



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**

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Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs

Prepared by:

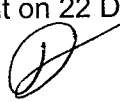
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This is the exhibit marked '**PWK37**' now produced and shown to PAUL WILLIAM KIRK at the time  
of swearing his affidavit on 22 December 2010.

Before me



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

**Exhibit 'PWK37'**

**Copy of 2010 Crop Sale  
Agreement dated 11 February  
2010**



## Sale of Table Grape Agreement

2004 Timbercorp Table Grape Project

**Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) in its capacity as responsible entity  
for the 2004 Timbercorp Table Grapes Project (ARSN 108 648 086)**

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

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

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

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

**Mark Anthony Korda and Leanne Kylie Chesser**

**Stephen Graham Longley and Paul William Kirk**

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

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# Sale of Table Grape Agreement

Allens Arthur Robinson



Date	11 FEBRUARY 2010
Parties	
1.	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) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 ( <i>RE</i> )
2.	Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 ( <i>TSL</i> )
3.	Timbercorp Limited (In Liquidation) (ACN 055 185 067) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 ( <i>Timbercorp</i> )
4.	Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) of Level 33, 360 Collins Street, Melbourne, Victoria, 3000 ( <i>Align</i> )
5.	Grapecorp Management Pty Ltd (In Liquidation) (ACN 105 995 195) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 ( <i>Grapecorp</i> )
6.	Mark Anthony Korda and Leanne Kylie Chesser in their capacities as liquidators of each Company of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 ( <i>Liquidators</i> )
7.	Stephen Graham Longley and Paul William Kirk in their capacity as joint and several receivers and managers of the assets charged by Align pursuant to a fixed and floating charge registered with the Australian Securities and Investment Commission as charge 994221 of Level 23, Freshwater Place, 2 Southbank Boulevard, Southbank, Victoria, 3006 ( <i>Receivers</i> )
8.	Costa Holdings Investments Pty Ltd (ACN 140 921 053) of 234 Deakin Avenue, Mildura Victoria 3500 ( <i>Costa</i> ).
Recitals	
A	The RE is the responsible entity for the Project, which is conducted on the Land.
B	The Land is an asset of TOT.
C	Align is the registered proprietor of the Land.
D	Align has leased the Land to Timbercorp pursuant to the Head Lease.

- E Timbercorp has sub-leased the Land to TSL pursuant to the Sub-lease.
- F Pursuant to the Licences, each Participant Grower was granted a licence to use and occupy the Grapelots.
- G Pursuant to the Constitution, 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 Project.
- 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, Permanent Nominees (Aust) Limited appointed Stephen Graham Longley and Paul William Kirk of PricewaterhouseCoopers as joint and several receivers and managers of all of the assets charged by Align pursuant to a fixed and floating charge registered with the Australian Securities and Investment Commission as charge 994221.
- L On 21 December 2009, Grapecorp engaged Costa, pursuant to the IMA, as the manager of the Vineyards and used for the Project.
- M The Receivers are entering into this Agreement only in their capacity as receivers and managers of the relevant assets charged by Align and, other than as set out in this Agreement, assume no personal liability as a consequence.
- N TSL cannot pay the fees and other amounts due to Grapecorp under the Management Agreement.
- O Pursuant to the Grapelot Management Agreement, TSL has been engaged by each of the Participant Growers to sell the Product or, if the RE determines that any part of the Participant Grower's Participating Interest in the Table Grapes should not be sold as Product, put such Table Grapes to commercial use, using its reasonable endeavours to seek to maximise returns, on such terms and conditions as TSL determines in its absolute discretion.
- P The RE has determined that, in accordance with its obligations under the Constitution and responsibilities under section 601FC(1)(c) of the Corporations Act, the 2010 Table Grapes should not be processed into Product.



- |   |  |
|---|--|
| Q | The RE and TSL have determined that, to maximise returns to Participant Growers, they will put the 2010 Table Grapes to commercial use by selling them to Costa on the terms and conditions of this Agreement. |
| R | Each of the RE and TSL enter into this Agreement both in its own capacity and as agent and attorney for each Participant Grower.   |
| S | Costa agrees to provide the Services for the Relevant Period on the terms and conditions sets out in this Agreement.   |

It is agreed as follows.

## 1. Definitions and interpretation

### 1.1 Definitions

In this document, unless the context requires otherwise:

**2010 Calendar Year** means the period commencing on 1 January 2010 and ending on 31 December 2010.

**2010 Table Grapes** means the Table Grapes which are, or are expected to be harvested during the 2010 Calendar Year.

**2010 Product** means the Table Grapes which are harvested during the 2010 Calendar Year.

**Agreement** means this document executed as a deed.

**Align Portion** means an amount equal to the aggregate of:

- (a) the Use and Occupancy Fee; and
- (b) the Receivers' Costs.

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

**Bank** means a corporation authorised by law to carry on the general business of banking in Australia.

**Best Practice** means sound viticultural, horticultural, environmental practices and industry practices that are adopted in relation to the sale of table grapes, including the Table Grapes.

**Best Viticultural Practice** means sound viticultural and environmental practices and industry practices that are adopted in relation to similar vines and vineyards.

**Budget** means the budget prepared by Costa for the provision of the Services during the Relevant Period as set out in Schedule 4.

**Business Day** means a day on which Banks are open for general banking business in Melbourne, excluding Saturdays, Sundays and public holidays.



**Buyer** has the meaning given in clause 13.2.

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

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

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

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

**Completion** means completion of the sale and purchase of the 2010 Table Grapes in accordance with this Agreement.

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

**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.

**Constitution** means the deed entered into by the RE dated 5 April 2004 as amended on 5 May 2005 and 19 August 2008 in respect of the managed investment scheme known as the 2004 Timbercorp Table Grape Project (ARSN 108 648 086).

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

**Costa Consideration** means Costa's agreement to accept the obligations to be performed by Costa pursuant to this Agreement.

**Costa Costs** mean an amount equal to the aggregate of:

- (a) any reasonable costs and expenses incurred by Costa in performing the Services in accordance with clause 4.1(a);
- (b) any Outgoings incurred by Costa in accordance with clause 4.2(a);
- (c) any Insurance Costs incurred by Costa in accordance with clause 10.1(a);
- (d) any Costa Pre-harvest Costs; and
- (e) the Marketing Fee.

**Costa Pre-harvest Costs** means an amount equal to the aggregate of:

- (a) any Direct Costs and Expenses,
- (b) any Repair and Maintenance Costs; and
- (c) any Costa Pre-harvest Outgoings,

which relate to the 2010 Table Grapes and are referable to the period commencing 21 December 2009 and ending on the Commencement Date.

**Costa Pre-harvest Outgoings** has the meaning given to the term "Outgoings" in the IMA.



**Costa Sale Agreement** has the meaning given under clause 13.2.

**Costa Shortfall Amount** means the amount, if any, by which the Costa Costs exceed the Notified Proceeds (to be expressed in a dollar amount).

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

**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.

**Determination Date** means the date on which the Costa Costs and the Notified Proceeds are agreed or determined in accordance with clause 8.

**Direct Costs and Expenses** has the meaning given in the IMA.

**Effective Date** means the date of this Agreement.

**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 Align;
- (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 Align.

**Existing Water Rights** means any Water Licences which, as at the date of this Agreement, are associated with, or may permit the taking or use of water in relation to, the Land, and any water allocation in respect of those Water Licences.

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

**Expiry Date** means the date which is three Months after the Commencement Date.

**Financier Interested Parties** means the parties listed in Part 1 of Schedule 1.

**Financial Year** has the meaning given in the Constitution.

**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.

**Grapelot Management Agreement** means the agreement in relation to the Project between TSL and each several Participant Grower named in the first schedule to that agreement.

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

**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 head lease described in Part 2 of Schedule 2.

**Insurance Costs** mean any insurance premiums required to be paid by Costa in accordance with clause 10.1.

**Interested Parties** means the Financier Interested Parties and the Other Interested Parties.

**Irrigation and Drainage Plan** means the irrigation and drainage plan for the Vineyard.

**IMA** means the Interim Management Agreement between Costa, Grapecorp, TSL, Timbercorp, the Liquidators, Align and the Receivers in relation to the Vineyard, dated 21 December 2009.

**Land** means the land described in Part 1 of Schedule 2 and for the purpose of clause 12 includes the Capital Works and the Vines.

**Liability** means any debt or other monetary liability or penalty, fine or payment or any damages, losses, costs, charges, outgoings or expenses of whatever description.

**Licences** means the licence agreement described in Part 2 of Schedule 2.

**Management Agreement** means the Management Agreement between TSL and Grapecorp dated 19 April 2004 in relation to the Project.

**Marketing Fee** is an amount equal to 6.5% of the Notified Proceeds (to be expressed in a dollar amount).

**Marketing Services** means the services or activities in respect of the 2010 Table Grapes described in Part 2 of Schedule 3.

**Month** means calendar month.

**Net Proceeds** means the amount by which the Notified Proceeds exceed the Costa Costs (to be expressed in a dollar amount).

**Notified Proceeds** means, in respect of the 2010 Table Grapes, an amount equal to the estimated gross proceeds from the sale of the 2010 Product sold by Costa, based on the final price for the 2010 Product advised by all of the buyers of the 2010 Product.

**Outgoings** means:



- (a) All rates, taxes, charges and assessments levied upon the Land (including Capital Works and, subject to clause 12.10(a)(i), any payment in respect of water, or electricity), 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), during the Relevant Period, 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 Rights) in accordance with clause 10 of this Agreement.

**Other Interested Parties** means the parties listed in Part 2 of Schedule 1.

**Participant Grower** has the meaning given in the Grapelot Management Agreement.

**Participating Interest** has the meaning given in the Constitution.

**Payment Date** means:

- (a) 20 Business Days after payment by the Buyer of all amounts payable at completion of the Sale (completion is deemed to occur when possession passes); 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 Align 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.

**Process** means sort, grade, package and store and "**processing**" has a corresponding meaning.

**Product** means Table Grapes produced in a saleable condition from the Vineyard.

**Project** means the managed investment scheme known as the 2004 Timbercorp Table Grape Project ARSN 108 648 086.

**Receivers' Costs** means \$26,345 (inclusive of GST) as a contribution towards costs and expenses incurred by the Receivers in relation to the maintenance of the 2010 Table Grapes.



**Related Body Corporate** has the meaning given to that term by section 9 of the Corporations Act.

**Relevant Period** means the period commencing on the Commencement Date and terminating on the earlier of:

- (a) one Month after the Commencement Date;
- (b) the completion of the marketing and sale of the Table Grapes forming the 2010 Table Grapes; and
- (c) if any party other than Costa is in breach of this Agreement and fails to remedy that breach within 5 Business Days and Costa gives notice to the parties of its wish to terminate the Relevant Period, the date upon which that notice takes effect.

**Repair and Maintenance Costs** has the meaning given in the IMA.

**Residual Amount** means the amount, if any, by which the Net Proceeds exceed the Align Portion (to be expressed in a dollar amount).

**Sale** has the meaning given under clause 13.2.

**Sale Agreement** has the meaning given under clause 13.2.

**Services** means the Vine and Vineyard Services and the Marketing Services but does not include the Excluded Services.

**Sorting and Packaging Facility** means the sorting and packing facility agreed between the Receivers and Costa.

**Sub-lease** means the sub-lease described in Part 2 of Schedule 2.

**Table Grapes** means the table grapes grown on the Vineyard, and whether or not harvested and any other products, rights, benefits or credits derived from the Vines.

**Table Grape Assets** means some or all of any right, title or interest in or to the Land, Vines, Vineyard, the 2010 Table Grapes and any future Table Grapes, but excludes the Existing Water Rights.

**Table Grape Asset Vendors** means Align, each Company and Vendor to the extent that it is within its power to sell any Table Grape Asset.

**Table Grape Sales Report** means the report prepared pursuant to paragraph 1.7 of Schedule 3.

**TOT** means the Timbercorp Orchard Trust.

**TOT Constitution** means the constitution governing the TOT, dated 15 September 2003.

**Use and Occupancy Fee** means an amount notified to the parties by the Receivers no later than 10 Business Days prior to the Expiry Date and determined in accordance with the formula:

$$UOF = A\% \times Fee \times \frac{RP}{365}$$

where:

- (i) UOF is the Use and Occupancy Fee;
- (ii) A% is 100%;
- (iii) Fee is the sum of the fees which would be payable by all Participant Growers under the Licences on 31 October 2009 for the year commencing 1 July 2009 and ending on 30 June 2010, if an invoice had been rendered by TSL or the RE; and
- (iv) RP is the number of days in the period commencing 21 December 2009 and ending on the Commencement Date.

**Vendors** means whichever of one or more of TSL as agent and attorney for each Participant Grower, the RE and the RE as agent and attorney for each Participant Grower as is or are together entitled under the Constitution, Grapelot Management Agreement or at law to sell the 2010 Table Grapes.

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

**Vine and Vineyard Services** means the services or activities in respect of the Vines and the Vineyard described in Part 1 of Schedule 3.

**Vineyard** means all of the Grapelots that are situated on the Land.

**Warranties** means the representations and warranties set out in clause 14.

**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 Align, 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. Sales and purchases

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### 2.1 Acknowledgement by the RE

The RE has determined that, pursuant to clause 7.2 of the Grapelot Management Agreement and in accordance with its obligations under the Constitution and responsibilities under section 601FC(1)(c) of the Corporations Act, the 2010 Table Grapes should not be sold as Product, but should be put to commercial use by selling them in accordance with this Agreement.

### 2.2 Sale of 2010 Table Grapes

The Vendors agree to sell all of their and the Participant Growers' present and future right, title and interest in and to the 2010 Table Grapes to Costa and Costa agrees to buy the 2010 Table Grapes:

- (a) for the Costa Consideration;
  - (b) free from all Encumbrances; and
  - (c) with effect from the Commencement Date,
- in accordance with this Agreement.

### 2.3 Title

All of the Vendors' and the Participant Growers' present and future right, title and interest in and to the 2010 Table Grapes will pass to Costa with effect on and from the Commencement Date.

### 2.4 Risk

All risk in the 2010 Table Grapes will pass to Costa with effect on and from the Commencement Date.

### 2.5 IMA

- (a) TSL (in any capacity (including in its capacity as RE)), Timbercorp, Grapecorp, the Liquidators, Align, the Receivers and Costa agree that, save as expressly provided otherwise in this Agreement:
  - (i) as and from the Commencement Date, the operation of the IMA will be suspended during the Relevant Period in so far as it would otherwise have related to the 2010 Table Grapes;
  - (ii) the suspension of the IMA will not affect:





- (A) accrued rights or remedies of a party under or in relation to the IMA; or
  - (B) the rights of a party under or in relation to the IMA in respect of the periods before or after the Relevant Period or which do not relate to the 2010 Table Grapes; and
  - (iii) for the avoidance of doubt, as and from the end of the Relevant Period, the operation of the IMA will be reinstated insofar as it would otherwise have related to the 2010 Table Grapes.
- (b) The parties acknowledge and agree that:
- (i) Costa will deduct from any amounts payable to it under the IMA in respect of the 2010 Table Grapes for the period commencing 21 December 2009 and ending on the Commencement Date all amounts that it receives as Costa Pre-harvest Costs under this Agreement and have no claim under the IMA in respect of those amounts; and
  - (ii) no amount are payable by the Companies or the Liquidators to Costa under the IMA for the period commencing 21 December 2009 and ending on the Commencement Date.

## 3. Completion and Term

### 3.1 Automatic completion

Completion will occur on the Commencement Date automatically without the need for any action or notification by any party.

### 3.2 Vendors' obligations

At Completion, and subject to the Vendors complying with their obligations to provide access in accordance with clause 12.7, the Vendors will be deemed to have delivered and transferred all of the 2010 Table Grapes to Costa on the Vines at the Vineyard or wherever that part of the 2010 Table Grapes are located on the Commencement Date.

### 3.3 Post Completion obligations

At and following Completion, the Vendors, the Companies, the Liquidators, the Receivers, Align and Costa must do all other things desirable or necessary to complete the sale and purchase of the 2010 Table Grapes or any other transactions contemplated by this Agreement

### 3.4 Term

This Agreement will terminate on the earlier of:

- (a) the date of payments of the Net Proceeds (if any) by Costa in accordance with clause 11; and
- (b) the Expiry Date.

## 3.5 Consequences of termination

Upon termination of this Agreement the rights and obligations of the parties will cease except for any obligations arising or rights or remedies accrued as a result of an existing breach of this Agreement.

## 4. Services

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### 4.1 Services

- (a) During the Relevant Period, Costa must provide the Services in accordance with the Budget.
- (b) The parties agree and acknowledge that:
  - (i) the costs and expenses incurred by Costa in performing the Services in accordance with clause 4.1(a) will be included as Costa Costs; and
  - (ii) a Marketing Fee for the provision of the Marketing Services by Costa in accordance with clause 4.1(a) will be included as Costa Costs.

### 4.2 Outgoings

- (a) All the Outgoings incurred during the Relevant Period are to be paid by Costa (apportioned on a daily basis) when the payments are due to the relevant authorities.
- (b) The parties acknowledge and agree that the amounts required to be paid by Costa in accordance with clause 4.2(a) will be included as Costa Costs.

### 4.3 Costa Costs

- (a) The parties acknowledge and agree that, subject to clause 8, Costa will:
  - (i) deduct and retain for its own use and benefit the Costa Costs incurred during the Relevant Period from the Notified Proceeds; and
  - (ii) be reimbursed for any Costa Shortfall Amount incurred during the Relevant Period in accordance with clause 13.3.

## 5. Budget

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### 5.1 Authorisation of Expenses

Costa must obtain the approval of the Receivers and the Vendors (not to be unreasonably withheld) before incurring any Costa Costs, except where such amounts:

- (a) are included in the Budget; or
- (b) do not exceed \$5,000 for a particular service or obligation (whether as a single amount or a series of amounts of a similar nature).



## 6. Costa's Discretion and Delegation

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### 6.1 Discretion

Subject to compliance with the Budget and this Agreement, Costa will have complete discretion in the performance of the Services.

### 6.2 Delegation

Costa may appoint, with the consent of the Receivers, which consent must not be unreasonably withheld or delayed, 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 Costa will be liable under this Agreement for the exercise of such powers and performance of such obligations.

## 7. Reporting

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### 7.1 Monthly reports

- (a) Costa must provide to Timbercorp and the Receivers, within 21 days of the end of each Month:
  - (i) a statement of the Costa Costs, as at the end of that Month and a detailed explanation for all variances from the Budget; and
  - (ii) any other information reasonably requested by Timbercorp or the Receivers to enable them to determine Costa's compliance to date with this Agreement.
- (b) If Timbercorp or the Receivers do not notify Costa that they disagree with a statement given by Costa under clause 7.1(a), including reasonable details of the basis of their disagreement and the amount the subject of the disagreement, within 10 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.
- (c) If Costa does not comply with its obligations under clause 7.1(a), the Receivers will, within 5 Business Days of the breach, notify Costa of the breach and require Costa to remedy it as soon as possible and in any event within 5 Business Days.

### 7.2 Audit

Timbercorp or 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 of Costa, 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 Timbercorp or the Receivers in relation to such payments or calculations.

### 7.3 Applicable records

In undertaking any audit, the applicable records of Costa 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 Costa which relate to any other matter, transaction or thing.

## **7.4 Auditor**

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

## **8. Determination**

### **8.1 Notification**

- (a) Costa must:
  - (i) within 10 Business Days after the end of the Relevant Period, notify the Vendors and the Receivers of the amounts which Costa considers to be the Costa Costs for the Relevant Period;
  - (ii) within five Business Days after Costa is advised by all the buyers of the 2010 Product of the final price for the 2010 Product that has been sold, which is expected to be no later than 30 days after completion of the harvest, notify the Vendors and the Receivers of the amount which Costa considers to be the Notified Proceeds; and
  - (iii) provide such supporting information as the Vendors or the Receivers may reasonably request or require to enable the Vendors or the Receivers to determine the accuracy of those amounts.
- (b) If Costa does not comply with its obligations under clause 8.1(a), the Receivers will, within 5 Business Days of the breach, notify Costa of the breach and require it to remedy the breach as soon as possible and in any event within 5 Business Days.

### **8.2 Best endeavours**

- (a) The Vendors, the Receivers and Costa will use their respective best endeavours to agree the amount of the Costa Costs and Notified Proceeds within five Business Days of the relevant notification having been received by the Vendors and the Receivers (without limiting clause 7.1).
- (b) If the Vendors or the Receivers do not notify Costa that they disagree with a notice given by Costa under clause 8.1 within 10 Business Days of receipt of the notice 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.

### **8.3 Determination by Expert**

If the Vendors, the Receivers and Costa cannot agree the amount of the Costa Costs and Notified Proceeds, within the relevant period set out in clause 8.2(a) (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.

## **8.4 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.

## **8.5 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.

## **8.6 Timeframe**

The Vendors, the Receivers, and Costa 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.

## **8.7 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.

## **8.8 Costs**

Each party must bear its own costs of complying with this clause 8 and the Vendors, the Receivers and Costa must bear equally the Expert's costs, unless the decision of the Expert states otherwise.

# **9. Access**

## **9.1 Access and Possession**

Subject to clause 9.2, Grapecorp must ensure that Costa and any subcontractors or other authorised persons, to the extent necessary, have sufficient rights of access to and use of the Vines and the Land through out the Relevant Period in order to perform the Services and any other obligations under this Agreement.

## **9.2 Right of access**

- (a) Notwithstanding clause 9.1, Align, Grapecorp, and their agents, representatives and nominees will have the right to enter upon the Land at any time, upon giving Costa reasonable written notice, for the purpose of:
  - (i) inspecting the Vines and monitoring the provision of the Services by Costa;
  - or

- (ii) any other rights of Align or Grapecorp or in order to fulfil any obligation of Align or Grapecorp.
- (b) The rights under clause 9.2(a) are subject to:
  - (i) the exercise of each of those rights not causing any interference in or impediment to the activities of Costa; and
  - (ii) compliance with the reasonable directions of Costa or Costa's nominees, agents, contractors or subcontractors while present on the Land.

## 9.3 Security measures

Subject to the rights of Costa under this Agreement, Align 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. Align must provide to Costa the keys to all padlocks and such other security access necessary to enable Costa to perform its duties and obligations under this Agreement.

## 9.4 Denial of possession

Costa 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.

## 9.5 Removal

Upon termination or expiry of this Agreement, Align and Grapecorp will, to the extent that it is lawfully able, permit Costa within 30 days after the end of the Relevant Period 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.

# 10. Insurance

## 10.1 Costa to keep insurance

- (a) Costa must effect and keep current during the Relevant Period a policy of general and public risk insurance for an amount not less than \$20,000,000 in relation to the Land.
- (b) The premium required to be paid by Costa in accordance with clause 10.1(a) will be included as Costa Costs.
- (c) All such insurance policies to be effected and maintained in accordance with clause 10.1(a) must:
  - (i) name Align, the Receivers, the Companies, the Liquidators and Costa 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.
- (d) Costa 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.
- (e) Costa, where appropriate, will provide each insured party with a copy of all relevant policies (including renewals and updates).

## 10.2 Not to render void

No party will at any time during the Relevant Period 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.

## 11. Allocation of Net Proceeds

- (a) No later than three Business Days prior to the Expiry Date, Costa will pay from the Net Proceeds (if any) the following amounts in the following order:
  - (i) first, the Align Portion to Align; and
  - (ii) second, the Residual Amount to the RE.
- (b) If the Net Proceeds are insufficient to pay the Align Portion, the Align Portion will be reduced to the amount of the Net Proceeds available to be applied to the payment of such fee and no Residual Amount will be payable to the RE by Costa.
- (c) Subject to clause 12.2(b)(ii), Align acknowledges and agrees that it has no recourse to the Companies, the Liquidators, the Receivers or Costa in respect of any shortfall in the Align Portion.

## 12. Ongoing rights and obligations

### 12.1 Costa

- (a) Costa will commence harvesting the 2010 Table Grapes as soon as practicable, and in any event within 2 Business Days of the Commencement Date.
- (b) Until the end of the Relevant Period, Costa will not enter into a transaction with a Related Body Corporate to sell the 2010 Product at a price, or on terms, more favourable than would be offered to an arms' length purchaser, without the consent of the Vendors and the Receivers.

### 12.2 Align

- (a) Align 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 Licences;

- (iii) any termination of the Licences may terminate the Project; and
  - (iv) Costa requires access to the Land in order to comply with its obligations and exercise its rights under this Agreement.
- (b) Align acknowledges that no rent or other amounts are payable by Timbercorp, TSL or the Liquidators under the Head Lease for the period commencing 31 October 2009 and ending on the Commencement Date. For the avoidance of doubt, the parties agree that:
  - (i) Align will deduct from the rent payable under the Head Lease for the period commencing 31 October 2009 and ending on the Commencement Date any amounts it receives as a Use and Occupancy Fee under this Agreement; and
  - (ii) this clause does not prevent or preclude Align from proving or claiming in the winding up of TSL or Timbercorp for the difference between the Use and Occupancy Fee it receives pursuant to this Agreement and any outstanding rent payable by Timbercorp or TSL under the Head Lease for the period commencing 31 October 2009 and ending on the Commencement Date.
- (c) Until the end of the Relevant Period, Align will:
  - (i) to the extent necessary, permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the 2010 Table Grapes;
  - (ii) provide Costa with full and free access to the Land (to the extent necessary) to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the IMA prior to the Commencement Date;
  - (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 13; 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 13.
- (d) After the Relevant Period, and if and for so long as Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa), Align will (to the extent that it is within its power to so provide) provide Costa with access to the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes, and not do anything which reduces, jeopardises or adversely affects Costa's



ability to so access the Land or any property on which the 2010 Table Grapes are located.

## 12.3 TSL

(a) TSL acknowledges that:

- (i) any termination of the Sub-lease by it may operate to terminate the Licences;
- (ii) any termination of the Licences may terminate the Project;
- (iii) Costa 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 Grapelot Management Agreement may terminate the Management Agreement.

(b) Until the end of the Relevant Period, TSL will:

- (i) to the extent necessary, permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the 2010 Table Grapes;
- (ii) provide full and free access to the Land to Costa (to the extent necessary) to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the IMA prior to the Commencement Date;
- (iii) not terminate the Sub-lease, the Licences, Grapelot 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 13; 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 13.

(c) After the Relevant Period, and if and for so long as Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa), TSL will (to the extent that it is within its power to so provide) provide Costa with access to the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes, and not do anything which reduces, jeopardises or adversely affects Costa's ability to so access the Land or any property on which the 2010 Table Grapes are located.

## 12.4 RE

- (a) The RE acknowledges that:
  - (i) any termination of the Sub-lease may operate to terminate the Licences;
  - (ii) any termination of the Licences may terminate the Project; and
  - (iii) Costa 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 Relevant Period, the RE will:
  - (i) to the extent necessary, permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the 2010 Table Grapes;
  - (ii) provide full and free access to the Land to Costa (to the extent necessary) to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the IMA prior to the Commencement Date;
  - (iii) not terminate the Grapelot Management Agreement or the 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 accordance with clause 13; 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 13.
- (c) After the Relevant Period, and if and for so long as Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa), the RE will (to the extent that it is within its power to so provide) provide Costa with access to the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes, and not do anything which reduces, jeopardises or adversely affects Costa's ability to so access the Land or any property on which the 2010 Table Grapes are located.

## 12.5 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 Project; and



- (iv) Costa 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 Relevant Period, Timbercorp will:
  - (i) to the extent necessary, permit the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the Relevant Table Grapes;
  - (ii) provide Costa with full and free access to the Land (to the extent necessary) to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the IMA prior to the Commencement Date;
  - (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 13.
- (c) After the Relevant Period, and if and for so long as Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa), Timbercorp will (to the extent that it is within its power to so provide) provide Costa with access to the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes, and not do anything which reduces, jeopardises or adversely affects Costa's ability to so access the Land or any property on which the 2010 Table Grapes are located.

## 12.6 Grapecorp

- (a) Until the end of the Relevant Period, Grapecorp will not:
  - (i) terminate the Management Agreement; or
  - (ii) sell any of the Table Grape Assets,other than in connection with a sale of the Table Grape Assets in accordance with clause 13.
- (b) After the Relevant Period, and if and for so long as Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa), Grapecorp will (to the extent that it is within its power to so provide) provide Costa with access to the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes, and not do anything which reduces, jeopardises or adversely affects Costa's ability to so access the Land or any property on which the 2010 Table Grapes are located.

## 12.7 Vendors

The Vendors:

- (a) during the Relevant Period, must procure that:
  - (i) the use of and access to the Land for the purposes of the cultivation, maintenance and harvesting of the 2010 Table Grapes is permitted; and
  - (ii) full and free access to the Land is provided to Costa (to the extent necessary) to enable Costa to perform its obligations and exercise its rights under this Agreement on the same basis that Costa has had access to the Land under the IMA prior to the Commencement Date;
- (b) during the Relevant Period, must not sell or agree to 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 13; and
- (c) after the Relevant Period, and if and for so long as Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa), must ensure that Costa is able to access to the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes, and not do anything which reduces, jeopardises or adversely affects Costa's ability to so access the Land or any property on which the 2010 Table Grapes are located.

## 12.8 Liquidators

- (a) The Liquidators acknowledge that:
  - (i) any disclaimer of the Head Lease or the Sub-lease by it may operate to terminate the Licences;
  - (ii) any disclaimer of the Licences may terminate the Project; and
  - (iii) any disclaimer of the Grapelot Management Agreement may terminate the Management Agreement.
- (b) Until the end of the Relevant Period, the Liquidators will not take any action which has the effect of frustrating this Agreement.
- (c) Until the end of the Relevant Period, the Liquidators will not:
  - (i) disclaim the Head Lease, Sub-lease, the Licences, Grapelot Management Agreement, or Management Agreement; and
  - (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 13.
- (d) After the Relevant Period, and if and for so long as Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have

been removed from the Land and are in the possession and control of Costa), the Liquidators will not knowingly do anything which reduces, jeopardises or adversely affects Costa's ability to access the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes .

## 12.9 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 Project; and
  - (iii) Costa 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 Relevant Period, the Receivers will not take any action which has the effect of frustrating this Agreement.
- (c) Until the end of the Relevant Period, the Receivers will not:
  - (i) repudiate or terminate the Head Lease; and
  - (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 13.
- (d) After the Relevant Period, and if and for so long as a Costa owns or has rights under this Agreement in relation to all or part of the 2010 Table Grapes (including until the harvest of the 2010 Table Grapes and until all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of the relevant Costa ), the Receivers will not knowingly do anything which reduces, jeopardises or adversely affects Costa's ability to access the Land or any property on which the 2010 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2010 Table Grapes.

## 12.10 Water rights

- (a) During the Relevant Period, Align will:
  - (i) provide and make available any allocations, entitlements or water use rights under the Water Licences in respect of the Land free of charge; 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 Relevant Period, Costa 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 Align of any water shortfall or surplus requirements in keeping with Best Viticultural Practice; and
- (iii) if necessary, provide all assistance to Align, 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.

## 13. Sale of Table Grape Assets

### 13.1 Acknowledgement

The parties acknowledge that the Table Grape Asset Vendors may wish to sell the Table Grape Assets.

### 13.2 Condition of sale

The Table Grape Asset Vendors must not sell or agree to sell the Table Grape Assets (*Sale*) to any person (other than Costa or a Related Body Corporate of Costa) (*Buyer*), unless all of the following are satisfied:

- (a) the Buyer is notified of this Agreement and Costa's interest and rights in relation to the 2010 Crop under this Agreement;
- (b) the agreement in relation to the Sale (*Sale Agreement*) provides that completion of the Sale to the Buyer will not occur before such time as completion of the harvest of the 2010 Crop has occurred and all of the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa.

### 13.3 Costa Shortfall Costs

- (a) In the event of completion of a Sale Agreement between Align and Costa (*Costa Sale Agreement*), the Receivers and Align will not be required to reimburse Costa for the Costa Shortfall Amount.
- (b) Costa is only entitled to payment of the Costa Shortfall Amount in accordance with clause 13.3(c) if, prior to the Expiry Date:
  - (i) the Costa Sale Agreement is not executed by any of the parties to that agreement;
  - (ii) the Costa Sale Agreement is lawfully terminated or rescinded by the Receivers prior to its completion, or
  - (iii) the Costa Sale Agreement is lawfully terminated by any party as a consequence of a failure to fulfil a condition precedent by the relevant condition precedent end date.

and the Table Grape Assets the subject of the Costa Sale Agreement are sold to a Buyer.

- (c) Subject to:

- (i) the circumstances listed at clause 13.3(b) being satisfied;
  - (ii) Costa complying with clauses 7.1 and 8; and
  - (iii) receipt of a Tax Invoice from Costa,
- the Receivers must reimburse Costa on the Payment Date for the Costa Shortfall Amount.
- (d) If the Table Grape Assets are sold to a Buyer, the Costa Shortfall Amount will be paid to Costa out of the proceeds of the Sale on the relevant Payment Date.
  - (e) The parties agree and acknowledge that:
    - (i) payment of the Costa Shortfall Costs in accordance with clause 13.3(d) is conditional upon completion of the Sale;
    - (ii) the Costa Shortfall Costs are costs incurred with respect to the Align receivership and are only required to be paid by the Receivers from the proceeds of the Sale;
    - (iii) the Participant Growers, TSL and/or the Receivers may make or bring a Claim; and
    - (iv) in the event that Claim is successful, it may be paid ahead of the Costa Shortfall Costs.
  - (f) Costa acknowledges and agrees that it has no recourse to the Companies or the Liquidators in respect of the Costa Shortfall Amount.

## 14. Representations by the Vendors and Companies, Liquidators, and Align

### 14.1 Vendors and Companies

Each of the Vendors and the Companies represent and warrant to Costa and the Receivers that, as at the date of this Agreement, from the date of this Agreement and as at each Commencement Date and, in respect of the warranties in clauses 14.1(b) and 14.1(i) only, until the harvest of the 2010 Table Grapes and until all of the Table Grapes constituting the 2010 Table Grapes have been removed from the Land and are in the possession and control of Costa:

- (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,and, in the case of the Vendors, to pass legal and beneficial title to the 2010 Table Grapes on the relevant Commencement Dates to Costa;
- (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 TOT) or any interest in the Table Grape Assets (other than by virtue of an interest in the units in the TOT);

- (h) **(recitals)** so far as it is aware, the statements in the Recitals, other than those statements at Recitals B, C, K and M are true and accurate;
- (i) **(access to Land)** so far as it is aware, Align, TSL, the RE, Timbercorp, the Vendors and the Liquidators between them have the power and authority to ensure that Costa is provided full and free access to the Land to enable Costa to perform its obligations and exercise its rights under this Agreement.

## 14.2 Align representations

Align represents and warrants to each of the Vendors and Companies, Costa and the Liquidators that, as at the date of this Agreement and as at each Commencement Date:

- (a) **(responsible entity)** Align is the responsible entity of the TOT;
- (b) **(trust power)** it is empowered by the TOT 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 responsible entity of the TOT;
- (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 TOT 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 TOT) or any interest in the Table Grape Assets (other than by virtue of an interest in the units in TOT);
- (h) **(owner of Land)** it is the registered proprietor of all of the Land;
- (i) **(recitals)** so far as it is aware, those statements at Recitals B, C, D, K and M are true and accurate; and
- (j) **(access to Land)** so far as it is aware, Align, TSL, the RE, Timbercorp, the Vendors and the Liquidators between them have the power and authority to ensure that Costa is provided full and free access to the Land to enable Costa to perform its obligations and exercise its rights under this Agreement.

## 14.3 Liquidator's representations

The Liquidators represent and warrant to Costa, Align and the Receivers that in respect of each of the Vendors and the Companies, as at the date of this Agreement and as at each Commencement Date:

- (a) **(status)** each of the Vendors and 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 Vendors and the Companies in accordance with the requirements of the Corporations Act;
- (c) **(power)** as at the Commencement Date, the Liquidators have full power and authority to cause each of the Vendors and 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 Vendors and 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 Vendor and Company under clause 14.1 are true and accurate.

#### 14.4 Receivers' representations

The Receivers represent and warrant to Costa, the Liquidators, and each of the Vendors and Companies that in respect of Align, as at the date of this Agreement and as at each Commencement Date:

- (a) (appointment) the Receivers are validly and legally appointed as receivers and managers of the relevant assets charged by Align 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 Align to enter into this document and have taken all necessary action to authorise the execution, delivery and performance of this document by Align in accordance with its terms; and
- (c) (warranties and representations) to the best of the Receivers' knowledge, the warranties and representations given by Align under clause 14.2 are true and accurate.

#### 14.5 No implied warranties

Costa acknowledges that:

- (a) except for the Warranties and any warranties which cannot by law be excluded, none of the Vendors, the Companies, Align, the Receivers or the Liquidators are giving any warranties to Costa; and
- (b) the 2010 Table Grapes are being sold in an 'as is, where is' condition.

### 15. Representations by Costa

Costa represents and warrants to each of the Vendors and Companies, the Liquidators, Align and the Receivers that, as at the date of this Agreement and as at the Commencement Date:

- (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 Costa 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.

## 16. Liquidators not Personally Liable

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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 12.8;
- (b) save for in respect of the representations given by the Liquidators in clause 14.3; and
- (c) except in the event of fraud or dishonesty on their part.

### 16.2 Acknowledgement

Notwithstanding any other clause of the Agreement, the parties acknowledge and agree that the Liquidators do not adopt or ratify the Head Lease and have not and will not use or occupy or be in possession of the Land.

## 17. Receivers not Personally Liable

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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 12.9;
- (b) save for in respect of the representations given by the Receivers in clause 14.4; and
- (c) except in the event of fraud or dishonesty on their part.

## 18. Liability of Align

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### 18.1 Limitation of liability

Align enters into this Agreement only in its capacity as responsible entity of the TOT.

A liability arising under or in connection with this Agreement is limited and can be enforced against Align only to the extent to which Align is actually indemnified as responsible entity of TOT in respect of that liability out of the assets comprising the Table Grape Assets. No person will be entitled to:

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

## 18.2 Qualification to limitation

The limitation of liability in clause 18.1 does not apply to any obligation or liability of Align to the extent to which there is, in respect of that obligation or liability, whether under the TOT Constitution or by operation or law, a reduction in the extent of Align's indemnification, or a loss of Align's right to indemnification, out of the assets of the TOT as a result of any fraud, breach of trust or breach of duty by Align.

## 19. Force Majeure

- (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 19(a) and 19(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.



## 20. Confidentiality and Announcements

### 20.1 Confidentiality

Subject to clause 20.2, 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.

### 20.2 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 Vendors, the Companies and the Liquidators, to properly conduct the liquidation of the Vendors and the Companies (including reporting to the creditors of the Vendors and the Companies);
- (c) to the extent necessary, in the case of the Receivers and Align, to properly conduct the receivership of all the assets charged by Align including conducting a Sale in accordance with clause 13;
- (d) 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;
- (e) 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;
- (f) 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 clauses 20.2(b) and 20.2(c), 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.

## **20.3 Injunctive relief**

Each party acknowledges that monetary damages alone may not be adequate compensation to the other parties for a breach of this clause 20 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 20.

## **20.4 Survival of Clause**

This clause 20 survives the termination of this Agreement.

## **20.5 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.

# **21. GST**

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## **21.1 Definitions**

For the purposes of this clause 21, 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*.

## **21.2 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.

## **21.3 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.

# **22. Notices**

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## **22.1 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 22.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by email or facsimile to that address.

## 22.2 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.

## 22.3 Address of parties

Unless varied by notice in accordance with this clause 22, the parties' addresses and other details are:

Party: Liquidators, Vendors, RE, 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: Receivers and Align  
Attention: Paul Kirk  
Address: Freshwater Place, Level 23, 2 Southbank Boulevard, VIC, 3006  
Facsimile: +61 3 8613 4852  
E-mail: paul.kirk@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: Costa  
Attention: Charlie Costa  
Address: Lot 15, Kilpatrick Road Euston (PO Box 676 Robinvale VIC 3549)  
Facsimile: +61 3 5026 3359  
E-mail: Charlie@grapehouse.com.au

## **22.4 Requirement for written notice**

For the avoidance of doubt, the requirement in clause 22.1(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.

## **23. General**

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### **23.1 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.

### **23.2 Paramountcy of document**

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

### **23.3 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.

### **23.4 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.

### **23.5 Amendment**

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

### **23.6 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.





## 23.7 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.

## 23.8 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.

## 23.9 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.

## 23.10 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).

## 23.11 Costs

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

## 23.12 Counterparts

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

## 23.13 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.

## 23.14 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.

# Sale of Table Grape Agreement

Allens Arthur Robinson 

Executed 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/~~JEANNE KYLIE~~  
~~CHESSER~~ in his/~~her~~ capacity as joint and  
several Liquidator in the presence of:



Signature of witness



Signature of Liquidator

NICK COURTNEY

Name of witness (print)

MARK KORDA

Name of Liquidator (print)

Signed sealed and delivered by  
TIMBERCORP SECURITIES LIMITED (IN  
LIQUIDATION) (ACN 092 311 469) in its  
own capacity and as agent and attorney for  
each Participant Grower by being signed by  
MARK ANTHONY KORDA/~~JEANNE 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)

# Sale of Table Grape Agreement

Allens Arthur Robinson 

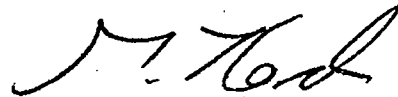
Signed sealed and delivered by  
**TIMBERCORP LIMITED (IN LIQUIDATION)**  
(ACN 005 185 067) by being signed by  
**MARK ANTHONY KORDA/LEANNE KYLIE**  
**CHESSER** in his/her capacity as joint and  
several Liquidator in the presence of:



Signature of witness



Name of witness (print)




Signature of Liquidator



Name of Liquidator (print)

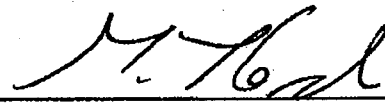
Signed sealed and delivered by  
**GRAPECORP MANAGEMENT PTY LTD (IN**  
**LIQUIDATION)** (ACN 105 995 195) by being  
signed by **MARK ANTHONY KORDA/LEANNE**  
**KYLIE CHESSER** in his/her capacity as joint  
and several Liquidator in the presence of:



Signature of witness



Name of witness (print)




Signature of Liquidator

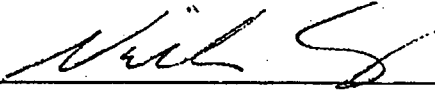


Name of Liquidator (print)

# Sale of Table Grape Agreement

Allens Arthur Robinson 

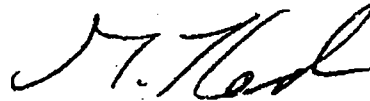
Signed sealed and delivered by MARK  
ANTHONY KORDA in his capacity as  
Liquidator of each Company in the presence  
of:



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:



Signature of witness

NICK COURTNEY

Name of witness (print)

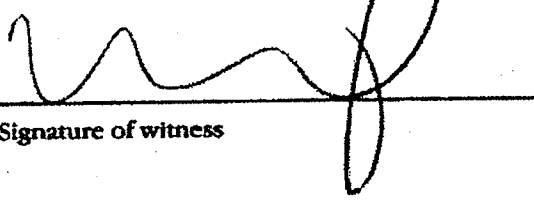


Signature of Leanne Kylie Chesser

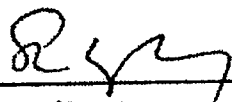
# Sale of Table Grape Agreement

Allens Arthur Robinson 

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:

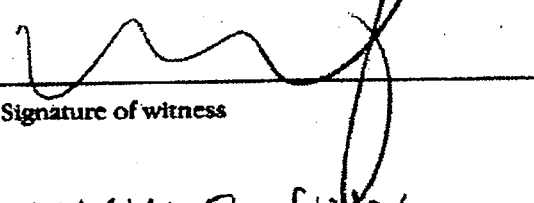
  
Signature of witness

MICHAEL FUNG  
Name of witness (print)

  
Signature of Receiver

STEPHEN LONGLEY  
Name of Receiver (print)

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

MICHAEL FUNG  
Name of witness (print)

  
Signature of Stephen Graham Longley

# Sale of Table Grape Agreement

Allens Arthur Robinson



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

Signature of Paul William Kirk

Maha Payne

Name of witness (print)

Signed sealed and delivered by COSTA  
HOLDINGS INVESTMENT PTY LIMITED in  
accordance with section 127 of the  
Corporations Act in the presence of:

Signature of witness

Signature of director

Name of witness (print)

Name of director (print)

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:

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Signature of witness

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Signature of Paul William Kirk

---

Name of witness (print)

Signed sealed and delivered by COSTA  
HOLDINGS INVESTMENT PTY LIMITED in  
accordance with section 127 of the  
Corporations Act in the presence of:

---

Signature of witness

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Signature of director

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**DARREN STEPHEN GOLDSMITH**  
619 King Street, West Melbourne 3003  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

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*Charles Costa*  
Name of director (print)

## Schedule 1

### Interested Parties

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#### Part 1 – Financier Interested Parties

Permanent Nominees (Aust) Limited ACN 000 154 441

#### Part 2 – Other Interested Parties

Timbercorp Limited ACN 055 185 067

Timbercorp Securities Limited ACN 092 311 469

Grapecorp Management Pty Ltd ACN 105 995 195

Timbercorp Finance Pty Ltd ACN 054 581 190

Timbercorp Finance (Vic) Pty Ltd ACN 091 460 356



## Schedule 2

### Land and Leases

#### Part 1 – Land

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The land described in:

- (a) Folio Identifier 1 / 1067588;
- (b) Folio Identifier 22 / 1093662; and
- (c) Folio Identifier 2 / 1046695.

#### Part 2 – Leases

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- (a) Head Lease is the head lease dated 15 April 2004 (as amended on 5 May 2005 and 22 August 2007 and by partial surrender on 28 April 2005) between Align in its capacity as the responsible entity of the TOT and Timbercorp.
- (b) Sub-Lease is the sub-lease dated 15 April 2004 (as amended by partial surrender on 28 April 2005) between Align in its capacity as the responsible entity of the TOT, Timbercorp and TSL.
- (c) Licences are the licence agreements between Align in its capacity as the responsible entity of the TOT, Timbercorp, TSL and each Participant Grower in relation to the 2004 Timbercorp Table Grape Project ARSN 108 648 086.

## Schedule 3

### Services

#### Part 1 – Vine and Vineyard Services

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##### 1.1 Cultivation, maintenance and management services (Vines and Vineyard)

During the Relevant Period, Costa will perform any activity or undertaking necessary to maximise the 2010 Table Grapes and the return from the 2010 Product, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practice.

##### 1.2 Harvesting & Processing services

Without limiting the general obligations described in paragraph 1.1 of this Schedule 3, Costa must harvest the Table Grapes to a standard consistent with all OH&S policies and Best Viticultural Practice including the following:

- (a) **(Test maturity)** Test the maturity of samples of the Table Grapes at appropriate times to determine whether the Table Grapes are ready for harvesting.
- (b) **(Completion of harvest)** Notify the Receivers and the Vendors of completion of the harvest within 2 Business Days of completion occurring.
- (c) **(Harvesting equipment)** Use harvesting aids that minimise Table Grape damage and optimise harvesting efficiencies.
- (d) **(Loading & Transfer)** Transfer the harvested Table Grapes, which must be immediately available for collection to the Sorting and Packing Facility, utilising trucks or other modes of transport as Costa reasonably determines.
- (e) **(Weigh, sort & grade)** Weigh sort and grade the Table Grapes as soon as reasonably practicable following delivery to the Sorting and Packing Facility.
- (f) **(Recording systems)** Operate a recording system that enables trace-back of the harvested Table Grapes to the Vineyard.
- (g) **(Storage)** Storing the Table Grapes in storage areas that are maintained at temperatures and humidity levels that ensure Table Grape quality is optimised and suffers minimum deterioration during the storage phase.
- (h) **(Compliance)** Have in place all certification and quality assurance systems, including OH&S policies required by regulatory authorities and the law, and industry and customer standards for Table Grapes.

##### 1.3 Testing of Table Grapes

The parties agree:



- (a) subject to making prior appointment in writing with Costa, the Receivers may be present at any tests carried out by Costa in relation to the Table Grapes (or a random sample of them); and
- (b) that the Receivers are entitled to require Costa to provide it with the results of any tests carried out under paragraph 1.3(a) of this Schedule 3 and such other related information in possession of Costa as is reasonably required to enable the Receivers to analyse those results. Costa will provide such information to the Receivers if requested by the Receivers in writing.

## 1.4 Assessment of Table Grapes

Costa will assess the Table Grapes after Processing having regard to size, variety and defects and report the results to the Receivers in the Table Grape Sales Report to be prepared in accordance with paragraph 1.7 of this Schedule 3

## Part 2 – Marketing Services

### 1.5 Marketing Services

During the Relevant Period, Costa must market the Table Grapes to a standard consistent with Best Practice for the marketing of table grapes, and use reasonable endeavours to market the Table Grapes having regard to usual practices in the table grape industry, existing and potential customer relationships and any marketing plan that may be developed by Costa and Receivers including (without limitation) the following:

- (a) **(Maximise returns)** At all times use reasonable endeavours to market the Table Grapes such that the proceeds from the sale of the Table Grapes are maximised, given the quality, grade, size and variety of Table Grapes having regard to usual practices in the Table Grape industry, existing and potential customer relationships and any marketing plan that may be developed by Costa and the Receivers.
- (b) **(Reports)** Provide the Receivers with the Table Grape Sales Report.
- (c) **(Best Practice)** Adopt Best Practice in the Table Grape industry for marketing and selling Table Grapes.

### 1.6 Sale of Table Grapes

Subject to any agreement in writing between Costa and the Receivers, Costa agrees that all Table Grapes available from any harvest will be sold by Costa or its nominee as soon as practicable and ensuring the optimum marketability of the Table Grapes.

### 1.7 Provision of Table Grape Sales Reports

- (a) Subject to paragraph 1.7(b) of this Schedule 3, Costa agrees to provide the Receivers with a Table Grape Sales Report in respect of the 2010 Table Grapes, within 10 Business Day of the completion of the harvest, which will include

- (i) the results of Costa's assessments under paragraph 1.4 of this Schedule 3 in respect of the Table Grapes harvested during the Month to which the Table Grape Sales Report relates; and
  - (ii) such information, as Costa acting reasonably considers appropriate, which demonstrates to the Receivers that the price payable by the customers to Costa for the Table Grapes is comparable to:
    - (A) that paid to other Table Grapes suppliers, having regard to the variety and quality of the Table Grapes sold; and
    - (B) the prevailing market price for the Table Grapes at the time of sale; and
  - (iii) such information as the Receivers, by notice in writing to Costa, reasonably requires to satisfy it that the matter described in paragraph 1.7(a)(ii) of this Schedule 3 are complied with.
- (b) In preparing the Table Grape Sales Report for the Receivers under paragraph 1.7(a) of this Schedule 3, Costa is not required to include confidential or commercially sensitive information in the Table Grape Sales Report.



## Schedule 4

### Budget

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[illegible]

### Projected Operating Costs (Excluding Post Harvest)

394,724

**Projected Profit/(Loss)**

(97,724)

\_\_\_\_\_

	30,000
\$	24.00
	<hr/> 720,000

		2019	2018
Property, Plant & Equipment	\$	255,000	255,000
Construction	\$	54,000	54,000
Debt	\$	75,000	75,000
Pay	\$	9,000	9,000
Liabilities	\$	15,000	15,000
Equity	\$	15,000	15,000
<b>TOTAL</b>		<b>423,000</b>	<b>-</b>
<b>CASH &amp; EQUIV</b>		<b>297,000</b>	<b>-</b>

Projected Operating Costs (Excluding Post Harvest)	394,724	315,779	78,945
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<b>Projected Profit/(Loss)</b>	<b>(97,724)</b>	<b>(18,779)</b>	<b>(78,945)</b>
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Costa Management Group Pty Ltd  
Bella Vista Vineyards  
Actual Expenditure Report  
For the Period Ended 1st Jan 2010

Activity	Actual Costs	25th Dec	Budget 1st Jan	Total	Variance	Explanation Timing or Permanent
Farm Supervisor - Includes Irrigation Mgt	2,880	1,500	1,500	3,000	(120)	Permanent
Irrigation Chemicals - Chlorine	1,450	1,500		1,500	(50)	Timing
Application of Spray Materials Including Equipment Usage	23,717	22,704	22,704	46,408	(21,691)	Timing
Vine/Bunch Management Activities - Dis-budding/Leaf Plucking	35,066		18,000	18,000	17,066	Timing
Weed Control - Slashing/Weedicide Application	17,789	4,000	4,000	8,000	9,789	Timing
Vine Training	30,784	20,000	20,000	40,000	(9,217)	Timing
Topping	26,704	15,000	15,000	30,000	(3,296)	Timing
Administration	2,000	2,000		2,000	0	Timing
Summer Pruning						
<b>Total</b>	<b>140,390</b>	<b>66,704</b>	<b>81,204</b>	<b>147,908</b>		



Coesta Management Group Pty Ltd									
Bella Vista Vineyards									
Protected Operating Budget									
For the Period Ended 30th April 2010									
	Week Ended 26th Dec	1st Jan	8th Jan	15th Jan	22nd Jan	29th Jan	5th Feb	Total	
Farm Supervisor - Includes Infection Mgt	1,500	1,500	1,500	1,500	1,500	1,500	1,500	7,500	7,500
Injection Chemicals - Chlorox	1,500		1,500					1,500	1,500
Application of Spray Materials including Equipment Usage	22,704	22,704	22,704	22,704	22,704	22,704	22,704	158,224	158,224
Vine/Bunch Management Activities - Dis-Budding/Lead Plucking	18,000		18,000					18,000	18,000
Vine Control - Staking/Weedside Application	4,000	4,000	4,000	4,000	4,000	4,000	4,000	24,000	24,000
Vine Training	20,000	20,000	12,500	2,500	2,500			57,500	57,500
Topping	15,000	15,000						30,000	30,000
Administration	2,000		2,000					2,000	2,000
Summer Pruning			15,000	15,000	15,000			45,000	45,000
<b>Total</b>	<b>65,704</b>	<b>61,204</b>	<b>66,500</b>	<b>55,704</b>	<b>47,704</b>	<b>30,704</b>	<b>26,204</b>	<b>417,724</b>	<b>417,724</b>
Subtotals									
Pre-Harvest Period	376,724							376,724	376,724
Harvest Period	15,000							15,000	15,000
Post Harvest Period	23,000							23,000	23,000
<b>Total</b>	<b>414,724</b>							<b>414,724</b>	<b>414,724</b>

Costa Management Group Pty Ltd

Bella Vista Vineyards

Projected Operating Budget  
For the Period Ended 30th April 2010

Activity	Week Ended 25th Dec	PRE-HARVEST PERIOD							POST-HARVEST PERIOD							Total
		1st Jan	8th Jan	15th Jan	22nd Jan	29th Jan	5th Feb	12th Feb	19th Feb	26th Feb	5th Mar	12th Mar	19th Mar	26th Mar	2nd Apr	
Farm Supervisor - Includes Irrigation Mgt	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	22,800
Irrigation Chemicals - Chlorine	1,200	-	1,200	-	-	-	-	-	-	-	-	-	-	-	-	2,400
Application of Spray Materials	18,163	18,163	-	18,163	18,163	18,163	18,163	-	-	-	-	-	-	-	-	108,878
Vine/Bunch Management Activities - Dis- budding/Leaf Plucking	-	14,400	14,400	-	-	-	-	-	-	-	-	-	-	-	-	28,800
Weed Control - Staking/Weedicide Application	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	-	-	-	-	-	-	-	35,200
Vine Training	18,000	18,000	10,000	10,000	2,000	2,000	-	-	-	-	-	-	-	-	-	58,000
Topping	12,000	12,000	12,000	-	-	-	-	-	-	-	-	-	-	-	-	36,000
Administration	1,600	-	1,600	-	1,600	-	-	-	-	-	-	-	-	-	-	8,000
Summer Pruning	-	-	12,000	12,000	12,000	-	-	-	-	-	-	-	-	-	-	36,000
<b>Total</b>	<b>89,563</b>	<b>84,863</b>	<b>53,600</b>	<b>44,563</b>	<b>35,163</b>	<b>34,863</b>	<b>22,563</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>354,179</b>

Subtotals

Pre-Harvest Period  
Harvest Period

Subtotal

Post Harvest Period

Total

13,000

303,179

18,000

315,179

38,000

Costa Management Group Pty Ltd  
Bella Vista Vineyards  
Projected Operating Budget  
For the Period Ended 30th April 2010

Projected Operating Budget For the Period Ended 30th April 2010																					
Activity	PRE-HARVEST PERIOD										POST-HARVEST PERIOD										Total
	Week Ended 28th Dec		1st Jan	8th Jan	15th Jan	22nd Jan	28th Jan	5th Feb	12th Feb	19th Feb	26th Feb	5th Mar	12th Mar	19th Mar	26th Mar	2nd Apr	9th Apr	16th Apr	23rd Apr	30th Apr	
Farm Supervisor - Includes Irrigation Mgt	800	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	300	5,700	
Irrigation Chemicals - Chlorine	300	-	300	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	600	
Application of Spray Materials	4,541	4,541	-	4,541	4,541	4,541	4,541	4,541	4,541	4,541	-	-	-	-	-	-	-	-	-	27,245	
Vine/Bunch Management Activities - Die- budding/Leaf Plucking	-	3,800	3,800	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	7,200	
Weed Control - Stairing/Weedside Application	800	800	800	800	800	800	800	800	800	800	-	-	-	-	-	-	-	-	-	8,400	
Vine Training	4,000	4,000	2,500	2,500	500	500	-	-	-	-	-	-	-	-	-	-	-	-	-	14,000	
Topping	3,000	3,000	3,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9,000	
Administration	400	-	400	-	400	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2,000	
Summer Pruning	-	-	3,000	3,000	3,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	9,000	
Total	13,341	10,341	15,900	11,141	8,541	6,141	5,541	5,541	5,541	5,541	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	85,545	
							</														

4,000

3,000

75,945

Subtotal

Pre-Harvest Period  
Harvest Period

Sub-Total

Post Harvest Period

Total

75,945  
3,000  
78,945

4,600  
23,545