

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

LIST E

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

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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs

Prepared by:

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This is the exhibit marked '**PWK38**' now produced and shown to PAUL WILLIAM KIRK at the time
of swearing his affidavit on 22 December 2010.

Before me



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

Exhibit 'PWK38'

**Copy of 2011 Crop Sale
Agreement for the 2004 Table
Grape Project dated 20 December
2010**



Allens Arthur Robinson



2011 Sale of Table Grape Agreement

2004 Timbercorp Table Grape Project: Bella Vista

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)

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

Michael Fung and Paul William Kirk

Costa Holdings Investments Pty Limited (ACN 140 921 053)

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2011 Sale of Table Grape Agreement

Allens Arthur Robinson



Date

20 DECEMBER

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 (*RE*)
2. **Timbercorp Securities Limited (In Liquidation)** (ACN 092 311 469) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (*TSL*)
3. **Timbercorp Limited (In Liquidation)** (ACN 055 185 067) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (*Timbercorp*)
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 (*Align*)
5. **Mark Anthony Korda and Leanne Kylie Chesser** in their capacities as liquidators of each Company of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 (*Liquidators*)
6. **Michael Fung 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 (*Receivers*)
7. **Costa Holdings Investments Pty Ltd** (ACN 140 921 053) of 234 Deakin Avenue, Mildura Victoria 3500 (*Costa*).

Recitals

- A The RE is the responsible entity for the 2004 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 2004 Project.
- I On 23 April 2009, Mark Anthony Korda and Leanne Kylie Chesser were appointed as voluntary administrators to each Company and Grapecorp pursuant to section 436A of the Corporations Act.
- J At a meeting of creditors of each of the Companies and Grapecorp on 29 June 2009, the creditors of each Company and Grapecorp voted to wind up each Company and Grapecorp and Mark Anthony Korda and Leanne Kylie Chesser were appointed as liquidators of each Company and Grapecorp.
- 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, and on 25 May 2010, Michael Fung replaced Stephen Graham Longley as a receiver and manager of all the assets charged by TOT RE.
- L On 21 December 2009, Grapecorp engaged Costa, pursuant to the IMA, as the manager of the Vineyards and used for the 2004 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 2011 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 2011 Table Grapes to commercial use by selling a portion of the 2011 Table Grapes to Costa and a portion of the 2011 Table Grapes to Align 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 set out in this Agreement.

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

In this document, unless the context requires otherwise:

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

2011 Financial Year means the period commencing on 1 July 2010 and ending on 30 June 2011.

2011 Table Grapes means the Table Grapes which are, or are expected to be harvested during the 2011 Financial Year.

2011 Product means the Table Grapes which are harvested during the 2011 Financial Year.

2011 Table Grape Agreement – 2005 Project means the 2011 Sale of Table Grape Agreement – 2005 Timbercorp Table Grape Project: Bella Vista dated on or around the date of this Contract.

Agreement means this document executed as a deed.

Align Consideration means Align's agreement to accept the obligations to be performed by Align pursuant to clause 7.2.

Align Portion means the lesser of:

- (a) the portion of the 2011 Table Grapes which results in, or would result in if sold in accordance with this Agreement, Net Proceeds equal to the aggregate of the Use and Occupancy Fee; and
- (b) the balance of the 2011 Table Grapes after deduction of the Costa Portion.

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 as set out in Schedule 4 and includes budgeted costs in respect of Costa Costs for the Relevant Period.

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 8.2.

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 and Timbercorp.

Completion means, in respect of all or part of a Portion, completion of the sale and purchase of all or that part (as the case may be) of that Portion in accordance with this Agreement.

Completion Date means, in respect of all or part of a Portion, the first date upon which all or that part (as the case may be) of that Portion is ascertained for the purposes of Section 21 of the Goods Act 1958 (Vic).

Commencement Date means 1 July 2010.

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, including, for the removal of doubt, providing Services for the Relevant Period on the terms and conditions set out in 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 7.1(a);
- (b) any Outgoings incurred by Costa in accordance with clause 7.1(c);
- (c) any Insurance Costs incurred by Costa in accordance with clause 7.1(f);
- (d) any Repair and Maintenance Costs;
- (e) the Marketing Fee.

Costa Portion means that portion of the 2011 Table Grapes which results in, or would result in if sold in accordance with this Agreement, Net Proceeds equal to the Costa Costs.

Costa Sale Agreement has the meaning given under clause 8.2.

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

CP Satisfaction Date has the meaning given in clause 2.6

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 Relevant Period and in which PBR exists.

Determination Date means the date on which the Costa Costs are agreed or determined in accordance with clause 6.

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.

Extended Expiry Date means 20 November 2010 or such other date as the parties to the IMA agree.

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



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) person (whether autonomous or not) who is charged with the administration of a law.

Grapecorp means Grapecorp Management Pty Ltd (In Liquidation) (ACN 105 995 195) of Level 8, 461 Bourke Street, Melbourne, Victoria 3000.

Grapelot Management Agreement means the agreement in relation to the 2004 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 7.1(i).

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, as amended by written agreement dated 27 January 2010, and as further amended on 18 March 2010 and 23 July 2010.

Land means the land described in Part 1 of Schedule 2 and for the purpose of clause 7 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 2004 Project.

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

Marketing Services means the services or activities in respect of the 2011 Table Grapes described in Part 2 of Schedule 3.

Month means calendar month.

Net Proceeds means, in respect of a Portion, an amount equal to the proceeds which would have been received from that Portion if the 2011 Table Grapes were sold in accordance with this Agreement.

New RE means a responsible entity of the 2004 Project other than TSL.

NSW Water means the water rights described in Water Share WAL9415 or, in the event the water rights described in WAL9415 are split between two or more water shares, the subsequent water shares.

Outgoings means all rates, taxes, charges and assessments levied upon the Land (including Capital Works and, subject to clause 7.9(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):

- (a) local authority rates;
- (b) sewerage rates;
- (c) land tax (if any) on a multiple holding basis, and other State taxes.

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

Outstanding Costa Costs means an amount equal to the Costa Costs less any amounts received by Costa from proceeds of the sale of 2011 Product pursuant to clause 9(b) (to be expressed in a dollar amount).

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.

Portion means the Costa Portion or the Align Portion.

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.

Purchase Consideration has the meaning given in clause 8.6.

Purchaser means:

- (a) Costa in respect of the Costa Portion; and
- (b) Align in respect of the Align Portion.

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

Relevant Event means:

- (a) a New RE exercising its option under clause 8.3; or
- (b) completion of the Sale of the Table Grape Assets to a Buyer.

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

- (a) the completion of the marketing and sale of the Table Grapes forming the 2011 Table Grapes; and
- (b) if any party other than Costa is in breach of this Agreement and fails to remedy that breach within five 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.

Relevant Table Grapes means the 2011 Table Grapes including, for the avoidance of doubt, any part of the 2011 Table Grapes sold to Align and Costa pursuant to this Agreement.

Repair and Maintenance Costs means the repairs and maintenance agreed by the Purchaser and the Receivers to be necessary during the Relevant Period and incorporated in the Budget, including repairs and maintenance to waterways, dams, irrigation and pumping equipment, fences, fire-breaks and farm equipment.

Residual Portion means that part of the 2011 Table Grapes other than the Costa Portion and the Align Portion.

Sale has the meaning given under clause 8.2.

Sale Agreement has the meaning given under clause 8.2.

Settlement Date means:

- (a) in the case of the sale and purchase of the Table Grape Assets referred to in clause 8.4, the date on which completion of the Sale occurs; and
- (b) in the case of the appointment of a New RE, 30 Business Days after expiry of the notice period referred to in clause 8.3.

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 2004 Project 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 2011 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 end of the Relevant Period 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 2010 for the year commencing 1 July 2010 and ending on 30 June 2011, if an invoice had been rendered by TSL or the RE; and
- (v) RP is the number of days in the Relevant Period.

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 2011 Table Grapes.

Vines means the vines planted on the Vineyard.

Victorian Water means the water rights described in Water Shares WEE045487 and WEE018428.

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 10.

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 and includes:

- (a) the NSW Water; and
- (b) the Victorian Water.

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. Conditions

2.1 Condition precedent

This Agreement (other than the provisions of this clause 2) is subject to and conditional upon, and so will have no force or effect until the following condition has been satisfied or waived in accordance with this Agreement:

- (a) the Liquidators obtaining approval for this transaction in respect of each Company pursuant to section 477(2B) of the Corporations Act.

2.2 Waiver

The condition in clause 2.1(a) is for the benefit of all parties and may not be waived without the consent of all parties.



2.3 Non-satisfaction

At the option of any party, this Agreement may be terminated with immediate effect by giving written notice to the other parties if the condition set out in clause 2.1(a) is not satisfied within 45 days of the date of this Agreement.

2.4 Termination

Upon termination of this Agreement under clause 2.3:

- (a) accrued rights and remedies of a party are not affected; and
- (b) subject to clause 2.4(a), the parties are released from further performing their obligations under this document.

2.5 Obligation to satisfy condition

The Liquidators, each Company and Align must use all reasonable endeavours (other than waiver) to ensure that the condition set out in clause 2.1 is satisfied on or before the applicable date set out in clause 2.3.

2.6 Notice of satisfaction

Align, the Liquidators and each Company must notify the other parties in writing as soon as practicable after it becomes aware that the condition set out in clause 2.1 is satisfied (*CP Satisfaction Date*) or that the condition is incapable of being satisfied.

2.7 IMA

- (a) Subject to the condition precedent in clause 2.1(a) being satisfied, TSL (in any capacity (including in its capacity as RE)), Timbercorp, the Liquidators, Align, the Receivers and Costa will terminate the IMA with effect from 30 June 2010.
- (b) In the event this Agreement is terminated in accordance with clause 2.3, the parties agree that the IMA will remain on foot until its Extended Expiry Date or such other date as the parties to the IMA agree.
- (c) Termination of the IMA in accordance with clause 2.7(a) will not affect:
 - (i) accrued rights or remedies of a party under or in relation to the IMA; or
 - (ii) the rights of a party under or in relation to the IMA in respect of the periods before the Relevant Period.

3. Sales and purchases

3.1 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 Portions should not be sold as Product, but should be put to commercial use by selling them in accordance with this Agreement.

3.2 Sale of Costa Portion

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

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

3.3 Sale of Align Portion

The Vendors agree to sell all of its and the Participant Growers' present and future right, title and interest in and to the Align Portion to Align and Align agrees to buy the Align Portion:

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

3.4 Title

All of the Vendors' and the Participant Growers' present and future right, title and interest in and to:

- (a) the Costa Portion will pass to Costa; and
 - (b) the Align Portion will pass to Align,
- with effect on and from the relevant Completion Date.

3.5 Risk

All risk in:

- (a) the Costa Portion passes to Costa; and
 - (b) the Align Portion passes to Align;
- with effect on and from the CP Satisfaction Date.

4. Completion

4.1 Automatic Completion

Subject to notification in accordance with clause 2.6 that the condition precedent set out in clause 2.1 is satisfied, completion in respect of all or part of a Portion will occur on the relevant Completion Date automatically without the need for any action or notification by any party. Completion may occur in respect of different parts of a Portion on different Completion Dates.



4.2 Vendors' obligations

At Completion of all or part of a Portion, and subject to the Vendors complying with their obligations to provide access in accordance with clause 7.6, the Vendors will be deemed to have delivered and transferred all or that part of that Portion (as the case may be) to the relevant Purchaser on the Vines at the Vineyard or wherever that part of that Portion is located on the relevant Completion Date.

4.3 Post Completion obligations

At and following Completion of all or part of a Portion, the Vendors, the Companies, the Liquidators, the Receivers, Align and the relevant Purchaser must do all other things desirable or necessary to complete the sale and purchase of that part of a Portion or any other transactions contemplated by this Agreement in respect of that Portion.

5. Reporting

5.1 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 5.1(a), including reasonable details of the basis of their disagreement and the amount the subject of the disagreement, within 20 Business Days of receipt, they will be deemed to have agreed with the statement and it will be final and binding upon them in respect of the relevant Month.
- (c) If Costa does not comply with its obligations under clause 5.1(a), the Receivers will, within five 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 five Business Days.

5.2 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.

5.3 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.

5.4 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.

6. Determination

6.1 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; and
 - (ii) 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 6.1(a), the Receivers will, within five 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 five Business Days.

6.2 Best endeavours

- (a) The Vendors, the Receivers and Costa will use their respective best endeavours to agree the amount of the Costa Costs within 10 Business Days of the relevant notification having been received by the Vendors and the Receivers (without limiting clause 5.1).
- (b) If the Vendors or the Receivers do not notify Costa that they disagree with a notice given by Costa under clause 6.1 within 20 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.

6.3 Determination by Expert

If the Vendors, the Receivers and Costa cannot agree the amount of the Costa Costs within the relevant period set out in clause 6.2(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.

6.4 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.

6.5 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.

6.6 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.

6.7 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.

6.8 Costs

Each party must bear its own costs of complying with this clause 6 and the Vendors, the Receivers and Costa must bear equally the Expert's costs, unless the decision of the Expert states otherwise.

7. Ongoing rights and obligations

7.1 Costa

- (a) **(Services)** During the Relevant Period, Costa must provide the Services in accordance with the Budget.
- (b) **(Costs, expenses and Marketing Fee)** The costs and expenses incurred by Costa in performing the Services in accordance with clause 7.1(a) will be included as Costa Costs and a Marketing Fee for the provision of the Marketing Services by Costa in accordance with clause 7.1(a) will be included as Costa Costs.
- (c) **(Outgoings)** 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. The amounts required to be paid by Costa in accordance with this clause will be included as Costa Costs.
- (d) **(Costa Costs)** In determining the Costa Portion, the Costa Costs will be calculated only by reference to the Relevant Period and do not include any fees, expenses,



interest and other amounts incurred by Costa during the period before or after the Relevant Period.

- (e) **(Related Body Corporate Transactions)** Until the end of the Relevant Period, Costa will not enter into a transaction with a Related Body Corporate to sell the 2011 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.
- (f) **(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:
 - (i) are included in the Budget; or
 - (ii) 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).
- (g) **(Discretion)** Subject to compliance with the Budget and this Agreement, Costa will have complete discretion in the performance of the Services.
- (h) **(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.
- (i) **(Insurance)** 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.
 - (i) The premium required to be paid by Costa in accordance with clause 7.1(i) will be included as Costa Costs.
 - (ii) All such insurance policies to be effected and maintained in accordance with clause 7.1(i) must:
 - (A) name Align, the Receivers, the Companies, the Liquidators and Costa as an insured party (where appropriate);
 - (B) include cross liability provisions so that the acts or omissions of one insured party do not prejudice the other party's cover; and
 - (C) include waiver of subrogation provisions so that the insurer cannot exercise a right of subrogation against any of the names insured parties.
 - (iii) 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.
 - (iv) Costa, where appropriate, will provide each insured party with a copy of all relevant policies (including renewals and updates).

- (j) **(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.

7.2 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 2004 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 agrees that the Align Portion will be sold by Costa on behalf of Align as part of the Services provided by Costa.
- (c) Align acknowledges that no rent or other amounts are payable by Timbercorp, TSL or the Liquidators, the Receivers or Costa in respect of any shortfall in the Align Portion or under the Head Lease for the Relevant Period. For the avoidance of doubt, the parties agree that:
 - (i) Align will deduct from the rent payable under the Head Lease for the Relevant Period 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 Relevant Period.
- (d) 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 2011 Table Grapes;
 - (ii) provide Costa and any subcontractors or other authorised persons (to the extent necessary) 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;
 - (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 8; and



- (v) not sell any of the Table Grape Assets (other than all or any part of the Residual Portion) which are within its power to sell, other than in connection with a sale of the Table Grape Assets in accordance with clause 8;
 - (vi) not 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.
- (e) 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 2011 Table Grapes (including until the harvest of the 2011 Table Grapes and until all of the 2011 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 2011 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2011 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 2011 Table Grapes are located.
- (f) **(Right of access)** Notwithstanding clause 7.2(d) (ii), and subject to:
- (i) the exercise of each of the rights in this clause 7.2(f) 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,
- Align 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:
- (iii) inspecting the Vines and monitoring the provision of the Services by Costa; or
 - (iv) any other rights of Align or in order to fulfil any obligation of Align.
- (g) **(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.
- (h) **(Removal)** Upon termination or expiry of this Agreement, Align 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.



7.3 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 2004 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 2011 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 8;
 - (v) not sell any of the Table Grape Assets (other than all or part of the Residual Portion) which are within its power to sell, other than in connection with a sale of the Table Grape Assets in accordance with clause 8.
- (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 2011 Table Grapes (including until the harvest of the 2011 Table Grapes and until all of the 2011 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 2011 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2011 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 2011 Table Grapes are located.

7.4 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 2004 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 2011 Table Grapes;
 - (ii) provide Costa and any subcontractors or other authorised persons (to the extent necessary) 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;
 - (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 8; and
 - (v) not sell any of the Table Grape Assets (other than all or part of the Residual Portion) which are within its power to sell, other than in connection with a sale of the Table Grape Assets in accordance with clause 8.
- (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 2011 Table Grapes (including until the harvest of the 2011 Table Grapes and until all of the 2011 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 2011 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2011 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 2011 Table Grapes are located.

7.5 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 2004 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 and any subcontractors or other authorised persons (to the extent necessary) 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;
 - (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 8.
- (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 2011 Table Grapes (including until the harvest of the 2011 Table Grapes and until all of the 2011 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 2011 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2011 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 2011 Table Grapes are located.
- (d) **(Removal)** Upon termination or expiry of this Agreement, Timbercorp 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.

7.6 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 2011 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 (other than all or part of the Residual Portion) which are within its power to sell, other than in connection with a sale of the Table Grape Assets in accordance with clause 8; 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 2011 Table Grapes (including until the harvest of the 2011 Table Grapes and until all of the 2011 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 2011 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2011 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 2011 Table Grapes are located.
- (d) acknowledge that during the Relevant Period, the vendors will not 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.

7.7 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 2004 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 (other than all or part of the Residual Portion) in accordance with clause 8.
- (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 2011 Table Grapes (including until the harvest of the 2011 Table Grapes and until all of the 2011 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 2011 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2011 Table Grapes .

7.8 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 2004 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;
 - (ii) 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; and
 - (iii) take any action which has the effect of terminating this Agreement, other than in connection with a sale of the Table Grape Assets (other than all or part of the Residual Portion) in accordance with clause 8.
- (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 2011 Table Grapes (including until the harvest of the 2011 Table Grapes and until all of the 2011 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 2011 Table Grapes are located for the purpose of harvesting, collecting and removing from the Land the 2011 Table Grapes.

7.9 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, other than in connection with:
 - (A) a sale of the Water Licences, the settlement of which will not occur until the Completion date of the Costa Sale Agreement or the Sale Agreement;
 - (B) the transfer of the Victorian Water to Align.
- (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 provide Align and the Receivers with a monthly water reading of the amount of water used in the preceding month; 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.
- (c) The parties agree and acknowledge that:
 - (i) the Participant Growers, TSL and/or the Receivers may make or bring a Claim; and
 - (ii) in the event that Claim is successful, it may be paid ahead of the Outstanding Costa Costs.
- (d) Costa acknowledges and agrees that it has no recourse to the Companies or the Liquidators in respect of the cost of additional water (if any) purchased by Costa to enable Costa to perform its obligations under this Agreement.

8. Sale of Table Grape Assets

8.1 Acknowledgement

The parties acknowledge that:

- (a) the Table Grape Asset Vendors may wish to sell the Table Grape Assets; or
- (b) a New RE may be appointed.

8.2 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 the 2011 Table Grape Agreement – 2005 Project and Costa's interest and rights in relation to the Table Grapes under this Agreement and the 2011 Table Grape Agreement – 2005 Project;
- (b) the agreement in relation to the Sale (*Sale Agreement*) provides that completion of the Sale is subject to and will not occur unless Costa and Align have each received payment of the Purchase Consideration under clause 8.6 or, in the case of Costa, its estimate of Outstanding Costa Costs under clause 8.7; and
- (c) in connection with or as part of the Sale (and prior to completion of the Sale), the Buyer purchases the Purchaser's Portion in accordance with clause 8.5.

8.3 New RE

Within five Business Days after its appointment, if prior to completion of the harvest of the Relevant Table Grapes, a New RE may elect to purchase the Portions in accordance with



clauses 8.4 and 8.5, subject to it paying the relevant Purchase Consideration under clause 8.6.

8.4 Purchase

If a Relevant Event occurs:

- (a) in the case of a New RE exercising its option under clause 8.3:
 - (i) the sale by the Vendors of that part of both Purchasers' Portions in respect of which Completion has not occurred will be terminated; and
 - (ii) the New RE will purchase all of a Purchaser's right, title and interest in and to that part of both Purchasers' Portions in respect of which Completion has occurred to the extent proceeds have not been received,

for, in aggregate, the Purchase Consideration for that Portion in accordance with clause 8.5;

- (b) in the case of completion of the sale of the Table Grape Assets:
 - (i) the sale by the Vendors of that part of both Purchasers' Portions in respect of which Completion has not occurred will be terminated;
 - (ii) (for the purpose of passing title in respect of Costa's Portion to the Buyer) the Receivers will purchase all of a Purchaser's right, title and interest in and to that part of the Costa Portion in respect of which Completion has occurred to the extent proceeds have not been received; and
 - (iii) the Buyer will purchase all of a Purchaser's right, title and interest in and to that part of the Align Portion in respect of which Completion has occurred to the extent proceeds have not been received,

for, in aggregate, the Purchase Consideration for that Portion, in accordance with clause 8.5.

8.5 Settlement of Purchase

- (a) Subject to clause 8.5(b) and, in the event of purchase in accordance with clauses 8.4(a), and 8.5(c), a termination or purchase referred to in clause 8.4 will occur on the Settlement Date and:
 - (i) in respect of a termination will operate to terminate the present and future right, title and interest that a relevant Purchaser had in the relevant part of that Portion and return that present and future right, title or interest; and
 - (ii) in respect of a purchase, will be a sale of the present and future right, title and interest in the relevant part of that Portion;to the relevant person referred to in clause 8.4, free from all Encumbrances, as and from the Settlement Date.
- (b) On the Settlement Date the New RE, the Receivers, Vendors or the Buyer (as the case may be) must pay the Purchase Consideration to the relevant Purchaser.

- (c) In the case of a sale and purchase of the Table Grape Assets referred to in clause 8.4(b), a Table Grape Asset Vendor will not complete the sale unless and until the Purchase Consideration has been paid to each Purchaser or, in the case of Costa, its estimate of Outstanding Costa Costs under clause 8.7.
- (d) The parties agree and acknowledge that the Liquidators, the RE and TSL reserve their rights to bring a Claim in respect of all or any part of the proceeds of sale of the Table Grape Assets in relation to any amounts which are owing or become owing to the Participant Growers or TSL.

8.6 Purchase Consideration

The Purchase Consideration will be:

- (a) in respect of the Costa Portion, the Outstanding Costa Costs payable by the Receivers in accordance with clause 8.4(b)(ii); and
- (b) in respect of the Align Portion, the Outstanding Use and Occupancy Fee.

8.7 Adjustment

If on the Settlement Date, the Outstanding Costa Costs cannot be determined, Costa will estimate the Outstanding Costa Costs. The estimate of the Outstanding Costa Costs will be payable on the Settlement Date, with an appropriate adjustment and payment being made in respect of the Outstanding Costa Costs either to or by Costa once the Outstanding Costa Costs are determined on the Determination Date.

8.8 Claw back

The Liquidators will not make any Claim in relation to amounts paid by or on behalf of the Vendors, the Receivers, the New RE or the Buyer to the Purchasers under this clause 8 (including in relation to any amount of the Purchase Consideration).

8.9 Outstanding Costa Costs

- (a) In the event of completion of a Sale Agreement between Align and Costa the Receivers and Align will not be required to reimburse Costa for the Outstanding Costa Costs.
- (b) The parties agree and acknowledge that the Receivers' payment of the Outstanding Costa Costs in accordance with clause 8.4(b)(ii) is:
 - (i) conditional upon completion of the Sale;
 - (ii) a cost incurred with respect to the Align receivership; and
 - (iii) only required to be paid by the Receivers from the proceeds of the Sale.

9. Acknowledgements

Each party acknowledges and agrees that:

- (a) the 2011 Product will be deemed to have been sold in the following order:
 - (i) first, the Costa Portion;

- (ii) second, the Align Portion; and
 - (iii) lastly, the Residual Portion;
- (b) proceeds of the sale of the 2011 Product will be deemed to have been received by Costa on account of:
 - (i) first, in relation to the Costa Portion until the Net Proceeds of the Costa Portion have been received in full;
 - (ii) second, in relation to the Align Portion until the Net Proceeds of the Align Portion have been received in full; and
 - (iii) lastly, in relation to the Residual Portion; and
- (c) if Costa suffers or incurs any Liability as a result of a breach of this Agreement by Align, Costa may satisfy that Liability from the Align Portion.

10. Representations by the Vendors and Companies, Liquidators, and Align

10.1 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 Completion Date and, in respect of the warranties in clauses 10.1(b) and 10.1(i) only, until the harvest of the 2011 Table Grapes and until all of the Table Grapes constituting the 2011 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 Portions 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 all or any part of the Residual Portion or by virtue of an interest in the units in the TOT) or any interest in the Table Grape Assets (other than all or any part of the Residual Portion or 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.

10.2 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 all or any part of the Residual Portion or by virtue of an interest in the units in TOT) or any interest in the Table Grape Assets (other than all or any part of the Residual Portion or 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.

10.3 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 10.1 are true and accurate.

10.4 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 10.2 are true and accurate.

10.5 No implied warranties

Each Purchaser 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) its Portion is being sold in an 'as is, where is' condition.

11. 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.

12. Liquidators not Personally Liable

12.1 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 7.7;
- (b) save for in respect of the representations given by the Liquidators in clause 10.3; and
- (c) except in the event of fraud or dishonesty on their part.

12.2 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.

13. Receivers not Personally Liable

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

- (a) save for in respect of clause 7.8;
- (b) save for in respect of the representations given by the Receivers in clause 10.4; and
- (c) except in the event of fraud or dishonesty on their part.

14. Liability of Align

14.1 Limitation of liability

Align enters into this Agreement only in its capacity as responsible entity of 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 and Existing Water Rights. 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 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 the assets comprising the Table Grape Assets and Existing Water Rights held by Align as responsible entity of TOT.

14.2 Qualification to limitation

The limitation of liability in clause 14.1 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 Table Grape Assets and Existing Water Rights as a result of any fraud, breach of trust or breach of duty by Align.

15. 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 15(a) and 15(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.

16. Confidentiality and Announcements

16.1 Confidentiality

Subject to clause 16.2, 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.

16.2 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 8;
- (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 16.2(b) and 16.2(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.

16.3 Injunctive relief

Each party acknowledges that monetary damages alone may not be adequate compensation to the other parties for a breach of this clause 16 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 16.

16.4 Survival of Clause

This clause 16 survives the termination of this Agreement.

16.5 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.

17. GST

17.1 Definitions

For the purposes of this clause 17, 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*.

17.2 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.

17.3 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.

18. Notices

18.1 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 18.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by email or facsimile to that address.



18.2 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.

18.3 Address of parties

Unless varied by notice in accordance with this clause 18, 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

with a copy to:

Attention: Darren Goldsmith of Goldsmith Lawyers
Address: 613 King Street, West Melbourne, VIC, 3003
Facsimile: +61 3 9329 1543
E-mail: darren@goldlaw.com.au

18.4 Requirement for written notice

For the avoidance of doubt, the requirement in clause 18.1(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.

19. General

19.1 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.

19.2 Paramountcy of document

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

19.3 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.

19.4 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.

19.5 Amendment

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

19.6 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.



19.7 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.

19.8 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.

19.9 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.

19.10 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).

19.11 Costs

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

19.12 Counterparts

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

19.13 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.

19.14 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.

2011 Sale of Table Grape Agreement

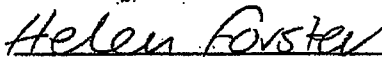
Allens Arthur Robinson

Executed as a deed in Victoria

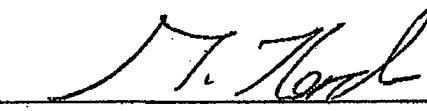
Signed Sealed and Delivered by
TIMBERCORP SECURITIES LIMITED (IN
LIQUIDATION) (ACN 092 311 469) in its
capacity as responsible entity for the 2004
Timbercorp Table Grape Project
(ARSN 108 648 086) by being signed by
MARK ANTHONY KORDA/LEANNE KYLIE
CHESSEY in his/her capacity as joint and
several Liquidator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



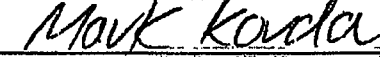
Witness Signature



Print Name:



Liquidator Signature

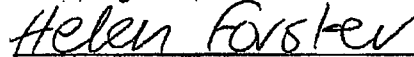


Print Name

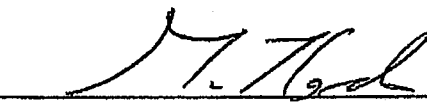
Signed Sealed and Delivered by
TIMBERCORP SECURITIES LIMITED (IN
LIQUIDATION) (ACN 092 311 469) in its
own capacity and as agent and attorney for
each Participant Grower by being signed by
MARK ANTHONY KORDA/LEANNE KYLIE
CHESSEY in his/her capacity as joint and
several Liquidator in the presence of:



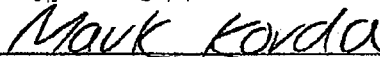
Witness Signature



Print Name




Liquidator Signature



Print Name

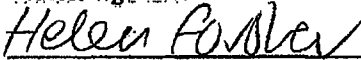
2011 Sale of Table Grape Agreement

Allens Arthur Robinson 

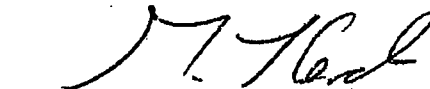
Signed Sealed and Delivered by
TIMBERCORP LIMITED (IN LIQUIDATION)
(ACN 005 185 067) by being signed by MARK
ANTHONY KORDA/LEANNE KYLIE CHESSER
in his/her capacity as joint and several
Liquidator in the presence of:




Witness Signature



Print Name

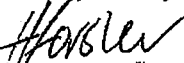


Liquidator Signature

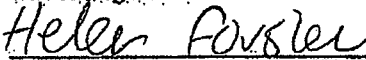


Print Name

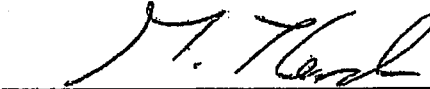
Signed Sealed and Delivered by MARK
ANTHONY KORDA in his capacity as
Liquidator of Timbercorp Securities Limited
and Timbercorp Limited in the presence of:



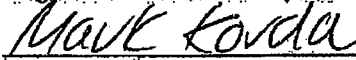
Witness Signature



Print Name



Signature of Mark Anthony Korda

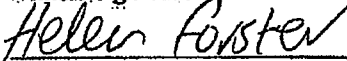


Print Name

Signed Sealed and Delivered by LEANNE
KYLIE CHESSER in her capacity as
Liquidator of Timbercorp Securities Limited
and Timbercorp Limited in the presence of:



Witness Signature



Print Name



Signature of Leanne Kylie Chess

LEANNE CHESSER

Print Name

2011 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/MICHAEL FUNG in his capacity as joint
and several receiver and manager in the
presence of:

Witness Signature

LUCY CRAIG

Print Name

Receiver Signature

MICHAEL FUNG

Print Name

Signed Sealed and Delivered by MICHAEL
FUNG 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:

Witness Signature

LUCY CRAIG

Print Name

Signature of Michael Fung

MICHAEL FUNG

Print Name

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:

Witness Signature

LUCY CRAIG


Print Name

Signature of Paul William Kirk

PAUL KIRK

Print Name

2011 Sale of Table Grape Agreement

Allens Arthur Robinson 

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
COSTA HOLDINGS INVESTMENT PTY
LIMITED:


Director Signature

Sol


Director/Secretary Signature

Carmelo Costa

Print Name

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

Schedule 1

Interested Parties

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

The land described in:

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

Part 2 – Leases

- (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**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 2011 Table Grapes and the return from the 2011 Product, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practice.

1.2 Viticulture and Property Management

Without limiting the generality of clause 1.1 of this Schedule 3, Costa will:

- (a) **(Irrigation and fertilisation)** Provide the Vineyard with necessary irrigation water in accordance with clause 7.9 and apply fertilisers and nutrients at the appropriate times to maintain satisfactory rates of growth and productivity of the Vines on the Vineyard. This includes efficient irrigation application management and salinity and groundwater monitoring and control. Costa will comply with all requirements of the Vineyard irrigation and drainage plan or any such plans required by local water or government authorities.
- (b) **(Weed control)** Ensure there are no impediments to Vine development and Table Grapes production in keeping with Best Viticultural Practice.
- (c) **(Insects and diseases)** Keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines or spoil or damage the Table Grapes in keeping with Best Viticultural Practice.
- (d) **(Spray diaries)** Maintain and upon request provide Align with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Vineyard. The records must detail the types and quantities or concentrations applied, and the times at which they are applied.
- (e) **(Advise Align of deterioration)** Promptly advise Align of any deterioration in yield or quality in the Table Grapes.
- (f) **(Destruction)** Destroy any Vines or Table Grapes which a reasonable horticulturist would destroy, with the prior permission of Align which will not be unreasonably withheld, having regard to the best interests of the remaining unaffected Vines and Table Grapes.
- (g) **(Prune)** Prune the Vines in a manner that optimises yield over the life of the 2004 Project.
- (h) **(Repair and maintenance)** Keep the following in good repair and condition:



- (i) any access road or roads within the Vineyard, all waterways, dams, irrigation and pumping equipment within the Vineyard, as necessary;
 - (ii) all trellises, fences, fire-breaks and other improvements within the Vineyard, as necessary; and
 - (iii) all farm equipment, plant and equipment, tractors, vehicles, protective gear, and other things used to perform the services described in this clause;
- (i) **(Vermin)** As permitted by law, take reasonable steps to control or eradicate vermin which have caused or may cause damage to the Vineyard, as appropriate, by fumigating and poisoning and complying with the provisions of all statutes, regulations and by-laws (and all amendments) and any other statutes, rules, regulations and by-laws relating to, or affecting the Vineyard;
 - (j) **(Breaches)** Immediately notify Align of any breach of the Water Licence during the Term; and
 - (k) **(Supervision)** Supervise the activities of employees, subcontractors and agents it engages to procure the performance of work at a standard required by Align and TSL.
 - (l) **(Certification)** Implement and maintain any environmental, health and safety, food safety or quality certification programmes required by retailers and other customers or industry or Government Agencies.
 - (m) **(Yield forecasts)** Supply Align with forecasts as to the yields on a seasonal basis for each Table Grapes cultivar grown on the Vineyard prior to the beginning of each season as required by Align. In the event there is a surplus or a deficit to forecasts as the season progresses, and if there is any variation in forecasted quality or disease or other affliction, then this information will be conveyed to Align as the situation arises.
 - (n) **(Map updates)** Maintain maps of the Vineyard showing each block, irrigation designs, windbreaks, fences, roads and tracks, buildings and general infrastructure.
 - (o) **(Water compliance & monitoring)** Strictly comply with and monitor all terms and conditions of the Water Licences, including any policies, guidelines or updates relevantly required by NSW State Water Corporation (or its successor), NSW Department of Natural Resources, Lower Murray Water Authority and Department of Sustainability and Environment.
 - (p) **(Water usage)** To 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;
 - (q) **(Licence renewal)** Provide all assistance to Align, Timbercorp or its Related Bodies Corporate to ensure that the Water Licences are renewed on or before the expiry of their term, and any further renewals.
 - (r) **(Insurance)** Effect and maintain adequate insurance in accordance with clause 7.1.

- (s) **(Fallow Areas)** In relation to the fallow areas do all things reasonably necessary to maintain land of this type.

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 two 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 and Liquidators 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 and Liquidators are entitled to require Costa to provide them 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 and Liquidators (as applicable) to analyse those results. Costa will provide such information to the Receivers and Liquidators if requested by the Receivers and/or the Liquidators 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 and Liquidators 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 the Receivers and Liquidators 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 and Liquidators.
- (b) **(Reports)** Provide the Receivers and Liquidators 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 and Liquidators, 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 and Liquidators with a Table Grape Sales Report in respect of the 2011 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 and Liquidators 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 and/or the Liquidators, by notice in writing to Costa, reasonably requires to satisfy them/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 and Liquidators 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

Bella Vista - 2011 Sale of Table Grape Agreement - Budget Costs

2004 Project

Cost by Item In \$	Jul 10	Aug 10	Sep 10	Oct 10	Nov 10	Dec 10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11	Total
Admin	1,925	1,925	1,925	1,925	1,925	1,925	1,925	1,925	1,925	1,925	1,925	1,925	23,100
Chemicals - Weeds (incl Equip Hire)		21,175	21,175	21,175	21,175	21,175	21,175	21,175	21,175				165,400
Chemicals - Disease and Nutrition (incl Equip Hire)		21,175	40,040	18,865	37,730	18,865	18,865						155,540
Covercrop materials													-
Depreciation													-
Equipment hire/lease				42,350	42,350								84,700
Fertilizer (incl Equip Hire)													-
Finance													-
Freight													-
Fuel & Oil													-
Grape Levies													-
Harvesting													-
Insurance - Hall and Frost													-
Labour - Vine Training													-
Labour - Bunch Thinning/Trimming/Leaf Plucking													-
Labour - Shoot Thinning													-
Labour and Equipment Hire - Topping													-
Labour - Summer Pruning													-
Management													-
Post repairs													-
Power													-
Pruning - contract													-
Rates and Taxes													-
Repairs & maintenance													-
Sundry Items													-
Vine Covers - Installation and Removal - Agreed Useful Life 2.5 Years (P 40%)													-
Water lease													-
Total Expenses	163,082	51,586	82,001	274,588	384,534	157,846	150,108	788,368	829,948	762,573	13,856	167,702	3,826,483
Total amount of additional water required?	None												
Rational for requiring additional water	[Insert reasoning here for requiring additional water]												

[Other]													
Item	Explanation												
Grape Levies	Statutory Obligation												
Harvest Cost	Not previously requested - based on Approx. yields 10kg per Vine												
Fertiliser	Vine Nutrition												
Insurance - Hall and Frost	Mitigate Risk												
Labour - Shoot Thinning	Required to maximise Crop Potential												
Labour - Summer Pruning	Required to maximise Crop Potential												
Power	Require to Irrigate Vineyard												
Vine Covers - Include Installation and Removal	Mitigate against risk of Fruit damage caused by Rain												

77%

23%

2005 Project

Total

1,142,979

4,969,472