

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

LIST E

S CI 2010

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

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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs

Prepared by:

Allens Arthur Robinson
Lawyers
530 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref (mkwm:cchm:306250099)
Matthew.Whittle@aar.com.au
Clint.Hinchen@aar.com.au

This is the exhibit marked '**PWK40**' now produced and shown to PAUL WILLIAM KIRK at the time
of swearing his affidavit on 22 December 2010.

Before me

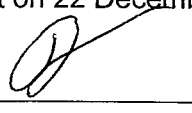

DANIELLE RUTH NAHUM
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

Exhibit 'PWK40'

**Copy of the side letter to the 2011
Sale of Table Grape Project
Agreement for each of the 2004
and 2005 Timbercorp Table Grape
Projects dated 20 December 2010**

14 December 2010

BY EMAIL

1. Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 in its capacity as responsible entity for the 2004 Timbercorp Citrus Project (*TSL RE*)
ARSN 114 091 299
Email: lcnesser@kordamentha.com
cc: jsheridan@abl.com.au
2. Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 (*TSL*)
Email: lcnesser@kordamentha.com
cc: jsheridan@abl.com.au
3. Timbercorp Limited (In Liquidation) ACN 055 185 067 (*Timbercorp Limited*)
Email: lcnesser@kordamentha.com
cc: jsheridan@abl.com.au
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) (*Align*)
Email: Michael.fung@au.pwc.com
cc: steve.clifford@aar.com.au
5. Mark Anthony Korda and Leanne Kylie Chesser (In their capacities as Liquidators of each of TSL and Timbercorp Limited) (*Liquidators*)
Email: lcnesser@kordamentha.com
cc: jsheridan@abl.com.au
6. Michael Fung and Paul William Kirk in their capacity as joint and several receivers and managers of the relevant assets charged by Align (*Receivers*)
Email: Michael.fung@au.pwc.com
cc: steve.clifford@aar.com.au
7. Costa Holdings Investments Pty Limited ACN 140 921 053 (*Costa*)
Email: Charlie@grapehouse.com.au
cc: darren@goldlaw.com.au
8. Carmelo Costa (*Guarantor*)
Email: charlie@grapehouse.com.au
cc: darren@goldlaw.com.au

PricewaterhouseCoopers
ABN 52 780 433 757

Freshwater Place
2 Southbank Boulevard
Southbank VIC 3006
GPO Box 1331L
Melbourne VIC 3001
DX 77 Melbourne
Australia
Telephone 61 3 8603 1000
Facsimile 61 3 8603 1999

Dear Sir/Madam

2011 Sale of Table Grape Agreement – 2004 Timbercorp Table Grape Project: Bella Vista
2011 Sale of Table Grape Agreement – 2005 Timbercorp Table Grape Project: Bella Vista
(2005 Crop Deeds) (together, Crop Deeds)

Contract of Sale dated 23 July 2010

The parties to the Crop Deeds refer to the Crop Deeds dated on and around the date of this letter between the above listed parties (with the exception of the Guarantor) and the parties to the Contract of Sale dated 23 July 2010 between Align, the Receivers, Costa and the Guarantor (**Contract of Sale**) refer to the Contract of Sale.

Definitions used in the Crop Deeds and the Contract of Sale have the same meaning in this letter, unless the context requires otherwise.

The parties to the Crop Deeds confirm paragraphs 1 and 2.

1. Vine covers

- 1.1 To enable Costa to perform its obligations under the Crop Deeds, Costa will purchase vine covers and include an amount in the Budget equivalent to an annual rate of depreciation of the vine covers of (40%) (the **Depreciation Amount**).
- 1.2 The following clause is added to clause 1.2 of Schedule 3 of the Crop Deeds as clause 1.2(t) of Schedule 3.

(Vine covers) Use the vine covers in keeping with the Best Viticultural Practice.
- 1.3 The cost of providing the Service described at clause 1.2(t) of Schedule 3 of the Crop Deeds is included in the Budget.
- 1.4 In the event of Settlement of the Contract of Sale:
 - 1.4.1 in accordance with clause 8.9 of the Crop Deeds, the Receivers and Align will not be required to reimburse Costa for the Outstanding Costa Costs; and
 - 1.4.2 Costa will retain title to the vine covers purchased in accordance with paragraph 1.1 of this letter.
- 1.5 If a Relevant Event occurs in accordance with clause 8.4 of the Crop Deeds:
 - 1.5.1 for the purpose of determining the Purchase Consideration, the Costa Costs will be reduced by the Depreciation Amount; and
 - 1.5.2 in addition to the payment of the Purchase Consideration in accordance with clause 8.6(a) of the Crop Deeds as amended by paragraph 1.5.1 of this letter, the Receivers or, subject to clause 8.3 of the Crop Deeds, the New RE (as the case may be) will pay Costa the full cost of the vine covers; and
 - 1.5.3 title to the vine covers will pass to the Receivers or the New RE (as the case may be) upon payment of the Vine Cover Cost to Costa in accordance with paragraph 1.5.2 of this letter.

2. 2005 Crop Deed

- 2.1 An outbreak of "Downy Mildew" has occurred within the 88 acres of non-producing Golden Globe vines.
- 2.2 To enable Costa to perform its obligations under the 2005 Crop Deed, but subject to Costa not performing Excluded Services, Costa will treat the Downey Mildew by pruning the 40,332 Golden Globe vines (*GG Pruning*) at a cost of \$2.00 per vine excluding GST (equating to a cost of \$80,664 exclusive of GST).
- 2.3 For the avoidance of doubt, GG Pruning will not remove the scion wood from the Cultivars.
- 2.4 In the event of Settlement of the Contract of Sale, and subject to paragraph 2.5, the Receivers will reimburse Costa \$65,000 excluding GST (*GG Pruning Amount*) from the proceeds of sale of the Land.
- 2.5 Payment of the GG Pruning Amount is subject to:
- 2.5.1 all 40,332 vines being pruned at a cost of \$2.00 per vine excluding GST at a total cost to Costa of \$80,664 excluding GST;
 - 2.5.2 the GG Pruning Amount being reduced proportionally if less than 40,332 vines are pruned, if pruned at a lower unit price than \$2.00 or both;
 - 2.5.3 Costa providing a tax invoice to Align for the GG Pruning Amount together with all supporting documentation and invoices in respect of the pruning; and
 - 2.5.4 the Receivers' and Timbercorp's right of audit in accordance with clause 5.2 of the 2005 Crop Deed.
- 2.6 If a Relevant Event occurs in accordance with clause 8.4 of the 2005 Crop Deed, subject to paragraphs 2.5 of this letter, and the Receivers' and Vendors' right of determination in accordance with clause 6 of the 2005 Crop Deed, for the purpose of determining the Purchase Consideration, the Costa Costs will include the GG Pruning Amount (adjusted, if required, pursuant to paragraph 2.5.2).

The parties to the Contract of Sale confirm that the Receivers will reimburse Costa in accordance with paragraph 2.4 this letter by way of an adjustment as per general condition 16 of the Contract of Sale.

Please confirm your agreement to the relevant matters set out in this letter by signing and sending a copy of it to Allens Arthur Robinson as instructed in the accompanying email.

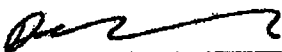
This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Executed as a deed in Victoria

Executed on

20 DECEMBER 2010

Executed as a deed in accordance with
section 127 of the Corporations Act 2001 by
COSTA HOLDINGS INVESTMENTS PTY
LTD (ACN 140 921 053) in the presence of:



Signature of witness

DARREN STEPHEN GOLDSMITH

613 King Street West Melbourne 3003

Name of witness (print)
An Australian Legal Practitioner

within the meaning of the
Legal Profession Act 2004




Sole Director and Sole Secretary Signature

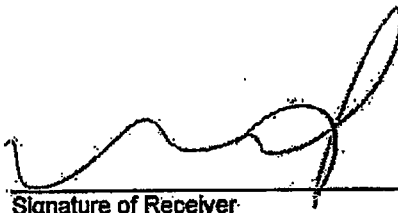
Carmelo Costa

Name (print)

Executed as a deed by **ALIGN FUNDS MANAGEMENT LIMITED**
(ACN 105 684 231) in its capacity as
responsible entity for the Timbercorp
Orchard Trust (ARSN 106 557 297)
(Receivers and Managers Appointed) by
being signed by **MICHAEL FUNG/PAUL
WILLIAM KIRK** in his capacity as joint and
several receiver and manager in the
presence of:


Signature of witness

LUCY CRAIG
Name of witness (print)



Signature of Receiver

MICHAEL FUNG
Name of Receiver

Signed sealed and delivered by **PAUL
WILLIAM KIRK** in his capacity as receiver
and manager of Align Funds Management
Limited in its capacity as responsible entity
of the Timbercorp Orchard Trust
(Receivers and Managers Appointed) in the
presence of:


Witness Signature

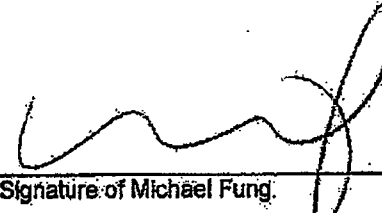
LUCY CRAIG
Print Name


Signature of Paul William Kirk

Signed sealed and delivered by
MICHAEL FUNG in his capacity as
receiver and manager of Align Funds
Management Limited in its capacity as
responsible entity of the Timbercorp
Orchard Trust (Receivers and Managers
Appointed) in the presence of:


Witness Signature

LUCY CRAIG
Print Name


Signature of Michael Fung

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



Signature of witness



Name of witness (print)



Signature of Liquidator

LEANNE CHESSER

Name of Liquidator (print)

Executed as a deed 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 CHESSER in his/her
capacity as joint and several Liquidator in the
presence of:



Signature of witness



Name of witness (print)



Signature of Liquidator

LEANNE CHESSER

Name of Liquidator (print)

Executed as a deed by TIMBERCORP
LIMITED (IN LIQUIDATION)
(ACN 055 185 087) by being signed by MARK
ANTHONY KORDA/LEANNE KYLIE
CHESSER in his/her capacity as joint and
several liquidator in the presence of:



Signature of witness



Name of witness (print)



Signature of Liquidator

LEANNE CHESSER

Name of Liquidator (print)



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

Signature of Mark Anthony Korda

Helen Forster

Print Name

Signed sealed and delivered by LEANNE
KYLIE CHESSER in his capacity as
Liquidator of Timbercorp Securities Limited
and Timbercorp Limited in the presence of:

Witness Signature

Signature of Leanne Kylie Chesser

Helen Forster

Print Name

Executed as a deed in accordance with
section 127 of the Corporations Act 2001 by
**COSTA HOLDINGS INVESTMENTS PTY
LTD (ACN 140 921 053)** as trustee for the
Charlie Costa Investments Trust in the
presence of:



Signature of witness

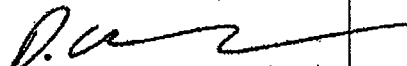
DARREN STEPHEN GOLDSMITH
613 King Street, West Melbourne 3003
Name of witness (an Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004)



Sole Director and Sole Secretary Signature


Name (print)

Executed as a deed in accordance with
section 127 of the Corporations Act 2001 by
**COSTA HOLDINGS INVESTMENTS PTY
LTD (ACN 140 921 053)** as trustee for the
Paul Costa Investments Trust in the
presence of:



Signature of witness

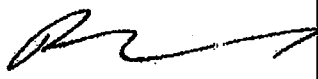
DARREN STEPHEN GOLDSMITH
613 King Street, West Melbourne 3003
Name of witness (an Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004)



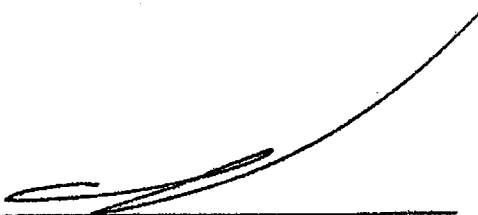
Sole Director and Sole Secretary Signature

Name (print)

Signed sealed and delivered by
CARMELO COSTA in the presence of:



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



Signature of Carmelo Costa