted Services and Services

- (a) During the Term, and prior to the implementation of the Management Plan in accordance with clause 4.2(a), the Purchaser must provide the Restricted Services in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practice for the production of table grapes.



- (b) During the Term, and after the implementation of the Management Plan in accordance with clause 4.2(a), the Purchaser must provide the Services in a manner consistent with the Management Plan in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practice for the production of table grapes.
- (c) Subject to clauses 3.2 and 3.3, the parties agree and acknowledge that no amounts are payable to the Purchaser by TOT RE, the Receivers, the Timbercorp Group entities or the Liquidators in respect of any Direct Costs and Expenses incurred by the Purchaser during the Term.

## 3.2 Repairs and maintenance

- (a) The Purchaser agrees and acknowledges that in provision of the Services, it is responsible for the repairs and maintenance agreed by the Purchaser and TOT RE to be necessary during the Term and in accordance with the Budget and Management Plan, including repairs and maintenance to waterways, dams, irrigation and pumping equipment, fences, fire-breaks and farm equipment.
- (b) Subject to the Purchaser complying with clauses 4, 6.1(a)(i), 6.1(a)(ii) and 7, the Purchaser will be reimbursed for the Repair and Maintenance Costs it incurred during the Term in accordance with clauses 10 of this Agreement.

## 3.3 Bella Vista Outgoings

The parties agree that:

- (a) all the Outgoings incurred during the Term are to be paid by the Purchaser when the payments are due to the relevant authorities; and
- (b) subject to the Purchaser complying with clauses 4, 6.1(a)(i), 6.1(a)(ii) and 7, the Purchaser will be reimbursed for the Outgoings it incurred during the Term in accordance with clauses 10 of this Agreement.

# 4. The Budget and Management Plan

## 4.1 Preparation and approval

The Purchaser represents and warrants to the Receivers that as soon as practically possible and no longer than 10 Business Days after the Commencement Date or such other time agreed by the Purchaser and the Receivers, the Purchaser will prepare and agree with the Receivers the Budget and Management Plan for provision of the Services.

## 4.2 Management Plan

- (a) Following agreement with the Receivers in accordance with clause 4.1, the Purchaser shall immediately implement the Management Plan.
- (b) The Purchaser shall do all things required by the Management Plan to a standard and in a manner consistent with Best Viticultural Practice for production of table grapes.

## 4.3 Authorisation of Expenses

The Purchaser must obtain the approval of the Receivers before incurring any Direct Costs and Expenses, Repair and Maintenance Costs and Outgoings, except where such amounts:

- (a) are included in the Budget; or
- (b) do not exceed \$2,000 for a particular service or obligation (whether as a single amount or a series of amounts of a similar nature).

## 5. Purchaser's Discretion and Delegation

### 5.1 Discretion

Subject to compliance with the Management Plan and this Agreement, the Purchaser will have complete discretion in the performance of the Services.

### 5.2 Delegation

The Purchaser may appoint, with the consent of the Receivers, which consent must not be unreasonable withheld, suitably qualified and skilled agents and sub-contractors and engage such personnel and acquire and use materials necessary, usual or desirable for the purposes of exercising some of all of its powers and performing all or some of its obligations under this Agreement, provided that the Purchaser will be liable under this Agreement for the exercise of such powers and performance of such obligations.

## 6. Reporting

### 6.1 Monitoring

- (a) The Purchaser must provide to the Receivers, within 21 days of the end of each Month:
  - (i) a statement of the Bella Vista Costs and the Direct Costs and Expenses, as at the end of that Month and a detailed explanation for all variances from amounts budgeted in the Budget for that Month; and
  - (ii) provide any other information reasonably requested by the Receivers to enable them to determine the Purchaser's compliance with this Agreement.
- (b) If the Receivers do not notify the Purchaser that they disagree with a statement given by the Purchaser under this clause 6.1, including reasonable details of the basis of their disagreement and the amount the subject of the disagreement, within 20 Business Days of receipt, they will be deemed to have agreed with the statement and it will be final and binding upon them in respect of the relevant Month.

### 6.2 Audit

The Receivers may, from time to time, on giving at least 10 Business Days prior notice, at their expense, cause an audit to be conducted of the applicable records the Purchaser, in order to verify any matter or calculation in relation to the payments and adjustments



required to be made pursuant to this Agreement and any reports given to the Receivers in relation to such payments or calculations.

## **6.3 Applicable records**

In undertaking any audit, the applicable records of the Purchaser will only be in relation to details contemplated by this Agreement or necessary to make any calculation required to be made under this Agreement and in no circumstances will the person undertaking the audit have access to the records of the Purchaser which relate to any other matter, transaction or thing.

## **6.4 Auditor**

Audits will be conducted by the Receivers or their agents or employees, during regular business hours at the offices of the Purchaser and in such a manner as not to interfere with normal business activities of the Purchaser or any of its related bodies corporate.

## **7. Determination**

### **7.1 Notification**

The Purchaser must:

- (a) within 20 Business Days after the end of the Term, notify the Receivers of the amounts which the Purchaser considers to be the Bella Vista Costs and the Direct Costs and Expenses for the Term; and
- (b) provide such supporting information as the Receivers may reasonably request or require to enable the Receivers to determine the accuracy of those amounts.

### **7.2 Best endeavours**

The Receivers and the Purchaser will use their respective best endeavours to agree the amount of the Bella Vista Costs within 10 Business Days of the relevant notification having been received by the Receivers (without limiting clause 7.1). If the Receivers do not notify the Purchaser that they disagree with a notice given by the Purchaser under clause 7.1 within 20 Business Days of receipt including reasonable details of the basis of their disagreement and the amount the subject of the disagreement, they will be deemed to have agreed with the notice and it will be final and binding upon them.

### **7.3 Determination by Expert**

If the Receivers and the Purchaser cannot agree the amount of the Bella Vista Costs and the Direct Costs and Expenses, within the relevant period set out in clause 7.2 (or such longer period as they may agree), the determination of the relevant amount must be referred, by written notice from one of them to the other, to an Expert:

- (a) agreed on by them; or
- (b) if agreement is not reached within seven days of the notice for referral, appointed by the then president of the Victorian Chapter of the Institute of Chartered Accountants or his or her duly appointed deputy.



## **7.4 Role of Expert**

The Expert will act as an expert and not as an arbitrator. The decision of the Expert will be final and binding on all parties in the absence of manifest error.

## **7.5 Venue, representation and format**

Unless otherwise agreed between the disputants, the place of the resolution of the dispute will be Melbourne and the disputants will be entitled to legal representation. The rules of evidence will apply to the resolution process.

## **7.6 Timeframe**

The Receivers and the Purchaser will each use all reasonable endeavours to ensure that the Expert is able to make a decision as soon as is practical, including, but not limited to, providing the Expert with all information relevant to the determination.

## **7.7 Confidentiality**

Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the determination.

## **7.8 Costs**

Each party must bear its own costs of complying with this clause 7 and the Receivers and the Purchaser must bear equally the Expert's costs, unless the decision of the Expert states otherwise.

# **8. Access**

## **8.1 Access and Possession**

Subject to clause 8.2, Grapecorp must ensure the Purchaser and any subcontractors or other authorised persons have sufficient rights of access to and use of the Vines, the Capital Works and the Land through out the Term in order to perform the Services and any other obligations under this Agreement.

## **8.2 Right of access**

- (a) Notwithstanding clause 8.1, TOT RE and their agents, representatives and nominees will have the right to enter upon the Land at any time, upon giving the Purchaser reasonable written notice, for the purpose of:
  - (i) inspecting the Vines and monitoring the provision of the Services by the Purchaser; or
  - (ii) any other rights of TOT RE or in order to fulfil any obligation of TOT RE.
- (b) The Purchaser acknowledges and agrees that TOT RE may, to the extent that it is lawfully able, permit BV Management, within 30 day from the Commencement Date, to enter upon the Land to remove all their employees, contractors and agents from the Land, together with all their equipment, tools, plant, vehicles and machinery.

- (c) The rights under clauses 8.2(a) and (b) are subject to:
  - (i) the exercise of each of those rights not causing any interference in or impediment to the activities of the Purchaser; and
  - (ii) compliance with the reasonable directions of the Purchaser or the Purchaser's nominees, agents, contractors or subcontractors while present on the Land.

## 8.3 Security measures

Subject to the rights of the Purchaser under this Agreement, TOT RE may, at its own cost and expense, padlock gates on roads and tracks entering the Vineyard in order to prevent trespassers entering and to take such other security measures as it considers appropriate. TOT RE must provide to the Purchaser the keys to all padlocks and such other security access necessary to enable the Purchaser to perform its duties and obligations under this Agreement.

## 8.4 Denial of possession

The Purchaser will not be liable for any failure to perform its duties or obligations under this Agreement, which arises because it is denied, or is otherwise unable to secure, access to, or possession or occupation of, the Land or any part of it, for any reason.

## 8.5 Removal

Upon termination or expiry of this Agreement, Grapecorp will, to the extent that it is lawfully able, permit the Purchaser within 30 day after termination and at their own expense, to enter upon the Land to remove all their employees, contractors and agents from the land, together with all their equipment, tools, plant, vehicles and machinery.

# 9. Insurance

## 9.1 The Purchaser to keep insurance

- (a) The Purchaser must effect and keep current during the Term a policy of general and public risk insurance for an amount not less than \$20,000,000 in relation to the Land. The premiums to effect such insurance will be deemed an Outgoing for the purpose of clause 3.3.
- (b) All such insurance policies to be effected and maintained in accordance with clause 9.1(a) must:
  - (i) name TOT RE, the Receivers, the Companies and the Liquidators and the Purchaser as an insured party (where appropriate);
  - (ii) include cross liability provisions so that the acts or omissions of one insured party do not prejudice the other party's cover; and
  - (iii) include waiver of subrogation provisions so that the insurer cannot exercise a right of subrogation against any of the names insured parties.



- (c) The Purchaser must use its best endeavours to effect and maintain professional indemnity insurance cover, at its cost, for an amount not less than \$1,000,000.
- (d) The Purchaser, where appropriate, will provide each insured party with a copy of all relevant policies (including renewals and updates).

## 9.2 Not to render void

No party will at any time during the Term permit or suffer to be done any act, matter or thing upon the Land, whereby any insurance in respect of the Land may be prejudiced or rendered void or voidable, or whereby the rate of premium on any insurance policy will be liable to be increased.

## 10. Sale of Table Grape Assets

- (a) In the event of completion of the Contract of Sale, the Receivers will not be required to reimburse the Purchaser for any of the Bella Vista Costs.
- (b) The Purchaser is only entitled to payment of the Bella Vista Costs in accordance with clause 10(c) if, during the Term:
  - (i) the Contract of Sale is not executed by any of the parties to that agreement; or
  - (ii) the Contract of Sale is lawfully terminated or rescinded prior to its completion,

and the Table Grape Assets the subject of the Contract of Sale are sold to a third party, not related to the Purchaser (*Third Party Purchaser*).

- (c) Subject to:
  - (i) the circumstances listed at clause 10(b) being satisfied;
  - (ii) no Claim having been made or brought by the Purchaser;
  - (iii) the Purchaser complying with clauses 4, 6.1, 6.2 and 7; and
  - (iv) receipt of a Tax Invoice from the Purchaser,the Receivers must reimburse the Purchaser on the Payment Date for the Bella Vista Costs.
- (d) If the Table Grape Assets are sold to a Third Party Purchaser the Bella Vista Costs owing to the Purchaser will be paid out of the proceeds of the Bella Vista Sale on the Payment Date.
- (e) The parties agree and acknowledge that:
  - (i) payment of the Bella Vista Costs in accordance with clause 10(d) is conditional upon completion of the Bella Vista Sale;
  - (ii) the Bella Vista Costs are costs incurred with respect to the TOT RE receivership and are only required to be paid by the Receivers from the proceeds of the Bella Vista Sale;



- (iii) the Participant Growers, TSL and/or the Receivers may make or bring a Claim; and
- (iv) in the event that a Participant Growers' Claim is successful, the Participant Growers' Claim may be paid ahead of the Bella Vista Costs.

## 11. Acknowledgements

### 11.1 The Purchaser

The Purchaser:

- (a) acknowledges that Timbercorp and TOT RE entered into the PBR Agreements with Andriske Research and in letters dated 13 November 2009 and 1 December 2009, Andriske Research claim that:
  - (i) Timbercorp and TOT RE are in breach of a PBR Agreement; and
  - (ii) royalties may be payable to Andriske Research under the terms of the PBR Agreements (the *Andriske Research Claim*);
- (b) agrees that, unless otherwise agreed by the Purchaser and the Receivers, during the Term, the Purchaser will:
  - (i) provide the Restricted Services and the Services (as applicable) so that the terms of the PBR Agreements are complied with; and
  - (ii) not carry out any Excluded Services.

### 11.2 TOT RE

- (a) TOT RE acknowledges that:
  - (i) any termination of the Head Lease by it may operate to terminate the Sub Lease;
  - (ii) any termination of the Sub Lease may operate to terminate the Licence;
  - (iii) any termination of the Licences may terminate the Projects; and
  - (iv) the Purchaser requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.
- (b) Until the end of the Term, TOT RE will:
  - (i) permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Crop;
  - (ii) provide the Purchaser with full and free access to the Land to enable the Purchaser to perform its obligations and exercise its rights under this Agreement;
  - (iii) not terminate the Head Lease or take any action which has the effect of frustrating this Agreement;

- (iv) not take any action which has the effect of terminating this Agreement other than in connection with a sale of the Table Grape Assets in accordance with clause 10; and
- (v) not sell any of the Table Grape Assets which are within its power to sell, other than in connection with a sale of the Table Grape Assets in accordance with clause 10.

## 11.3 TSL

- (a) TSL acknowledges that:
  - (i) any termination of the Sub Leases by it may operate to terminate the Licences;
  - (ii) any termination of the Licences may terminate the Projects;
  - (iii) the Purchaser requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement; and
  - (iv) any termination of the Graplot Management Agreements may terminate the Management Agreement.
- (b) Until the end of the Term, TSL will:
  - (i) permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Crop;
  - (ii) provide full and free access to the Land to the Purchaser to enable the Purchaser to perform its obligations and exercise its rights under this Agreement;
  - (iii) not terminate the Sub Leases, the Licences, the Graplot Management Agreement or Management Agreement, or take any action which has the effect of frustrating this Agreement;
  - (iv) not take any action which has the effect of terminating this Agreement other than in connection with a sale of the Table Grape Assets in accordance with clause 10; and
  - (v) not sell any of the Table Grape Assets which are within its power to sell, other than in connection with a sale of the Table Grape Assets in accordance with clause 10.

## 11.4 Timbercorp

- (a) Timbercorp acknowledges that:
  - (i) any termination of the Head Lease by it may operate to terminate the Sub Lease;
  - (ii) any termination of the Sub Lease by it may operate to terminate the Licences;
  - (iii) any termination of the Licences may terminate the Projects; and



- (iv) the Purchaser requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.
- (b) Until the end of the Term, Timbercorp will:
  - (i) permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Crop;
  - (ii) provide the Purchaser with full and free access to the Land to enable the Purchaser to perform its obligations and exercise its rights under this Agreement;
  - (iii) not terminate the Head Lease or the Sub Lease, or take any action which has the effect of frustrating this Agreement; and
  - (iv) not take any action which has the effect of terminating this Agreement other than in connection with a sale of the Table Grape Assets in accordance with clause 10.

## 11.5 Grapecorp

- (a) Until the end of the Term, Grapecorp will not:
  - (i) terminate the Management Agreement; or
  - (ii) sell any of the Table Grape Assets which are within its power to sell, other than in connection with a sale of the Table Grape Assets in accordance with clause 10.

## 11.6 Liquidators

- (a) The Liquidators acknowledge that:
  - (i) any disclaimer of the Head Lease or the Sub Lease may operate to terminate the Licences;
  - (ii) any disclaimer of the Licences may terminate the Projects; and
  - (iii) any disclaimer of the Grapelot Management Agreements may terminate the Management Agreements.
- (b) Until the end of the Term, the Liquidators will not take any action which has the effect of frustrating this Agreement.
- (c) Until the end of the Term, the Liquidators will not:
  - (i) disclaim the Head Lease, the Sub Leases, the Licences, Grapelot Management Agreements or Management Agreements; or
  - (ii) take any action which has the effect of terminating this Agreement, other than in connection with a sale of the Table Grape Assets in accordance with clause 10.

## 11.7 Receivers

- (a) The Receivers acknowledge that:
  - (i) any termination of the Head Lease may operate to terminate the Licences;

- (ii) any termination of the Licences may terminate the Projects; and
  - (iii) the Purchaser requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.
- (b) Until the end of the Term, the Receivers will not take any action which has the effect of frustrating this Agreement.
- (c) Until the end of the Term, the Receivers will not:
  - (i) repudiate or terminate the Head Lease; or
  - (ii) take any action which has the effect of terminating this Agreement, other than in connection with a sale of the Table Grape Assets in accordance with clause 10.

## 11.8 Water rights

- (a) During the Term, TOT RE will:
  - (i) provide and make available any allocations, entitlements or water use rights under the Water Licences in respect of the Land; and
  - (ii) not transfer, assign or deal with (either on a permanent or temporary basis) or vary or surrender the Water Licences as they relate to the Land.
- (b) During the Term, the Purchaser will:
  - (i) strictly comply with and monitor all terms and conditions of the Water Licences, including, but not limited to, any policies, guidelines or updates required by NSW State Water Corporation (or its successor), the NSW Department of Natural Resources and the Victorian Lower Murray Water Authority;
  - (ii) accurately and regularly monitor water usage on the Vineyard and advise TOT RE of any water shortfall or surplus requirements in keeping with Best Viticultural Practice; and
  - (iii) if necessary, provide all assistance to TOT RE, the Receivers, the Companies, the Liquidator and their agents, representatives and nominees to ensure that the Water Licences are renewed on or before the expiry of their term, and any further renewals.

## 12. Representations by the Companies, Liquidators, and TOT RE

### 12.1 Companies

Each of the Companies represent and warrant to the Purchaser and the Receivers that, as at the date of this Agreement, from the date of this Agreement and as at the date of completion of any Bella Vista Sale:

- (a) (status) it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (b) (power) it has full legal capacity and power to:



- (i) own property and carry on its business; and
- (ii) enter into and perform its obligations under this Agreement.
- (c) (authorisations) it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable each of them to enter into and perform their respective obligations under this Agreement;
- (d) (binding obligations) this Agreement is valid, binding and enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (e) (no contravention) the execution, delivery and performance of this Agreement will not contravene:
  - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
  - (ii) any provision of its constitution or equivalent documents; or
  - (iii) any agreement, undertaking or instrument which is binding on any of them or any of their respective property;
- (f) (liquidators) the Liquidators have been duly and validly appointed as liquidators of it pursuant to the Corporations Act;
- (g) (Interested Parties) it is not aware of any person, other than:
  - (i) the parties to this Agreement;
  - (ii) the Interested Parties; and
  - (iii) the Participant Growers,who has the benefit of any Encumbrance in, over or affecting the Table Grape Assets (other than by virtue of an interest in the units in the Timbercorp Orchard Trust) or any interest in the Table Grape Assets (other than by virtue of an interest in the units in the Timbercorp Orchard Trust);
- (h) (access to Land) so far as it is aware, TOT RE, TSL, Timbercorp and the Liquidators between them have the power and authority to ensure that the Purchaser is provided full and free access to the Land to enable the Purchaser to perform its obligations and exercise its rights under this Agreement.

## 12.2 TOT RE representations

TOT RE represents and warrants to each of the Companies, the Purchaser, and the Liquidators that, as at the date of this Agreement and as at the date of completion of any Bella Vista Sale:

- (a) (sole trustee) TOT RE is the sole trustee of the Timbercorp Orchard Trust;
- (b) (trust power) it is empowered by the Timbercorp Orchard Trust Constitution to:
  - (i) own property and carry out its business; and
  - (ii) enter into and perform its obligations under this Agreement,in its capacity as the responsible entity of the Timbercorp Orchard Trust;

- (c) (authorisations) it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Agreement;
- (d) (status) it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (e) (binding obligations) this Agreement is valid, binding and enforceable against it in accordance with its terms, subject to any necessary stamping and registration;
- (f) (no contravention) the execution, delivery and performance of this Agreement will not contravene:
  - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
  - (ii) any provision of its constitution, the Timbercorp Orchard Trust Constitution, or equivalent documents; or
  - (iii) any agreement, undertaking or instrument which is binding on any of them or any of their respective property;
- (g) (Interested Parties) it is not aware of any person, other than:
  - (i) the parties to this Agreement;
  - (ii) the Interested Parties; and
  - (iii) the Participant Growers,who has the benefit of any Encumbrance in, over or affecting the Table Grape Assets (other than by virtue of an interest in the units in the Timbercorp Orchard Trust) or any interest in the Table Grape Assets (other than by virtue of an interest in the units in the Timbercorp Orchard Trust);
- (h) (registered proprietor of Land) it is the registered proprietor of all of the Land;
- (i) (access to Land) so far as it is aware, TOT RE, TSL, Timbercorp and the Liquidators between them have the power and authority to ensure that the Purchaser is provided full and free access to the Land to enable the Purchaser to perform its obligations and exercise its rights under this Agreement.

## 12.3 Liquidator's representations

The Liquidators represent and warrant to the Purchaser, TOT RE and the Receivers that in respect of each of the Companies, as at the date of this Agreement and as at the date of completion of any Bella Vista Sale:

- (a) (status) each of the Companies validly exists in its place of incorporation under those laws;
- (b) (appointment) the Liquidators are validly and legally appointed as liquidators of each of the Companies in accordance with the requirements of the Corporations Act;

- (c) (power) as at the Completion Date, the Liquidators have full power and authority to cause each of the Companies to enter into this document and have taken all necessary action to authorise the execution, delivery and performance of this document by each of the Companies in accordance with its terms; and
- (d) (warranties and representations) to the best of the Liquidators' knowledge, the warranties and representations given by each Company under clause 12.1 are true and accurate.

## 12.4 Receivers' representations

The Receivers represent and warrant to the Purchaser, the Liquidators, and each of the Companies that in respect of TOT RE, as at the date of this Agreement and as at the date of completion of any Bella Vista Sale:

- (a) (appointment) the Receivers are validly and legally appointed as Receivers of the relevant assets charged by TOT RE in accordance with the requirements of the Corporations Act;
- (b) (power) as at the Commencement Date, the Receivers have full power and authority to cause TOT RE to enter into this document and have taken all necessary action to authorise the execution, delivery and performance of this document by TOT RE in accordance with its terms; and
- (c) (warranties and representations) to the best of the Receivers' knowledge, the warranties and representations given by TOT RE under clause 12.2 are true and accurate.

## 12.5 No implied warranties

The Purchaser acknowledges that except for the Warranties and any warranties which cannot by law be excluded, none of the Companies, TOT RE, or the Liquidators are giving any warranties to the Purchasers.

## 13. Purchaser's representations

The Purchaser represents and warrants to each of the Companies, the Receivers, TOT RE, and the Liquidators that, as at the date of this Agreement:

- (a) (status) it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (b) (power) it has full legal capacity and power to:
  - (i) own property and carry on its business; and
  - (ii) enter into and perform its obligations under this Agreement;
- (c) (authorisations) it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Agreement;

- (d) (binding obligations) this Agreement is valid, binding and enforceable against the Purchaser in accordance with its terms, subject to any necessary stamping and registration; and
- (e) (no contravention) the execution, delivery and performance of this Agreement will not contravene:
  - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
  - (ii) any provision of its constitution or equivalent documents; or
  - (iii) any agreement, undertaking or instrument which is binding on it or any of its property.

## 14. Receivers not personally liable

Despite any other provision of this Agreement, the Receivers will not be personally liable on any basis in respect of this Agreement:

- (a) save for in respect of clause 11.7;
- (b) save for in respect of the representations given by the Receivers in clause 12.2; and
- (c) except in the event of fraud or dishonesty on their part.

## 15. Liability of TOT RE

### 15.1 Limitation of liability

TOT RE enters into this Agreement only in its capacity as responsible entity of the Timbercorp Orchard Trust and in no other capacity. A liability arising under or in connection with this Agreement is limited and can be enforced against TOT RE only to the extent to which TOT RE is actually indemnified in respect of that liability out of the assets of the Timbercorp Orchard Trust. No person will be entitled to:

- (a) claim from or commence proceedings against TOT RE in respect of any liability under this Agreement in any capacity other than as responsible entity of the Timbercorp Orchard Trust; or
- (b) enforce or seek to enforce any judgement in respect of a liability under this Agreement against any property of TOT RE other than property held by TOT RE as responsible entity of Timbercorp Orchard Trust.

### 15.2 Qualification to limitation

The limitation of liability in clause 15.1 does not apply to any obligation or liability of TOT RE to the extent to which there is, in respect of that obligation or liability, whether under the Timbercorp Orchard Trust Constitution or by operation or law, a reduction in the extent of TOT RE's indemnification, or a loss of TOT RE's right to indemnification, out of the assets of Timbercorp Orchard Trust as a result of any fraud, breach of trust or breach of duty by TOT RE.

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## 16. Liability of Liquidators and Timbercorp

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### 16.1 Liquidators not personally liable

Despite any other provision of this Agreement, the Liquidators will not be personally liable on any basis in respect of this Agreement:

- (a) save for in respect of clause 11.6;
- (b) save for in respect of the representations given by the Liquidators in clause 12.3; and
- (c) except in the event of fraud or dishonesty on their part.

### 16.2 Acknowledgement

Notwithstanding any other clause of this Agreement, the Parties acknowledge and agree that no rental or other amounts are payable by Timbercorp, TSL or the Liquidators under or in connection with the Head Lease.

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## 17. Force Majeure

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- (a) No party will have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.
- (b) A party's failure to observe or comply with the terms of this Agreement will not give rise to any liability to that party for any direct or indirect consequential or special loss or damage of any kind, to the extent that the failure to observe or comply with those terms is attributable to Force Majeure.
- (c) A party claiming the benefit or protection of clauses 16(a) and (b) must at its own cost:
  - (i) promptly give notice to the other parties, as soon as it becomes aware of the Force Majeure, of the occurrence or circumstances in respect of which the claim arises;
  - (ii) take all reasonable steps to remedy the consequence of that occurrence without delay and give the other parties on request details of the steps that have been taken or are to be taken; and
  - (iii) resume performance in full of its obligations under this Agreement as soon as reasonably practicable and give the other parties notice as soon as it is able to resume performance of its obligations.

## 18. Confidentiality and Announcements

### 18.1 Confidentiality

Subject to clause 18.2, each party will (and each party will procure that its employees, officers and Associates will) keep strictly confidential and will not disclose to any third party without the prior written consent of the other parties:

- (a) the Confidential Information of any other party;
- (b) any information concerning any other party;
- (c) the existence of and contents of this Agreement;
- (d) any information of which it has become aware in connection with this Agreement;  
or
- (e) any transaction undertaken pursuant to this Agreement,

(whether in writing, orally or by any other means and whether directly or indirectly) other than information that is or becomes generally available to the public other than as a result of a breach of this Agreement.

### 18.2 Exceptions

A party may disclose Confidential Information:

- (a) as and to the extent required by law, the rules of any stock exchange or under this Agreement;
- (b) to the extent necessary, in the case of the Companies and the Liquidators, to properly conduct the liquidation of the Companies (including reporting to the creditors of the Companies);
- (c) to any officers, employees and agents of that party who:
  - (i) have a need to know the information, but only to the extent they have a need to know; and
  - (ii) before disclosure, are directed by that party to keep the Confidential Information confidential;
- (d) to the directors, secretary, professional advisers and bankers of that party so long as the party uses its best endeavours to ensure that the matters disclosed are kept confidential;
- (e) to the extent that a party may, at any time after any other party has failed to observe or perform all of its obligations under this Agreement, consider necessary or desirable to preserve or enforce its interests or rights,

and provided that, other than in the case of clause 18.2(b), the party must give as much advance notice to the other parties as possible of its intention to make the disclosure and take all lawful or reasonable steps to confine the disclosure of any Confidential Information and preserve its confidentiality.

## **18.3 Injunctive relief**

Each party acknowledges that monetary damages alone may not be adequate compensation to the other parties for a breach of this clause 18 and that any of the other parties are entitled to seek an injunction from a court of competent jurisdiction if the party fails to comply or threatens to fail to comply with this clause 18.

## **18.4 Survival of Clause**

This clause 18 survives the termination of this Agreement.

## **18.5 No public announcement**

No announcement of the transaction undertaken pursuant to this Agreement will be made otherwise than by the announcing party having given a reasonable opportunity for the other party to review, and have input on, the form of the proposed announcement.

# **19. GST**

## **19.1 Definitions**

For the purposes of this clause 19, Taxable Supply and Consideration will have the meaning given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

## **19.2 Exclusive of GST**

If anything done, or required to be done, under this Agreement, or anything done in settlement of the consequences of a breach of any warranty or other clause of this Agreement, constitutes a Taxable Supply by one party to another party, unless otherwise provided in this Agreement, the Consideration for that Taxable Supply will be exclusive of any GST.

## **19.3 Consideration to be increased**

If the party making the Taxable Supply is liable for any GST on that Taxable Supply, subject to that party issuing a valid tax invoice (or adjustment note) to the party that receives the Taxable Supply, the Consideration received will be increased so that the party making the Taxable Supply receives, net of the GST liability, the Consideration otherwise calculated pursuant to this Agreement.

# **20. Notices**

## **20.1 Method**

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("notices") given by a party under or in connection with this document must be:

- (a) in writing;

- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 20.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by email or facsimile to that address.

## 20.2 Receipt

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
  - (i) within Australia, on the second Business Day after the date of posting;
  - (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

## 20.3 Address of parties

Unless varied by notice in accordance with this clause 14, the parties' addresses and other details are:

Party: Liquidators, TSL, Timbercorp, and Grapecorp;  
Attention: Leanne Chesser  
Address: Level 24, 333 Collins Street, Melbourne, VIC, 3000  
Facsimile: +61 3 8623 3399  
E-mail: lchesser@kordamentha.com

with a copy to:

Attention: Jane Sheridan  
Address: Level 21, 333 Collins Street, Melbourne, VIC, 3000  
Facsimile: +61 3 9229 9900  
E-mail: jsheridan@abl.com.au

Party: TOT RE and Receivers  
Attention: Stephen Graham Longley  
Address: Freshwater Place, Level 23, 2 Southbank Boulevard, VIC, 3006  
Facsimile: +61 3 8613 3203  
E-mail: Stephen.Longley@au.pwc.com

with a copy to:

Attention: Steve Clifford  
Address: Level 29, 530 Collins Street, Melbourne, VIC, 3000



Facsimile: +61 3 9614 4661  
E-mail: Steve.Clifford@aar.com.au

Party: Purchaser  
Attention: Charlie Costa  
Address: Lot 15, Kilpatrick Road Euston (PO Box 676 Robinvale VIC 3549)  
Facsimile: +61 03 50 263359  
E-mail: charlie@grapehouse.com.au

## 20.4 Requirement for written notice

For the avoidance of doubt, the requirement in clause 20.1(a) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions "written" or "in writing" in relation to some but not all notices.

## 21. General

### 21.1 Entire agreement

This document constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this document and have no further effect.

### 21.2 Paramountcy of document

If this document conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

### 21.3 No merger

The provisions of this document will not merge on completion of any transaction contemplated in this document and, to the extent any provision has not been fulfilled, will remain in force.

### 21.4 Attorneys

Each person who executes this document on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this document under that power.

### 21.5 Amendment

This document may not be amended or varied unless the amendment or variation is in writing signed by all parties.

### 21.6 Assignment

No party may assign, transfer or otherwise deal with this document or any right or obligation under this document without the prior written consent of each other party, which must not be unreasonably withheld.

## **21.7 Severability**

Part or all of any provision of this document that is illegal or unenforceable will be severed from this document and will not affect the continued operation of the remaining provisions of this document.

## **21.8 Waiver**

Waiver of any power or right under this document:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

## **21.9 Rights, remedies additional**

Any rights and remedies that a person may have under this document are in addition to and do not replace or limit any other rights or remedies that the person may have.

## **21.10 Further assurances**

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this document and the transactions contemplated by it (including, but not limited to, the execution of documents).

## **21.11 Costs**

Each party must bear its own legal, accounting and other costs for the preparation and execution of this document.

## **21.12 Counterparts**

This document may be executed in any number of counterparts and all counterparts taken together will constitute one document.

## **21.13 Electronic delivery of document**

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

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

## **21.14 Governing law and jurisdiction**

This document will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

# Interim Management Agreement

Allens Arthur Robinson



Executed and delivered as a Deed in Victoria

Signed, sealed and delivered by  
TIMBERCORP SECURITIES  
LIMITED (IN LIQUIDATION)  
(ACN 092 311 469) in its capacity as  
responsible entity for the 2004  
Timbercorp Table Grape Project  
(ARSN 108 648 086) by being signed  
by MARK ANTHONY  
KORDA/LEANNE KYLIE CHESSER in  
his/her capacity as joint and several  
liquidator in the presence of:

Signature of witness

NICK IOURINEY

Name of witness (print)

Signature of liquidator

MARK KORDA

Name of liquidator (print)

Signed, sealed and delivered by  
TIMBERCORP SECURITIES  
LIMITED (IN LIQUIDATION)  
(ACN 092 311 469) in its capacity as  
responsible entity for the 2005  
Timbercorp Table Grape Project  
(ARSN 113 512 226) by being signed  
by MARK ANTHONY  
KORDA/LEANNE KYLIE CHESSER in  
his/her capacity as joint and several  
liquidator in the presence of:

Signature of witness

NICK IOURINEY

Name of witness (print)

Signature of liquidator

MARK KORDA

Name of liquidator (print)

# Interim Management Agreement

Allens Arthur Robinson

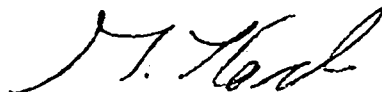
Signed sealed and delivered by  
TIMBERCORP LIMITED (IN  
LIQUIDATION) (ACN 092 311 469)  
by being signed by MARK ANTHONY  
KORDA/~~LEANNE KYLIE CHESSER~~ in  
his/her capacity as joint and several  
liquidator in the presence of:



Signature of witness

NICK COURTNEY

Name of witness (print)

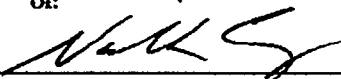


Signature of liquidator

MARK KORDA

Name of liquidator (print)

Signed sealed and delivered by  
GRAPECORP MANAGEMENT PTY  
LTD (IN LIQUIDATION) (ACN 105  
995 195) by being signed by MARK  
ANTHONY KORDA/~~LEANNE KYLIE  
CHESSER~~ in his/her capacity as joint  
and several liquidator in the presence  
of:



Signature of witness

NICK COURTNEY

Name of witness (print)



Signature of liquidator

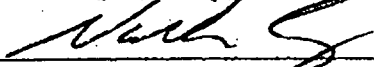
MARK KORDA

Name of liquidator (print)

# Interim Management Agreement

Allens Arthur Robinson

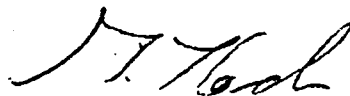
Signed sealed and delivered by  
MARK ANTHONY KORDA in his  
capacity as Liquidator of each  
Company in the presence of:



Signature of witness

NICK COURTNEY

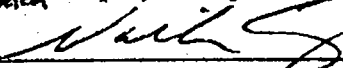
Name of witness (print)



Signature of Mark Anthony Korda

Signed sealed and delivered by  
LEANNE KYLIE CHESSER in her  
capacity as Liquidator of each  
Company in the presence of:

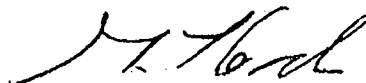
MARK ANTHONY KORDA  
is attorney for LEANNE  
KYLIE CHESSER under  
power of attorney dated  
5 October 2007



Signature of witness

NICK COURTNEY

Name of witness (print)



Signature of Leanne Kylie Chesser  
Mark Anthony Korda

Signed sealed and delivered by  
ALIGN FUNDS MANAGEMENT LTD  
(ACN 105 684 231) in its capacity as  
responsible entity for the Timbercorp  
Orchard Trust (ARSN 106 557 297)  
(RECEIVERS AND MANAGERS  
APPOINTED) by being signed by  
PAUL WILLIAM KIRK/STEPHEN  
GRAHAM LONGLEY in his capacity as  
joint and several receiver and  
manager in the presence of:

Signature of witness

Name of witness (print)

Signature of receiver and manager

Name of receiver and manager (print)

# Interim Management Agreement

Allens Arthur Robinson 

Signed sealed and delivered by  
**MARK ANTHONY KORDA** in his  
capacity as Liquidator of each  
Company in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Mark Anthony Korda

\_\_\_\_\_  
Name of witness (print)

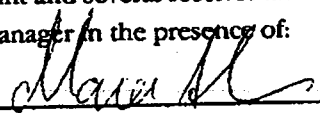
Signed sealed and delivered by  
**LEANNE KYLIE CHESSER** in her  
capacity as Liquidator of each  
Company in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Leanne Kylie Chesser

\_\_\_\_\_  
Name of witness (print)

Signed sealed and delivered by  
**ALIGN FUNDS MANAGEMENT LTD**  
(ACN 105 684 231) in its capacity as  
responsible entity for the Timbercorp  
Orchard Trust (ARSN 106 557 297)  
(RECEIVERS AND MANAGERS  
APPOINTED) by being signed by  
**PAUL WILLIAM KIRK/STEPHEN**  
**GRAHAM LONGLEY** in his capacity as  
joint and several receiver and  
manager in the presence of:

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Name of witness (print)

  
\_\_\_\_\_  
Signature of receiver and manager

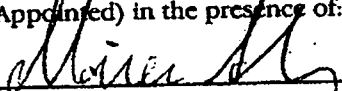
  
\_\_\_\_\_  
STEPHEN LONGLEY


\_\_\_\_\_  
Name of receiver and manager (print)

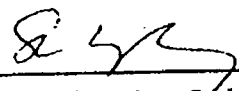
# Interim Management Agreement

Allens Arthur Robinson 

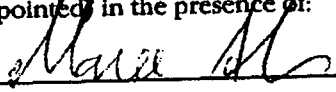
Signed sealed and delivered by  
**STEPHEN GRAHAM LONGLEY** in his  
capacity as a Receiver and Manager of  
Align Funds Management Ltd in its  
capacity as responsible entity for the  
Timbercorp Orchard Trust (ARSN 106  
557 297) (Receivers & Managers  
Appointed) in the presence of:

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Name of witness (print)

  
\_\_\_\_\_  
Signature of Stephen Graham Longley

Signed sealed and delivered by  
**PAUL WILLIAM KIRK** in his capacity  
as a Receiver and Manager of Align  
Funds Management Ltd in its capacity  
as responsible entity for the  
Timbercorp Orchard Trust (ARSN 106  
557 297) (Receivers & Managers  
Appointed) in the presence of:

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Name of witness (print)

  
\_\_\_\_\_  
Signature of Paul William Kirk

# Interim Management Agreement

Allens Arthur Robinson 

Signed sealed and delivered by  
COSTA HOLDINGS INVESTMENTS  
PTY LTD (ACN 140 921 053) by a  
director and a secretary/director:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

  
\_\_\_\_\_  
Signature of director / company  
secretary *sole*

*Charlie Costa*  
\_\_\_\_\_

Name of director / company secretary  
(print)