

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

LIST E

S CI 2010

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

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

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 22 December 2010

Filed on behalf of: The Plaintiffs

Prepared by:

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This is the exhibit marked '**PWK7**' 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 'PWK7'

**Copy of Parent Lease between
TOT RE and Timbercorp dated 15
April 2004**

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

LEASE

New South Wales
 Real Property Act 1900

**AA779246R**

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

STAMP DUTY

Office of State Revenue use only

NEW SOUTH WALES DUTY
 29-04-2004 0001931015-001
 LEASE - GENERAL
 DUTIABLE AMOUNT \$ *****38,624,400.00
 DUTY \$ *****135,185.40

(A) TORRENS TITLE

Property leased, if appropriate, specify the part or premises
 2/1046695 and 3/1059036 (now being Lots 1,2 and 3 in DP1067588)

INTERIM ASSESSMENT

(B) LODGED BY.

Delivery Box CITYLINK & LEGALITIES
 Name, Address or DX and Telephone

48t REF

KS / PAF / ORCHARD

Reference (optional): 275778 1.af

CODE

L

(C) LESSOR

ORCHARD INVESTMENTS MANAGEMENT LIMITED ACN 105 684 231

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

(D) Encumbrances (if applicable): 1. _____ 2. _____ 3. _____

(E) LESSEE

TIMBERCORP LIMITED ACN 055 185 067

(F) TENANCY: _____

(G) 1. TERM: 15 years months 75 days

2. COMMENCING DATE: 15 April 2004

3. TERMINATING DATE: 29 June 2019

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

5. With an OPTION TO PURCHASE set out in _____

6. Together with and reserving the RIGHTS set out in _____

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

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

9. The RENT is set out in clause 5 of Annexure A _____

ORIGINAL LEASE AA734546

DATE _____


- (H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: Orchard Investments Management Limited
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:

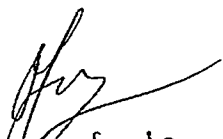
Office held:


MICHAEL EMERY
DIRECTOR

Signature of authorised person:

Name of authorised person:

Office held:


Richard O'Byrne
Director

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

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: Timbercorp Limited

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person:


Office held:


SOL RABINOWICZ
DIRECTOR

Signature of authorised person:

Name of authorised person:

Office held:


Robert Hance
Director

(I) STATUTORY DECLARATION *

I, _____

solemnly and sincerely declare that-

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

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

Made and subscribed at _____ in the State of _____
on _____ in the presence of -

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness [tick one]

☐ Justice of the Peace

☐ Practising Solicitor

☐ Other [specify] _____

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

This is Annexure A referred to in the lease made between Orchard Investments Management Limited (ACN 105 684 231), in its capacity as responsible entity of the Timbercorp Orchard Trust, as Lessor, Timbercorp Limited (ACN 055 185 067) as Lessee, and Timbercorp Securities Ltd (ACN 092 311 469) in respect of the land comprised in Folio Identifier Lot 2 Deposited Plan 1046695 (Costa's Crest) and Lot 3 DP1059036 (Bella Vista).

Execution Copy

Timbercorp Orchard Trust – Costa's Crest & Bella Vista
Lease

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Details of this Lease

Date of this Lease:

This Deed is made on 15 April 2004

Parties to this Lease:

1. Orchard Investments Management Limited

ACN 105 684 231
Level 2, 613 St Kilda Road
MELBOURNE VIC 3004

in its capacity as responsible entity
of the Timbercorp Orchard Trust

(Lessor)

2. Timbercorp Limited

ACN 055 185 067
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(Lessee)

3. Timbercorp Securities Limited

ACN 092 311 469
Level 8, 461 Bourke Street
Melbourne, Victoria, 3000

(TSL)

Background

- A. The Lessor has entered into contracts of sale with the vendor of the Costa Land.
- B. Pending completion of the contracts of sale of the Costa Land, the Lessor, as lessee, has entered into the Bella Vista Lease and the Costa's Crest Lease, each being an interim lease substantially in the form of the leases annexed as Annexure "A" and Annexure "B" respectively.
- C. Upon the Bella Vista Transfer being registered, the Lessor will become the registered proprietor of Bella Vista.
- D. Upon the Costa's Crest Transfer being registered, the Lessor will become the registered proprietor of Costa's Crest.

- E. The Lessor will lease the Costa Land, either in its capacity as registered proprietor or lessee under the Bella Vista Lease and the Costa's Crest Lease, to the Lessee in accordance with this Lease.
- F. In the event that the Lessor only purchases or leases one of either Costa's Crest or Bella Vista due to the conditions in the Costa's Crest Contract or the Bella Vista Contract not being satisfied, this Lease will apply with any necessary modifications only to the property which is acquired or leased by the Lessor.
- G. The Lessee will sub-lease part of the Costa Land from time to time to TSL under Project Sub-leases for use in the Projects TSL establishes.
- H. The Lessor consents to the Lessee entering into the Project Sub-leases and TSL entering into the Occupancy Agreements with the Growers in the Projects.
- I. The Lessee will pay rent in respect of the Costa Land in accordance with this Lease.

The Parties Agree as Follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

| | |
|------------------------------|---|
| Administrator: | has the same meaning as in the Corporations Act; |
| Authority: | includes any National, State, municipal or other government, statutory or government approved authority or body, which has authority or jurisdiction over the Capital Works, the Required Water Licences or the Costa Land or any part of them or anything about them; |
| Bella Vista: | either: (a) Lot 3 DP1059036; or (b) the lot of 131 hectares to be carved out of the said Lot 3; as the case requires under the Bella Vista Contract; |
| Bella Vista Contract: | the contract for sale dated 9 October 2003 between the Costas and the Lessor relating to Bella Vista |
| Bella Vista Lease: | the interim lease between the Lessor and the Costas substantially in the form of the lease comprising Annexure A; |
| Bella Vista Transfer: | the transfer of: (a) if registration of the plan of subdivision of Lot 3 DP1059036 to create a lot of 131 hectares does not occur on or before 8 April 2006, the whole of Lot 3, at no additional cost to the Lessor; (b) if registration of the said plan of subdivision occurs on or before 8 April 2006, that lot of 131 hectares; |
| Best Horticultural | sound horticultural and environmental practices and industry |

| | |
|--|---|
| Practice: | practices for similar vineyards; |
| Business Day: | any other day other than a Saturday, Sunday or a public holiday on which trading banks are open for general banking business with the public in Sydney, New South Wales; |
| Capital Works: | <p>(a) the infrastructure and capital works, including any Irrigation Infrastructure, that have been carried out on the Costa Land, before it was purchased by the Lessor;</p> <p>(b) the infrastructure and capital works that the Lessor has carried out or agreed to carry out, and any other works that the Lessor may in its absolute discretion carry out, including any new Irrigation Infrastructure, at its cost, on the Costa Land;</p> |
| Commencement Date: | the date hereof; |
| Constitution: | the constitution of a Project; |
| Controller: | has the same meaning as in the Corporations Act; |
| Corporations Act: | the <i>Corporations Act 2001</i> of the Commonwealth of Australia; |
| Costas: | Carmel Costa and Paul Costa, both of Block 15 Kilpatrick Euston in the State of New South Wales; |
| Costa's Crest: | Lot 2 Deposited Plan 1046695, Parish of Euston; |
| Costa's Crest Contract: | The contract for sale dated 9 October 2003 between the Costas and the Lessor relating to Costa's Crest; |
| Costa's Crest Lease: | the interim lease between the Lessor and the Costas, substantially in the form of the lease comprising Annexure B; |
| Costa's Crest Transfer: | the transfer from the Costas to the Lessor pursuant to the Costa's Crest Contract; |
| Costa Land: | the land described as "Costa Land" in Schedule 1; |
| CPI: | <p>(a) the "Weighted Average of Eight Capital Cities All Groups Consumer Price Index" as currently maintained and published by the Australian Bureau of Statistics; or</p> <p>(b) such other index number that replaces it in accordance with clause 6.3;</p> |
| Encumbrance: | <p>in relation to any property means anything which:</p> <p>(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or</p> <p>(b) prevents, restricts or delays the exercise of any right over the property or the registration by any person of any interest in or right over the property,</p> <p>and includes a Security Interest;</p> |
| Existing Table Grape Development: | the existing table grape vineyard on the Table Grape Land; |
| Existing | the existing 94 acre vineyard on the Table Grape Land comprising |

| | |
|-------------------------|---|
| Vineyard: | approximately 450 Vines per acre established on the Table Grape Land on or before 30 June 2002; |
| Financial Year: | the 12 month period ending on the last day of June with the exception of: (a) the first Financial Year which commences on the Commencement Date and ends on the day before the first day of the next Financial Year; and (b) the last Financial Year which commences on the day after the last day of the last preceding Financial Year and ends on the day of termination of the Project; |
| Force Majeure: | (a) an event or circumstance (or a combination of events or circumstances) that is beyond the control of the Lessor, including Acts of God, natural disasters, fire and explosions, riots, civil commotion, war, attack or other acts of hostility; acts of terrorism, revolution and radioactive contamination, but (b) not including a lack of funds on the part of the Lessor or the inability of the Lessor to use available funds resulting from an event or circumstance described in paragraph (a); |
| Government Body: | (a) any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country; (b) any public authority constituted by or under a law of any country or political sub-division of any country; and (c) any person deriving a right directly or indirectly from any other Government Body; |
| Grapelot: | an area of land which in total comprises 0.25 acres on the Existing Vineyard and/or the New Vineyard, as the case requires on which a Grower in a Project carries on or will carry on a business of cultivating and growing table grapes; |
| Grower: | a "Participant Grower" as defined in the relevant Constitution; |
| GST: | has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (as amended); |
| GST Law: | the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended); |
| GST Rate: | the rate of GST under the GST Law; |
| Indexed: | the amount adjusted on the date on which a relevant payment is due or the date upon which the relevant calculation is made, as the case requires (the Adjustment Date) in accordance with the following formula: $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> $A_t = \text{the amount on the Adjustment Date;}$ |

| | |
|-------------------------------------|--|
| | <p>A_0 = the amount being adjusted;</p> <p>CPI_t = the highest CPI for a full calendar quarter published between the date CPI_0 is published and the Adjustment Date, including CPI_0;</p> <p>CPI_0 = the CPI for a full calendar quarter most recently published before the date from which the adjustment is being made (the Base Date), provided that if no Base Date is specified, "CPI_0" will be the CPI published for the full calendar quarter that ended 12 months before the full calendar quarter in respect of which the CPI has most recently been published before the Adjustment Date.</p> |
| Irrigation Infrastructure: | water pumps, mainlines and other irrigation infrastructure situated, constructed or installed on the Costa Land; |
| New Table Grape Development: | each New Vineyard to be established on the Vacant Land; |
| New Vineyard: | each new vineyard on the Table Grape Land comprising approximately 450 Vines per acre to be established on the Vacant Land in accordance with a Project Sub-lease with the first new vineyard comprising approximately 300 plantable acres established or to be established on or before 30 June 2004 on Bella Vista; |
| Orchard Trust: | the Timbercorp Orchard Trust (ARSN 106 557 297); |
| Orchard Trust Constitution: | the constitution of the Orchard Trust; |
| Occupancy Agreements: | the sub-leases, licences or other occupancy rights proposed to be granted by TSL over parts of the Costa Land to Growers in a Table Grape Project, as they may from time to time be amended in accordance with their terms and conditions, provided that such agreements must not grant the Growers any greater rights than those that are granted to the Lessee under this Lease; |
| Projects: | Table Grape Projects and such other projects undertaken on the Costa Land from time to time by the Timbercorp Group or other responsible entities or managers of a horticultural or viticultural nature, whether or not registered as a managed investment scheme under Chapter 5C of the Corporations Act; |
| Project Sub-lease: | a sub-lease entered into between TSL and the Lessee in relation to a Table Grape Project established by TSL; |
| Quarter: | <p>the three month period ending on the last day of March, June, September or December with the exception of:</p> <p>(a) the first Quarter which commences on the Commencement Date and ends on the day before the first day of the next Quarter; and</p> |

| | |
|---------------------------------|---|
| | (b) the last Quarter which commences on the day after the last day of the last preceding Quarter and ends on the day of termination of this Lease; |
| Rent: | the amount specified in clause 6 as varied under this Lease; |
| Required Water Licences: | the water licences that are, or will be, owned or acquired by the Lessor and that are attributed to the Costa Land as required from time to time, and as specified in clause 5.1, that provide for a maximum licence entitlement specified in clause 5.1, as reduced by any variation in the maximum licence entitlement from time to time by the relevant water Authority restricting the amount or rate at which water may be taken, or the purpose for which it may be taken or prohibiting the taking of water or the purpose of its use; |
| Responsible Entity: | the responsible entity for the time being under the Orchard Trust Constitution, which is currently the Lessor; |
| Security Interest: | <p>an interest or right:</p> <p>(a) reserved over property; or</p> <p>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</p> <p>by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;</p> |
| Table Grapes: | the products, rights, benefits or credits derived from the Vines on the Costa Land; |
| Table Grape Land: | the whole of the land described in Schedule 1 of this Lease as the table grape land, and the Capital Works, the Required Water Licences and other improvements attributable to such table grape land for the purposes of this Lease; |
| Table Grape Projects: | the table grape managed investment schemes to be conducted by TSL on the Costa Land, whether registered or unregistered; |
| Term: | the term of this Lease, as described in clause 3; |
| Timbercorp: | Timbercorp Ltd (ACN 055 185 067); |
| Timbercorp Group: | Timbercorp and its controlled entities as defined in Accounting Standard AASB1024 "Consolidated Accounts"; |
| TSL: | Timbercorp Securities Limited (ACN 092 311 469); |
| Vacant Land | the whole of the land described in Schedule 1 of this Lease as the vacant land; |

| | |
|-----------|--|
| Vines: | the vines growing or to be grown on the Costa Land; |
| Vineyard: | one or both of the Existing Vineyard and the New Vineyard as the context requires. |

1.2 Interpretation

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

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

1.2 Headings

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

2. CAPACITY AND LIABILITY OF THE LESSOR

2.1 Capacity of Lessor

The parties acknowledge that:

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

2.2 Benefit to Lessor

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

2.3 Limitation of Liability

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

3. GRANT AND TERM OF LEASE

3.1 Grant and Term of Lease

- (a) The Lessor grants to the Lessee a lease of the Costa Land, the Capital Works and the Required Water Licences to use and occupy the Costa Land, the Capital Works and the Required Water Licences in accordance with the terms and conditions of this Lease for a period commencing on the date of this Lease and, subject to clause 13, expiring on 29 June 2019.
- (b) In the event that the Lessor only purchases or leases one of either Costa's Crest or Bella Vista, this Lease will apply in relation to the relevant property with any necessary modifications, including adjustments to the Rent payable by the Lessee.
- (c) The parties agree and acknowledge that the Lessor leases the Costa Land, the Capital Works and the Required Water Licences, either in its capacity as registered proprietor or lessee of the Costa Land, to the Lessee.

3.2 Representations

The Lessor represents and warrants that:

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

3.3 Representations

Notwithstanding anything to the contrary contained in this Lease, this Lease is deemed to have come to an end:

- (a) as regards Bella Vista, if the lease from the Costas to the Lessor made on or about the date of this Lease relating to Bella Vista (and in the form of Annexure A) comes to an end otherwise than as a result of the Lessor completing its purchase of and becoming registered proprietor of Bella Vista; and
- (b) as regards Costa's Crest, if the lease from the Costas to the Lessor made on or about the date of this Lease relating to Costa's Crest (and in the form of Annexure B) comes to an end otherwise than as a result of the Lessor completing its purchase and becoming registered proprietor of Costa's Crest.

4. ESTABLISHMENT OF VINEYARD

4.1 Warranty by Lessor as to the Existing Vineyard

The Lessor warrants and represents to the Lessee that, to its knowledge, the Existing Vineyard on the Table Grape Land has been established in accordance with Best Horticultural Practice and that the necessary infrastructure and other capital works have been constructed and carried out, and without limiting the generality of this clause 4.1, it is satisfied:

- (a) that part of Table Grape Land on which each Existing Vineyard is located has been prepared to ensure that the Vines can grow satisfactorily;
- (b) appropriate irrigation equipment has been installed and the necessary irrigation works have been carried out to ensure proper reticulation of water to the Vines on each Existing Vineyard;
- (c) drainage work and other works have been carried out to help prevent soil erosion on all Table Grape Land on which Existing Vineyard is located;
- (d) as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Vines on the Existing Vineyard have been eradicated;
- (e) Vines on the Existing Vineyard have been planted and staked and where applicable, trellising has been constructed in accordance with good horticultural practices so that the Vines can be harvested commercially;
- (f) the Vines on the Existing Vineyard were planted by 30 June 2002; and
- (g) such other capital works, services or things which, in the reasonable opinion of the Lessor, were incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.1(a) to (f) above, have been provided or undertaken, as the case requires.

4.2 Agreement by Lessor as the New Vineyard

- (a) The Lessor agrees with the Lessee that upon receiving a request from the Lessee or TSL, the Lessor must, at its own cost, establish, or procure the establishment of the New Vineyard on the Vacant Land for each Table Grape Project in accordance with Best Horticultural Practice and construct the necessary infrastructure and carry out the necessary capital works, and without limiting the generality of this clause 4.2, it must:
 - (i) prepare that part of the Vacant Land on which the New Vineyard is located to ensure that the Vines can grow satisfactorily subject to any Force Majeure;
 - (ii) install appropriate irrigation equipment and carry out the necessary irrigation works to ensure proper reticulation of water to the Vines on the New Vineyard;
 - (iii) carry out drainage work and other works to help prevent soil erosion on all the Vacant Land on which the New Vineyard is to be located;
 - (iv) eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Vines on the New Vineyard;
 - (v) plant Vines on the New Vineyard, erect stakes and where applicable, construct trellising in accordance with good horticultural practices so that the Vines can be harvested commercially;

- (vi) acquire for use on the New Vineyards the Required Water Rights;
and

provide or undertake, as the case requires, such other capital works, services or things which, in the reasonable opinion of the Lessor, are incidental or ancillary to the effective establishment and provision of the works referred to in paragraphs 4.2(a)(i) to (v) above.

- (b) The Lessor will use its best endeavours to complete the Capital Works in respect of the New Vineyard for each Table Grape Project in full by 30 June of the year in which the Table Grape Project is created or established or such other later date agreed by the parties. The Lessor will not be liable for any loss (including consequential loss) or damage (including all costs, expenses and other disbursements) incurred by the Lessee arising from any delay in so doing caused for any reason other than the negligence of the Lessor, its officers, employees or agents.
- (c) This clause 4.2 will not apply should Bella Vista not be purchased by the Lessor or become subject to the Bella Vista Lease.

4.3 Acknowledgments by the Lessee

- (a) The Lessee acknowledges that the Capital Works and Vines on, and the Required Water Licences attaching to, the Grapelots are, and will at all times remain, the property of the Lessor, subject to any rules or regulations made by any Authority, and the rights of the Costas under the Bella Vista Lease, if in force at the relevant time.
- (b) The Lessee agrees and acknowledges that the Lessor will not be liable for any loss or damage incurred by the Lessee, including where such loss or damage arises out of, or is in connection with, any act or omission of the Lessor or its officers, directors, employees, agents or agents under this Lease, whether or not constituting negligence, except that this paragraph 4.3(a) will not apply in the case of wilful default, dishonesty or fraud or breach of this Lease.

4.4 Acknowledgments by the Lessor

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

4.5 Cultivation and maintenance obligations in relation to the Vineyard

The Lessee, at its cost and expense, must cultivate, maintain and manage the Vines, the Grapelots, the Vineyard and the Costa Land, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural Practice including the following, having regard to good workmanlike and commercially responsible standards and Best Horticultural Practice:

- (a) **Irrigation and fertilisation:** provide the Vineyard with necessary irrigation water, irrigate the Vineyard and apply fertilisers and nutrients at the appropriate times. This includes efficient irrigation application management and salinity and groundwater monitoring and control;
- (b) **Weed control:** ensure no impediment to Vine development and Table Grape production, including impediments, such as weeds, brambles, briars, blackberries or other noxious growth;

- (c) **Vermin:** keep the Vineyard free from vermin;
- (d) **Insects and Diseases:** use its reasonable endeavours to keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines;
- (e) **Spray diaries:** prepare and provide the Lessor upon request with proper and accurate records of all fertilisers, nutrients and other chemicals applied to the Vineyard and the Costa Land, which records must detail the types and quantities or concentrations applied and the times at which they were applied;
- (f) **Advise the Lessor of deterioration or impurity:** promptly advise the Lessor of any deterioration of or impurity in the Table Grapes or the Vines, which is apparent to the Lessee;
- (g) **Destruction:** destroy any Vines which a reasonable horticulturist would destroy having regard to the best interests of the remaining unaffected Vines and promptly advise the Lessor in writing of the Vines destroyed and the reasons for destroying the Vines;
- (h) **Fencing:** maintain any fencing, trellising, staking or netting used on the Vineyard in accordance with Best Horticultural Practice
- (i) **Other Viticultural activities:** otherwise use the Vineyard and the Costa Land in accordance with the Constitution, the Grapelot Management Agreement and the Licence Agreements in respect of a Project.

4.6 Lessee's Obligations upon Termination

- (a) At the end of this Lease, subject to the Growers' rights to continue to occupy the Costa Land in accordance with clause 12.5, the Lessee must return the Costa Land and any Capital Works, and the relevant Grapelots, to the Lessor in good condition in accordance with the obligations of the Lessee under clause 4.5, but the Lessee is not required to remove the Vines or restore the Capital Works and the relevant Grapelots to their original condition, including making good any reasonable wear and tear during the Term.
- (b) Any structures or plant and equipment of any description which belong to the Lessee, TSL or the Grower must be removed from the relevant Grapelots within 30 days after the end of this Lease, subject to any rights the Growers have to continue to occupy the Costa Land and clause 12.5. If the Lessee does not comply, or procure TSL or the Grower to comply, with this requirement, then all structures and plant and equipment remaining on the relevant Grapelots at the time will become the absolute property of the Lessor.
- (c) The Lessor has no obligation to pay the Lessee, TSL or the Grower any compensation at the end, or on termination, of this Lease, including for any structures and plant and equipment remaining on the relevant Grapelots that become the absolute property of the Lessor in accordance with paragraph 4.6(b).
- (d) The Lessee must ensure that the Required Water Licences in existence throughout this lease are preserved in full force and effect and on termination are returned to the Lessor.

5. WATER LICENCES

5.1 Required Water Licences

The required water licences per acre are:

| | 2004/05 (by 15 August 2004) | 2005/06 (by 15 August 2005) | 2006/07 (by 15 August 2006) | 2007/08 ongoing (by 15 August 2007) |
|--|--------------------------------------|--------------------------------------|--------------------------------------|---|
| New Vineyard: 2004 Bella Vista Land – ML/acre | 1.8 | 3.0 | 3.0 | 3.0 |
| New Vineyard: 2004 Bella Vista Land – 300 acres | 540 | 900 | 900 | 900 |
| New Vineyard: 2004 Costa Land – ML/acre | 2.0 | 3.5 | 3.5 | 3.5 |
| New Vineyard: 2004 Costa Land – 23 acres | 46 | 81 | 81 | 81 |
| Existing Vineyard: 2002 Costa Land – ML/acre | 3.5 | 3.5 | 3.5 | 3.5 |
| Existing Vineyard: Costa Land – 94 acres | 329 | 329 | 329 | 329 |
| Total water for 417 acres (ML) | 915 | 1310 | 1310 | 1310 |

5.2 Use of Required Water Licences

The Lessor must at its cost:

- use all reasonable endeavours to ensure that its rights under the Required Water Licences are maintained to enable the Lessee to maximise the use and enjoyment of them by the Lessee, TSL and the Growers;
- take all reasonable steps to avoid interfering with the supply of water to the relevant Grapelots and to avoid any actions that would prejudice the Lessee's rights under this Lease, TSL's rights under the Project Sub-leases and the Growers' rights under the Occupancy Agreements; and
- except where any Force Majeure or any action or requirement of any Authority prevents or inhibits the Lessor, purchase and maintain the Required Water Licences during the Term of this Lease.

5.3 Acknowledgments

The Lessee acknowledges that:

- The Required Water Licences for the land specified in Clause 5.1 need to be in place only by the August dates specified in that Clause;
- the Lessor may purchase water licences, in addition to the Required Water Licences, and provide water under those additional water licences to the Lessee; and

- (c) such additional water licences do not attach to the Grapelots and will at all times remain the property of the Lessor.

6. RENT PAYMENTS

6.1 Rent

- (a) Subject to paragraphs 6.1(b) and (c), the Lessee must pay to the Lessor Rent for each Quarter payable in advance on the last day of each immediately preceding Quarter, equal to:

| Quarter: | Rent for Quarter: |
|---|---|
| For the December 2003 Quarter and each subsequent Quarter | <p>the aggregate of:</p> <p>(i) Existing Table Grape Development: the amount which is 11% of the Existing Table Grape Development CIP; plus</p> <p>(ii) Existing Table Grape Development Water Budget: the amount which is 11% of the Existing Table Grape Development Water Budget; plus</p> <p>(iii) New Table Grape Development: the amount which is 11% of the Budgeted Cost (ex-prime cost items) of the New Table Grape Development; plus</p> <p>(iv) New Table Grape Development Water Budget: the amount which is 11% of the New Table Grape Development Water Budget; plus</p> <p>(v) New Table Grape Development External Irrigation Infrastructure Budget: the amount which is 11% of the New Table Grape Development External Irrigation Infrastructure Budget; plus</p> <p>(vi) Existing Table Grape Development Excess Water Cost: the amount which is 11% of the Existing Table Grape Development Excess Water Cost, if any, as at the last day of the immediately preceding Quarter;</p> <p>(vii) New Table Grape Development Excess Water Cost: the amount which is 11% of the New Table Grape Development Excess Water Cost, if any, as at the last day of the immediately preceding Quarter;</p> <p>(viii) New Table Grape Development Excess External Irrigation Infrastructure Cost: the amount which is 11% of the New Table Grape Development Excess External Irrigation Infrastructure Cost, if any, as at the last day of the immediately preceding Quarter,</p> |

| | |
|--|--|
| | multiplied by the number of days in the relevant Quarter divided by 365; |
|--|--|

- (b) The Rent for the December 2003 Quarter in respect of the Existing Table Grape Development and the Existing Table Grape Development Water Budget is payable on the Commencement Date.
- (c) That part of the Rent for the December 2003, March 2004 and June 2004 Quarters which is referable to:
- (i) New Table Grape Development Excess Water Cost;
 - (ii) New Table Grape Development Water Budget;
 - (iii) New Table Grape Development Excess External Irrigation Infrastructure Cost;
 - (iv) New Table Grape Development External Irrigation Infrastructure Budget;
 - (v) the Budgeted Cost (ex-prime costs) of the New Table Grape Development,
- is payable on 30 June 2004.
- (d) The Rent payable under this Lease is subject to any adjustments under clauses 6.2, 6.4 and 6.5.

6.2 Adjustments to Rent for Indexation

The amounts used in clause 6.1 to calculate the Rent payable by Lessee must be adjusted as follows:

- (a) the Existing Table Grape Development CIP must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date with any adjustments to the Existing Table Grape Development CIP under clause 6.5 also being adjusted under this paragraph 6.2(a);
- (b) the Existing Table Grape Development Water Budget must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date;
- (c) the Budgeted Cost (ex-prime costs) of the New Table Grape Development must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date;
- (d) the New Table Grape Development Water Budget must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date;
- (e) the New Table Grape Development External Irrigation Infrastructure Budget must be Indexed as at 31 December of each year, beginning on 31 December 2004, using the Commencement Date as the Base Date;
- (f) the Existing Table Grape Development Excess Water Cost must be Indexed as at 31 December of each year, beginning on 31 December 2004,
- (i) by calculating the Existing Table Grape Development Excess Water Cost expended in each Half Year; and
 - (ii) using the last day of each relevant Half Year as the Base Date in the respect of the Existing Table Grape Development Excess Water Cost expended in that Half Year;

- (g) the New Table Grape Development Excess Water Cost must be Indexed as at 31 December of each year, beginning on 31 December 2004,
 - (i) by calculating the New Table Grape Development Excess Water Cost expended in each Half Year; and
 - (ii) using the last day of each relevant Half Year as the Base Date in the respect of the New Table Grape Development Excess Water Cost expended in that Half Year;
- (h) the New Table Grape Development Excess External Irrigation Infrastructure Cost must be Indexed as at 31 December of each year, beginning on 31 December 2004,
 - (i) by calculating the New Table Grape Development Excess External Irrigation Infrastructure Cost expended in each Half Year; and
 - (ii) using the last day of each relevant Half Year as the Base Date in the respect of the New Table Grape Development Excess External Irrigation Infrastructure Cost expended in that Half Year.

6.3 Discontinuance or suspension of CPI

- (a) If the Consumer Price Index (All Groups) Weighted Average of Eight Capital Cities is discontinued or suspended, such other index number that most closely reflects changes in the cost of living for the eight capital cities of Australia as is mutually agreed between the Lessor and the Lessee will replace it as the new "CPI" or, if they fail to agree, such alternative index number, as in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants (Victorian Division) at the request of either of them most closely reflects changes in the cost of living for the eight capital cities of Australia will replace it as the new "CPI".
- (b) The cost of any expert determination carried out under this clause 6.3 must be borne equally between the Lessor and the Lessee.

6.4 Rent reduction due to Unexpended Budgeted Cost (ex-water) of the New Table Grape Development

During the period between 1 July 2004 and the Budgeted Cost (ex-water) of the New Table Grape Development being expended, the Rent payable under this clause 6, will be reduced in accordance with the following formula:

$$A = B - [C * D * E]$$

- where:
- A is the Rent for the Quarters during the period between 1 July 2004 and the date at which the Budgeted Cost (ex-water) of the New Table Grape Development is expended;
 - B is the amount of the Rent for the Quarter, as adjusted under clauses 6.2, and 6.5;
 - C is the Budgeted Cost (ex-water) of the New Table Grape Development which has not been expended as at the last day of the immediately preceding Quarter;
 - D 180 Day Bank Bill Swap Reference Rate;
 - E the number of days in the relevant Quarter divided by 365.

6.5 Cost Inclusive Price of the Existing Table Grape Development

- (a) Subject to paragraph 6.5(c), the Cost Inclusive Price of purchasing the

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Existing Table Grape Development is estimated as at the Commencement Date to be \$3,342,364.

- (b) The Cost Inclusive Price of purchasing the Existing Table Grape Development and the Rent is to be re-calculated once the actual cost included in the Cost Inclusive Price is ascertained.
- (c) Upon the Cost Inclusive Price of purchasing the Existing Table Grape Development being re-calculated to reflect the correct Cost Inclusive Price, the Rent payable under this clause 6 will be adjusted, including any adjustment required under clause 6.2, to reflect the new Cost Inclusive Price for the Existing Table Grape Development. Any adjustment to the Rent will have effect from the Commencement Date and the Lessee must pay any difference due to such adjustments, including any adjustment required under clause 6.2, to the Lessor on the next date for payment of the Rent.
- (d) The Rent may be adjusted under this clause 6.5 on more than one occasion.

6.6 Definitions

In this clause 6, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

| | |
|---|--|
| Budgeted Cost (ex-prime costs) of the New Table Grape Development: | \$9,198,232, which has been budgeted as the cost (excluding GST) of undertaking the New Table Grape Development, including the Cost Inclusive Price of the Costa Land on which the New Table Grape Development will be situated, but excluding: (a) the New Table Grape Development External Irrigation Infrastructure Budget; and (b) the New Table Grape Development Water Budget; |
| Budgeted Cost (ex-water) of the New Table Grape Development: | \$11,749,532, which has been budgeted as the cost (excluding GST) of undertaking the New Table Grape Development, including the Cost Inclusive Price of the Costa Land on which the New Table Grape Development will be situated and the New Table Grape Development External Irrigation Infrastructure Budget, but excluding the New Table Grape Development Water Budget; |
| Cost Inclusive Price: | the total cost inclusive price (excluding GST) paid by the Lessor in purchasing that part of the Costa Land on which the Existing Table Grape Development is situated, including all stamp duty, registration and legal costs; |
| Existing Table Grape Development: | all of the Costa Land on which the Existing Vineyard is situated and adjacent land, being the land described as the Table Grape Land, including the Required Water Licences attributed to such Costa Land that have been purchased with the Costa Land; |
| Existing Table Grape Development CIP: | the Cost Inclusive Price of acquiring the Existing Table Grape Development, (a) including the cost of obtaining the plant breeders rights in relation to the Vines on the Existing Table Grape Development, but (b) excluding the cost of any Required Water Licences purchased after acquisition of the Existing Table Grape Development and attributed to the Existing Table Grape |

| | |
|--|---|
| | Development; |
| Existing Table Grape Development Excess Water Cost: | the cost (excluding GST) of purchasing the Required Water Licences to be attributed to the Existing Table Grape Development after its acquisition, in excess of the Existing Table Grape Development Water Budget; |
| Existing Table Grape Development Water Budget: | \$276,075, which has been budgeted as the cost (excluding GST) of acquiring the Required Water Licences to be attributed to the Existing Table Grape Development after its acquisition; |
| Half Year: | the 6 month period ending on the last day of June or December with the exception of: <ul style="list-style-type: none"> (a) the first Half Year which commences on the Commencement Date and ends on the day before the first day of the next Half Year; and (b) the last Half Year which commences on the day after the last day of the last preceding Half Year and ends on the day of termination of this Lease; |
| New Table Grape Development: | all of the Costa Land on which the New Vineyard will be situated and adjacent land, being the land described as the Vacant Land, including the Required Water Licences attributed to such Costa Land that have been purchased with the Costa Land; |
| New Table Grape Development Excess External Irrigation Infrastructure Cost: | the cost (excluding GST) of installing the external Irrigation Infrastructure in relation to the New Table Grape Development after its acquisition, in excess of the New Table Grape Development External Irrigation Infrastructure Budget; |
| New Table Grape Development Excess Water Cost: | the cost (excluding GST) of purchasing the Required Water Licences to be attributed to the New Table Grape Development after its acquisition, in excess of the New Table Grape Development Water Budget; |
| New Table Grape Development External Irrigation Infrastructure Budget: | \$2,551,300, which has been budgeted as the cost (excluding GST) of installing the external Irrigation Infrastructure in relation to the New Table Grape Development after its acquisition; |
| New Table Grape Development Water Budget: | \$1,323,625, which has been budgeted as the cost (excluding GST) of acquiring the Required Water Licences to be attributed to the New Table Grape Development after its acquisition; |
| 180 Day Bank Bill Swap Reference Rate: | (a) the most recent Bank Bill Swap Reference Rate for a period of 180 days published in the Australian Financial Review on the last Business Day of the immediately preceding calendar year; or |

| | |
|--|--|
| | (b) if the rate described in paragraph (a) of this definition is no longer published, any other similar rate published on a regular basis that is agreed by the Lessor and the Lessee having regard to comparable indices then available, and in absence of agreement as determined by an expert in accordance with clause 23. |
|--|--|

6.7 Purpose of this clause 6

In calculating the Rent under this clause 6 and in interpreting the provisions of this clause 6, the parties must have regard to the objective underlying this clause 6, being that the Lessor is to receive an 11% return on:

- (a) the Existing Table Grape Development CIP in relation to the Existing Table Grape Development;
- (b) the Existing Table Grape Development Water Budget in relation to the Required Water Licences to be attributed to the Existing Table Grape Development;
- (c) the Budgeted Cost (ex-prime costs) of the New Table Grape Development in relation to the New Table Grape Development;
- (d) the New Table Grape Development Water Budget in relation to the Required Water Licences to be attributed to the New Table Grape Development;
- (e) the New Table Grape Development External Irrigation Infrastructure Budget in relation to installing the external Irrigation Infrastructure in relation to the New Table Grape Development after its acquisition;
- (f) the Existing Table Grape Development Excess Water Cost in relation to the Required Water Licences to be attributed to the Existing Table Grape Development;
- (g) the New Table Grape Development Excess Water Cost in relation to the Required Water Licences to be attributed to the New Table Grape Development;
- (h) the New Table Grape Development Excess External Irrigation Infrastructure Cost in relation to the installation of the external Irrigation Infrastructure in relation to the New Table Grape Development after its acquisition,

as adjusted for CPI and reduced by the interest that the Lessor will earn on the unexpended Budgeted Cost (ex-water) of the New Table Grape Development from time to time.

7. LESSOR'S OBLIGATIONS AND RIGHTS

7.1 Obligations

The Lessor must:

- (a) maintain for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and ownership by the Lessor of the Vineyards;
- (b) subject to the terms of this Lease, allow the Lessee to peaceably and quietly hold and enjoy the Costa Land without any interruption by the Lessor or any person claiming through or under the Lessor;

- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Vineyards;
- (d) not create any Encumbrances over the Costa Land or the Vineyards or any part of the Costa Land or the Grapelots ranking in priority to the interests of the Lessee, TSL or the Growers who may sub-lease, licence or otherwise occupy the Costa Land or the Vineyards from the Lessee in the future, except where required to do so by an Authority;
- (e) take all reasonable measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Lessor are properly controlled and supervised; and
- (f) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor.

7.2 Rights

The Lessor:

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

8. RATES, TAXES AND CHARGES

- (a) The Lessee must reimburse the Lessor for or pay the Lessor's liability for all local authority rates, sewerage rates and land tax and other State taxes, as and when requested by the Lessor.
- (b) The Lessor must promptly deliver to the Lessee all rates and notices received by the Lessor in respect of the Costa Land.

9. INSURANCE

9.1 Lessee must maintain insurance

The Lessee must:

- (a) in connection with the Costa Land, maintain with insurers and on terms approved by the Lessor (which may not unreasonably withhold its approval) in the names of the Lessee, the Lessor and any other person named by the Lessor and the Lessee:
 - (i) public liability insurance for at least \$10 million (as varied by notice from the Lessor to the Lessee);

- (ii) the replacement value of the Capital Works, including the Vines and the Irrigation Infrastructure; and
 - (iii) other insurances required by law or that, in the Lessor's reasonable opinion, a prudent lessee would take out having regard to the cost of such insurance;
- (b) give the Lessor evidence when asked to do so that the Lessee has complied with paragraph 9.1(a); and
- (c) notify the Lessor immediately if an insurance policy required by this clause 9.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the Costa Land.

9.2 Claims under insurance policies

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

9.3 Insurance proceeds

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

9.4 Parties not to affect rights under insurance

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

9.5 Damage to, or destruction of, of the Grapelots

- (a) Upon damage to, or destruction of, part or all of the Grapelots or Capital Works, the Lessor and the Lessee must:
 - (i) negotiate in good faith to determine how to best replace and reinstate the relevant Grapelots or Capital Works;
 - (ii) the Lessor and the Lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the relevant Grapelots or Capital Works, as agreed under paragraph 9.5(a)(i).
- (b) In the event that the Lessor and the Lessee are unable to agree under paragraph 9.5(a) within 30 days, the matter is to be determined under clause 23.

- (c) The Lessee may in its absolute discretion use its own funds to replace and reinstate Grapelots or Capital Works that have been damaged or destroyed, and in such event the Lessor:
 - (i) must use any insurance proceeds the Lessor receives in respect of such damage or destruction in accordance with clause 9.3 to assist the Lessee in replacing and reinstating the relevant Grapelots or Capital Works;
 - (ii) agrees and acknowledges that the Lessee may undertake the reinstatement and replacement of the relevant Grapelots or Capital Works provided such works are done in accordance with Best Horticultural Practice.

10. USE OF COSTA LAND

10.1 Permitted use

- (a) The Lessee must only use the Costa Land in accordance with this Lease and Best Horticultural Practice, including:
 - (i) planting and tending vines and harvesting and processing the Table Grapes;
 - (ii) removing and selling or otherwise dealing in the Table Grapes and retaining all income from such sale or dealing.
- (b) Subject to paragraph 10.1(c), the Lessor agrees and acknowledges that:
 - (i) the Lessee may enter into Project Sub-leases with TSL in its absolute discretion;
 - (ii) TSL may enter into Occupancy Agreements in its absolute discretion; and
 - (iii) the Lessee and TSL may grant sub-leases, licences or other occupancy rights to any other person over the Costa Land in their absolute discretion,

provided that any such agreements do not grant any greater rights than those which are granted to the Lessee under this Lease.
- (c) The Lessee may only use the Costa Land in any other manner with the prior and express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.

10.2 Lessee's duties

The Lessee must, at its cost and expense, ensure that it, TSL and the Growers:

- (a) comply with Best Horticultural Practice and this Lease;
- (b) comply with all laws and regulations relating to the use and occupancy of the relevant Grapelots and the Costa Land;
- (c) take all reasonable steps to avoid interfering with the activities carried out on any neighbouring land by the owner or occupier of that land;
- (d) maintain the relevant Grapelots in accordance with Best Horticultural Practice including, using soil management technique methods to reduce erosion and maintain soil quality;

- (e) repair and maintain all Capital Works to a standard equal to Best Horticultural Practice;
- (f) permit the Lessor and its employees, agents and contractors to enter upon the relevant Grapelots and the Costa Land from time to time with or without equipment for the purposes of observing the state of repair of the relevant Grapelots; and
- (g) permit the Lessor and its employees, agents and contractors to enter upon the relevant Grapelots and the Costa Land from time to time with or without equipment for the purpose of performing its obligations under this Lease; and
- (h) preserve and do not do or omit to do anything which may affect in any way the Required Water Rights.

10.3 Indemnity

The Lessee must indemnify the Lessor from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature which the Lessor may suffer or incur in connection with the loss of life and/or personal injury to any person or damage to any property whatsoever occurring arising from an occurrence at the Costa Land, other than that attributable to act or omission of the Lessor and its officers, directors, employees or agents, or the use by the Lessee or the Lessee's invitees, employees and agents of the Costa Land except where the loss of life and/or personal injury or damage to property is the result of an act of default or neglect by the Lessor or the Lessor's invitees.

10.4 Structural work

- (a) The Lessee need not carry out structural work required to be undertaken on the Costa Land unless the work is required because of the negligence or default of:
 - (i) the Lessee;
 - (ii) TSL;
 - (iii) the Lessee's officers, employees, agents, contractors or invitees;
 - (iv) TSL's officers, employees, agents, contractors or invitees; or
 - (v) the Growers and their agents, contractors or invitees.
- (b) Any work undertaken under paragraph 10.4(a), must be undertaken in accordance with Best Horticultural Practice.
- (c) Subject to paragraph 10.4(d), the Lessee may in its reasonable discretion, and at its cost and expense, carry out structural work to the Costa Land provided that the Lessee obtains the prior written consent of the Lessor which consent must not be unreasonably withheld or delayed.
- (d) The Lessor's consent under paragraph 10.4(c) is not required if the structural work is being carried out by the Lessee in accordance with clause 9.5.

11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

11.1 Assignment by Lessee

The Lessee must not assign its interest under this Lease or transfer, sublet or part with possession of the Costa Land or any part of the Costa Land, other than as authorised by this Lease, without the prior written consent of the Lessor, which consent is not to

be unreasonably withheld.

11.2 Lessor consents to Lessee sub-letting

- (a) The Lessor consents to:
- (i) the Lessee entering into Project Sub-leases with TSL in its absolute discretion;
 - (ii) TSL entering into Occupancy Agreements in its absolute discretion; and
 - (iii) the Lessee and TSL granting sub-leases, licences or other occupancy rights to any other person over the Costa Land in their absolute discretion,

provided that any such agreements do not grant any greater rights than those which are granted to the Lessee under this Lease.

11.3 Lessee must not mortgage its interest

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

11.4 Assignment or mortgage by Lessor

The Lessor must not dispose of or Encumber any interest in the Lessor's rights under this Lease except where:

- (a) the Lessor gives the Lessee 14 day's notice, before the Lessor disposes of, or Encumbers, any interest in its rights under this document to a third party, not being an incoming Responsible Entity, or enters into any agreement to do so, and the third party has agreed to, and acknowledged, the paramountcy of the Lessee's, TSL's and the Grower's rights, as described in paragraph 7.1(d); or
- (b) the Lessor is being replaced as the Responsible Entity of the Orchard Trust.

11.5 Delegation

The Lessor and the Lessee are each entitled to:

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

its employees, agents and contractors, but any delegation by the Lessor or the Lessee does not release the Lessor from liability under this Lease, except as set out in clause 2.

12. DEFAULT AND RE-ENTRY

12.1 Default by Lessee

- (a) The Lessor and the Lessee covenant and agree the following are events of default under this Lease:

- (i) if the Lessee fails or neglects to make a payment within the time required under this Lease, including failing to pay the rent payable under this Lease by the due date, and such amount is not paid within 60 days after the Lessor has served a written notice on the Lessee requiring the Lessee to pay the amount; or
 - (ii) the Lessee commits or permits to occur any material breach or default in the due and punctual performance of any of its obligations under this Lease, and fails to remedy the breach or make reasonable compensation in money within 60 days after the Lessor has served a written notice on the Lessee requiring the Lessee to remedy the breach or make reasonable compensation in money, except where the Lessee:
 - (A) has within the period of 60 days after receipt of the written notice from the Lessor:
 - (1) advised the Lessor of a plan of remedial action to rectify any such default; and
 - (2) taken all reasonable steps to implement such plan of remedial action; and
 - (B) the Lessee implements the whole plan of remedial action as soon as reasonably practicable.
- (b) The written notice referred to in paragraph 12.1(a) must specify the breach and request the breach to be remedied.

12.2 Re-entry by Lessor

The Lessor will have the right to re-enter and take possession of the Costa Land if an act of default in clause 12.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

12.3 Re-entry does not prejudice Lessor's rights

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

12.4 Lessor discharged from obligations

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

12.5 Lessor's rights subject to Growers' rights

The Lessor's rights under this clause 12 are subject to the rights granted by the Lessee or TSL to the Growers under the Occupancy Agreements in accordance with this Lease.

13. TERMINATION

13.1 Termination of Lease by the Lessor

Without prejudice to the Lessor's rights under clause 12, the Lessor may terminate this

Lease in respect of all or part of the Costa Land, with immediate effect, if an act of default in clause 12.1 has not been rectified by the Lessee to the Lessor's reasonable satisfaction within the period of notice specified in clause 12.1.

13.4 Attorneys

Upon termination of the whole or part of this Lease under clauses 13.1 or 13.2, by the Lessor or the Lessee, as the case may be, the party terminating this Lease is hereby appointed by the other as its attorney to do all things and sign all documents necessary to give effect to the termination under this clause 13 of the whole or part of this Lease, as the case requires.

13.5 Limited right of termination

Except as expressly provided in this clause 13, a party may not terminate or rescind this Lease and the Lessor will not be entitled to re-enter the Costa Land or forfeit this Lease at any time prior to the expiration of the Term.

14. LEGAL COSTS

The Lessee must pay the reasonable costs of the Lessor's solicitors of and incidental to the preparation, execution, stamping and registration of this Lease including all registration fees and stamp duty payable and including the cost of obtaining any necessary consents.

15. NOTICES

15.1 Form of Notice

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

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

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

15.2 Receipt of Notice

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

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

16. PROPER LAW

This Lease is governed by and to be interpreted in accordance with the laws of New South Wales and the parties to this Lease submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them for determining any

dispute concerning this Lease or the transactions contemplated by this Lease.

17. SEVERANCE

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

18. ENTIRE AGREEMENT

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

19. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Lease is a taxable supply (according to GST Law) so that the Supplier is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Lease, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate.
- (c) The GST payable under paragraph 19(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Lease.
- (d) The right of a Supplier to payment under this clause 19 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Lease, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 19(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Lease, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Lease for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.

- (h) If a party has a claim under or in connection with this Lease and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

20. STATUTORY PROVISIONS

20.1 General

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

20.2 Conveyancing Act 1919 (NSW)

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

20.3 Agricultural Tenancies Act (NSW)

Without limiting generality of clause 20.1,

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

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

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

21. CAVEAT

- (a) The Lessee may at its own expense lodge a caveat at the Land Titles Office in respect of its interest under this Lease.
- (b) The Lessor agrees to provide to the Lessee all plans and other details reasonably necessary to enable the Lessee to lodge a caveat.
- (c) Upon the expiration or earlier termination of this Lease, the Lessee must promptly withdraw at its own expense any caveat lodged under this clause 21.
- (d) The Lessee irrevocably appoints the Lessor its attorney to execute a withdrawal of any caveat required to be withdrawn by the Lessee pursuant to paragraph 21(c) in the event of the Lessee failing promptly to do so.
- (e) The Lessee agrees to ratify anything done by the attorney in accordance with paragraph 21(d).

22. FURTHER ASSURANCES

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

23. DISPUTES

- (a) If a any dispute, question or difference of opinion arises out of or in connection with this Lease then the party asserting the dispute must give the other parties a notice of dispute in writing adequately identifying and providing details of the dispute (the "Notice of Dispute").
 - (b) Within 7 days after service of the Notice of Dispute the parties must confer on a "without prejudice" basis to attempt to resolve the dispute.
 - (c) If the dispute is not settled promptly by the parties in accordance with paragraph 23(b), any party may by notice in writing to the other parties require that the matter be referred to a person nominated by the President for the time being of Law Institute of Victoria at a place in Melbourne and the nominee's determination will be final and binding and he must be deemed to be acting as an expert and not as an arbitrator.
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23A. SURRENDER

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

- (a) the Surrender of Lease is to be prepared by the solicitor for the Lessor and submitted to the solicitor for the Lessee for approval and, if approved, for execution by the Lessee;
 - (b) the Surrender of Lease must be submitted to the solicitor for the Lessee within 28 days after registration of a plan of subdivision to create Lot 1 of 131ha in terms of the Plan comprising Schedule 2;
 - (c) the land to be the subject of the Surrender of Lease is all of those lands leased under this Lease with the exception of Lot 1 of 131ha;
 - (d) all of the costs and disbursements of both the Lessor and Lessee in connection with the preparation and execution and registration of the Surrender of Lease must be paid by the Lessor;
 - (e) to the extent that it is appropriate to vary the terms of this Lease (otherwise than in respect of the description of the demised premises) the parties must execute and register a Variation of Lease, such document to be prepared by the Lessor and approved by the Lessee, with all costs and disbursements relating to the preparation, execution and registration of the Variation of Lease being met by the Lessor.
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24. PLANT BREEDERS' RIGHTS

24.1 The licence grant

- (a) The Lessor hereby grants the Lessee the following rights, subject to the terms of this Lease and the Andriske Licence Agreement:

- (i) the right to plant and grow the Licensed Vines on the Table Grape Land;
 - (ii) the non-exclusive right to process and sell the Licensed Fruit in the Licensed Territory.
- (b) The Lessee agrees and acknowledges that:
 - (i) Andriske retains the right to plant, grow and market up to a maximum of 25,000 vines of each of the Protected Products, in the Licensed Territory;
 - (ii) the rights granted under this clause 24 are subject to the rights granted by Andriske to the Timbercorp Group and other third parties as described in the Andriske Licence Agreement;
 - (iii) the exclusive rights granted under Andriske Licence Agreement to the Lessor and the Timbercorp Group are revoked and replaced with non-exclusive rights in the event that the Timbercorp Group fails to reach certain planting targets specified in the Andriske Licence Agreement.
- (c) The Lessee agrees and acknowledges that the Lessor specifically withholds from the Lessee the following:
 - (i) any right or licence to Propagate the Licensed Vines;
 - (ii) the ownership of the PBRs and intellectual property in the protected product,as these rights are retained by Andriske.
- (d) The Lessor consents to:
 - (i) the Lessee in its absolute discretion sub-licensing the rights granted under this clause 24 to TSL under Project Sub-leases;
 - (ii) TSL in its absolute discretion sub-licensing the rights granted to it by the Lessee under the Occupancy Agreements; and
 - (iii) the Lessee and TSL in their absolute discretion granting sub-licences or other rights in relation the rights granted to the Lessee under this clause 24 to any other person who uses or occupies the Costa Land,provided that any such agreements do not grant any greater rights than those which are granted to the Lessee under this clause 24.

24.2 Marketing

The Lessee must use the cultivar name of the Licensed Vines and Licensed Fruit given by Andriske to the Lessor in its marketing.

24.3 Quality assurance

- (a) The Lessee agrees to ensure that all Licensed Fruit it sells to others:
 - (i) is true to cultivar;
 - (ii) has been grown and handled in a manner consistent with good viticultural practice; and
 - (iii) has been handled with reasonable precaution taken to avoid preventable infestation by disease causing or transmitting organisms or by other pests harmful to the commercial quality of the Licensed Fruit;

- (iv) is packed according to best table grape packing practice; and
- (v) is presented for sale in the best possible manner.
- (b) Subject to the Lessor giving the Lessee reasonable notice in writing, the Lessee agrees that the Lessor's and Andriske's designated employees or agents may inspect any or all growing facilities, fields and/or storage facilities on the Table Grape Land at any time during normal business hours to ensure that the Licensed Vines and the Licensed Fruit contained therein are being grown in accordance with paragraph 24.3(a).
- (c) The Lessor or Andriske and their authorised agent have the right to seek and discover and examine all the Licensed Vines or Licensed Fruit, and while accompanied by the Lessee or its employees or agents, take away for inspection a reasonable number of samples sufficient for examination of the Licensed Vines or Licensed Fruit, or part thereof, and for that purpose, subject to the Lessor giving the Lessee reasonable notice in writing, the Lessor is authorised to enter the Table Grape Land, but must take reasonable care in so doing.
- (d) The Lessee must abide by all mandatory local, regional and national government laws, rules and regulations that govern the growing of the Licensed Vines and sale and distribution of the Licensed Fruit.

24.4 Intellectual property rights

- (a) The Lessee must take all reasonable steps to ensure that no Licensed Vines, parts of Licensed Vines or Licensed Fruit are misappropriated by any third parties.
- (b) The Lessee must not challenge the validity of any intellectual property rights, including PBRs, in relation to the Licensed Vines or Licensed Fruit.
- (c) The Lessee must not breach or encourage or permit any breach of any intellectual property rights, including PBRs, in relation to the Licensed Vines or Licensed Fruit.
- (d) The Lessee agrees and acknowledges that all rights to:
 - (i) variations or mutations arising from the Licensed Vines or the Licensed Fruit; or
 - (ii) any vines or fruit demonstrating Essential Characteristics of the Protected Product; or
 - (iii) any Hybrid of the items specified in paragraphs 24.4(d)(i) and (ii),
 will be the property of Andriske notwithstanding that the same may constitute a new cultivar.
- (e) The Lessee must notify the Lessor immediately it becomes aware of the existence of any item specified in paragraph 24.4(d).

24.5 Labelling and packaging

- (a) The Lessee must, before the delivery of Licensed Fruit sold to any third party, attach in a form reasonably approved by Andriske, to each package, bundle or container of fruit, a durable and legible label or tag denoting:
 - (i) the correct cultivar name;
 - (ii) any plant variety protection number or identifier (if applicable); and
 - (iii) a warning that unlicensed sale or propagation is prohibited.

- (b) The Lessee must give notice to the Lessor and Andriske of its intention to use any of the cultivar names of Licensed Fruit in any of its catalogues, advertisements, brochures or merchandise lists.
- (c) The Lessee must ensure that all Licensed Fruit is properly classified, packaged and boxed in accordance with all relevant statutes and regulations affecting the same, and otherwise as may be nominated by the Lessor, acting reasonably, from time to time, in consultation with the Lessee.

24.6 Turnover Rent

- (a) The Lessee must pay the Turnover Rent to the Lessor for each Quarter within 21 days of the end of the Quarter.
- (b) Without prejudice to the Lessor's rights to terminate this Deed under clause 13.1 of this Deed, in the event payment of the total amount of the Turnover Rent is not received by the Lessor when due, and such delay in payment is not due to any act or fault of the Lessor, the Lessee must pay interest at the Default Rate on the unpaid Turnover Rent from the date such unpaid Turnover Rent was due for payment until paid.
- (c) The Lessee must submit a signed and dated Gross Sales report to the Lessor at the end of each Quarter, in the form reasonably specified by the Lessor from time to time.
- (d) Any Turnover Rent payable under this clause 24 is to be reduced to the extent that Timbercorp has paid royalties in relation to the Gross Sales in accordance with the Andriske Licence Agreement.

24.7 Planting and re-planting of Vines

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

24.8 Sales agents

- (a) The Lessee nominates Grapecorp Management Pty Ltd (ACN 105 995 195), and through Grapecorp Management Pty Ltd, The Grape House Pty Ltd (ACN 084 438 951), as the initial sales agents of the Lessee for all Licensed Fruit grown by Lessee.
- (b) The Lessee must notify the Lessor immediately of any change in the appointment of a Sale Agent.

24.9 Books and Records

- (a) The Lessee must keep books and records relating to receipt and sale of Licensed Fruit for a period of 5 years from the year in which such receipt or sale occurred to accurately show the following information:
 - (i) the amount of the Licensed Vines and Licensed Fruit on hand; and
 - (ii) the amount and price of Licensed Fruit sold to each third party (identified by name and business location) in the Licensed Territory together with the date of sale (Records).
- (b) The Lessee's Records, including those of any Subsidiary or Related Body Corporate, must be made available for inspection and audit by the Lessor or its designated employees or agents during regular business hours for the purpose of verifying the accuracy of Lessee's gross sales of the Licensed Fruit in accordance with paragraph 24.9(c).

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

24.10 Indemnity and infringement

- (a) The Lessee agrees to indemnify and keep indemnified, hold harmless, and defend the Lessor and its officers, employees and agents against any and all claims, suits, losses, damages, costs, fees and expenses suffered by the Lessor resulting from or arising out of any act or omission by the Lessee under this clause 24.
- (b) Without limiting the generality of paragraph 24.10(a), the Lessee:
 - (i) must not make or publish or cause to be made or published any false, misleading, deceptive or mis-descriptive statement or information in relation to the Licensed Vines or Licensed Fruit which may give rise to liability of the Lessor;
 - (ii) indemnifies the Lessor against any claim, liability, cost and expense which may be incurred or sustained by the Lessor arising or by reason of any false, misleading, deceptive or mis-descriptive statement or information made by the Lessee in relation to the Licensed Vines or Licensed Fruit.
- (c) The Lessor will at all times indemnify and keep indemnified the Lessee and its sub-licensees and the officers, employees and agents of the Lessee and its sub- licensees (in this paragraph 24.10(c) referred to as "**those indemnified**") from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of in connection with or in respect of:
 - (i) any breach of this clause 24 by the Lessor;

- (ii) any of the warranties given by the Lessor under paragraph 24.15(a) proving to have been false, misleading or inaccurate when made.
- (d) The Lessee and the Lessor each agree to notify each other promptly of any suspected propagation, sale or use of the Licensed Vines or Licensed Fruit, or any use of the Licensed Vines or Licensed Fruit from Essentially Derived Varieties, by firms or persons not duly licensed to Propagate or sell or use such material. Notification of any such suspected infringement must include all details known to the party providing the information, such as name and address of the suspected infringer, location, size of area planted, number of plants propagated or sold or any other information that would enable the other party to investigate and terminate such infringement.
- (e) The Lessee agrees to co-operate with the Lessor in any infringement proceedings instituted by the Lessor provided the Lessor pays or reimburses the Lessee's costs and expenses of doing so.
- (f) Nothing this clause 24 is to be construed as conferring upon the Lessee any right to bring proceedings for infringement relating to the Licensed Vines or Licensed Fruit, and Lessee acknowledges that it does not have any rights in relation to the control of any such proceedings. This paragraph 24.10(f) does not apply whilst the Lessee is Timbercorp.
- (g) Nothing this clause 24 is to be construed as an obligation for the Lessor or Andriske to bring or prosecute actions or proceedings against third parties for infringement of the Lessor's, Timbercorp's or Andriske's rights.
- (h) Where proceedings are commenced against the Lessee in respect of any matter involving any breach of the warranties referred to in paragraph 24.10(c)(ii), the Lessee may, on leave being granted, withdraw from the proceedings and the Lessor, Timbercorp and/or Andriske will, in their own name and at their own expense, conduct the proceedings.

24.11 Further assurances

The Lessee must:

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

24.12 Use of Names

- (a) The use of the names designated by Andriske, contractions of such names or reference to such names by the Lessee in any advertisement, labelling or publicity release relating to the Licensed Vines or the Licensed Fruit will only be allowed in the following manner:
 - (i) "Name of Lessee" is licensed in Licensed Territory by Andriske for the sale of the Licensed Fruit variety "Name of Variety";
 - (ii) in respect of describing the origin and characteristics of the Licensed Vines or Licensed Fruit for advertising purposes, the Lessee must use the Andriske's name only to provide factual and truthful information and must not use the name to imply endorsement by the Andriske of either the Lessee nor endorsement of the performance of the Licensed Vines or Licensed Fruit.

- (b) To ensure the Andriske's approval of proposed wording of the Lessee's advertising text or use of Andriske's name, the Lessee may submit such text to the Lessor for prior written approval.
- (c) Should the Lessee use any advertisement relating to the Licensed Vines or Licensed Fruit or to the Lessor or Andriske, which the Lessor or Andriske, in good faith, finds objectionable on reasonable grounds, the Lessee agrees promptly to stop the use of such advertisement upon written notification by the Lessor or Andriske.
- (d) If any trade mark of or Andriske is used on or in relation to the Licensed Vines or Licensed Fruit, then all representations of the trade mark must be clearly marked or accompanied with a clear statement that Andriske is the owner of the trade mark and the Lessee uses the trade mark under licence from Andriske.
- (e) All use of the Andriske trade marks will inure to Andriske.

24.13 Undertakings of the Lessee

- (a) The Lessee must:
 - (i) well and truly cultivate manure farm and irrigate all the Licensed Vines in a good workmanlike and commercially responsible manner and to a standard consistent with best horticultural practice and industry practices for similar vines;
 - (ii) in all cases adopt and pursue in the most prompt and careful manner a most effectual means for arresting combating reducing or eradicating pests or diseases having regard to best horticultural and industry practice;
 - (iii) undertake all necessary trellising and pruning of the Licensed Vines at proper times and develop and protect and care for the Licensed Vines;
 - (iv) comply in all respects with the terms and conditions as the case may be of the *Plant Diseases Act 1924 (NSW)*, *Phyloxera and Grape Industry Act 1995 (SA)*, *Plant Health and Plant Products Act 1995 (Vic)* and *Plant Diseases Act, 1914 (WA)* and any amendments to such legislation;
 - (v) exercise diligence in the growing of and sale of the Licensed Fruit in the Licensed Territory;
 - (vi) deliver all statements and reports required by this clause 24;
 - (vii) not use the Licensed Vines or Licensed Fruit for purposes not expressly contemplated by this Deed;
 - (viii) not violate or fail to keep or perform any obligation imposed under this clause 24;
 - (ix) not violate or induce or knowingly permit others to violate any country, state or other governmental laws, rules or regulations relative to the propagation, sale and or distribution of the Licensed Vines or Licensed Fruit as may be in force in Licensed Territory.
- (b) Termination of this Deed will not relieve the Lessee from its obligation to pay any Turnover Rent then due and owing or Turnover Rent that may accrue subsequent to such cancellation upon the Lessee's disposition of existing inventory of Licensed Fruit pursuant to this clause 24.

24.14 Disposition of Inventory and Forfeiture of Other Rights

- (a) Upon the lawful termination of this Lease by either party, the Lessee must provide the Lessor with a written inventory listing the quantity of the Licensed Vines and Licensed Fruit in the possession of Lessee.
- (b) The Lessee must dispose of the existing inventory of such Licensed Fruit within 3 calendar months from the date of notice of cancellation provided however that such disposition will be subject to this clause 24.
- (c) Should this Lease be lawfully terminated by either the Lessor or the Lessee, the Lessee forfeits all right to use, and agrees to cease all such use, of Andriske's name and forfeit all other rights granted under this clause 24 other than for the purpose of complying with paragraphs 24.14(a) and 24.14(b).

24.15 Warranty and Acknowledgments

- (a) The Lessor warrants to the Lessee that:
 - (i) it has the right, authority and capacity to grant the licence and rights granted under this clause 24;
 - (ii) the exercise by the Lessee of its rights under this clause 24 will not infringe the rights of any other person.
- (b) To the extent permitted by law, the Lessor makes no express or implied warranties or merchantability, trueness to type, or fitness of the Vines or Licensed Fruit for a particular purpose and the Lessor will have no liability to the Lessee or the Lessee's party customers on account of any defect or failure of the Licensed Vines or Licensed Fruit.
- (c) All other conditions and warranties which would, or may, but for this paragraph 24.15(c), be implied (whether by statute, law, trade usage or otherwise) into this Lease are expressly excluded.
- (d) Nothing in this Lease is to be construed as:
 - (i) conferring by implication, estoppel or otherwise any licence or rights under any other patents, plant variety titles, or variety protection certificates belonging to Andriske or the Lessor other than such limited rights granted to the Lessee in this Lease; or
 - (ii) an obligation to furnish any know-how in relation to the Licensed Vines or Licensed Fruit, save as expressly provided in this clause 24.
- (e) The Lessee agrees and acknowledges that:
 - (i) it has relied on its own viticultural knowledge and has taken expert advice as to the suitability, fitness of the Licensed Vines or the Licensed Fruit, the suitability of the district and soil in which the Licensed Vines are to be planted or otherwise and that no representations whatsoever other than are set out in this Lease, have been made by the Lessor as to the suitability or fitness for the purpose of trueness of type or merchantability of the Licensed Vines or Licensed Fruit;
 - (ii) the cultivars the subject of this clause 24 have not been viticulturally assessed and the genetic stability of such cultivars has not been established.

24.16 Further Restrictions

- (a) The Lessee must not:

- (i) propagate or asexually reproduce the Licensed Vines or Licensed Fruit; and
 - (ii) sell, transfer, lease or otherwise dispose of the Licensed Vines or Licensed Fruit other than on the terms imposed on the Lessee under this clause 24.
- (b) The Lessor must not create any Encumbrances over the rights granted to the Lessee under this clause 24 ranking in priority to the interests of the Lessee, TSL or the Growers who may sub-lease, licence or otherwise occupy the Costa Land or the Vineyards, as the case may be, in the future, including the rights and interests of Lessee, TSL and the Growers under:
- (i) this Lease;
 - (ii) the Project Sub-leases; and
 - (iii) the Occupancy Agreements,
- whether those rights exist as at date of this deed or arise subsequently.

24.17 Expiry of Term

The rights granted under this clause 24 remain in full force and effect for the Term, after which the Lessee must immediately discontinue selling the Licensed Fruit.

24.18 Capacity of Timbercorp

The parties and agree and acknowledge that:

- (a) this clause 24 applies to Timbercorp solely in its capacity as Lessee under this Lease;
- (b) nothing in this clause 24 affects, or detracts from, any of Timbercorp's rights as a party to, licensee under, the Andriske Licence Agreement.

24.19 Definitions

In this clause 24, unless the context or contrary intention appears, the following words and expressions have the meanings set opposite them:

| | |
|------------------------------------|---|
| Andriske: | Andriske Research Pty Ltd (ACN 006 565 260); |
| Andriske Licence Agreement: | means the Licence Agreement between Andriske as licensor and each of the Lessor and Timbercorp as licensees made on 9 October 2003; |
| Essential Characteristics: | has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ; |
| Default Rate: | the rate from time to time prescribed by the <i>Penalty Interest Rates Act 1983 (Vic)</i> ; |
| Gross Sales: | the gross price charged (exclusive of GST) for the Licensed Fruit sold on an arms' length basis at the Shed Door Price, whether by the Lessee, TSL or a Grower; |
| Hybrid: | has the same meaning as in the <i>Plant Breeders' Rights Act 1994 (Cth)</i> ; |
| Licensed Fruit: | all Table Grapes grown on the Licensed Vines processed or unprocessed; |
| Licensed | (a) White Seedless Grape Cultivar known as "Stanley |

| | |
|--------------------------------|--|
| Products: | <p>Seedless" Vines and Table Grapes from such "Stanley Seedless" Vines (Plant Breeder's Rights Application No. 1996/046 and granted 25th May, 2002, and Numbered 2010);</p> <p>(b) Red Seedless Grape Cultivar known as "Red Rob" Vines and Table Grapes from such "Red Rob" Vines (Plant Breeder's Rights Application No. 1998/144 and granted 11th June, 2003 and Numbered 2263).</p> |
| Licensed Territory: | <p>(a) <u>For planting of Licensed Vines:</u></p> <p>South of Latitude 32-54 degrees South in all of Australia, except in Western Australia, where it is South of Latitude 30 degrees South including the following properties:</p> <p>(i) the land described in Folio Identifier 1/1046694 (a copy of which is annexed to the Andriske Licence Agreement and marked "Property 1", being an area comprising a vineyard of 94 acres planted on or before 30 June 2002 and a further area of 23 plantable acres to be planted on or before 30 June 2004;</p> <p>(ii) Lots 1 and 2 on Proposed Subdivision of Lot 4378 in DP 767245 and Part W.L.L. 9829 (a copy of which is annexed to the Andriske Licence Agreement and marked "Property 2");</p> <p>(iii) such other land notified to Andriske Research Pty Ltd (ACN 006 565 260) from time to time.</p> <p>(b) <u>For Sale of Licensed Fruit:</u></p> <p>(i) For export quality - The World;</p> <p>(ii) For less than export quality – Australia;</p> |
| Licensed Vines: | all Vines which are Licensed Products; |
| PBRs: | plant breeders rights; |
| Propagate: | to grow, culture or multiply by sexual or asexual means including growing of any seeds produced, grafting, budding, hybridisation or any other means of reproduction; |
| Protected Products: | <p>(a) Plant Breeders Rights Application No. 1996/046 in respect of the White Seedless Grape Cultivar known as "Stanley Seedless" and granted 25th May, 2002, and Numbered 2010;</p> <p>(b) Plant Breeders Rights Application No. 1998/144 in respect of the Red Seedless Grape Cultivar known as "Red Rob" and granted 11th June, 2003, and Numbered 2263;</p> |
| Related Body Corporate: | has the same meaning as in the Corporations Act; |
| Sales Agents: | a sales agent nominated by the Lessee in accordance with clause 24.8; |
| | |

| | |
|-------------------------|---|
| Shed Door Price: | <p>(a) the sale price of the Licensed Fruit; less</p> <p>(b) any cost incurred by the Lessee, TSL or the Grower, as the case requires, in respect of the Licensed Fruit after the Licensed Fruit leaves the installation where the Licensed Fruit is packed, including costs such as freight, insurance, agents' fees, cold storage charges, import duty and AQIS (other than any amount or amounts payable to Sales Agents),</p> <p>except in the case of any sale of Licensed Fruit by the Lessee, TSL or the Grower, as the case requires, at an invoice price less than that charged to persons negotiating at arms' length, there will be substituted for the purpose of calculation of payments due under this Deed, such invoice price (exclusive of GST) as would be charged in any arms' length transaction;</p> |
| Subsidiary: | <p>has the same meaning as in the Corporations Act;</p> |
| Turnover Rent: | <p>8% of the Gross Sales of the Licensed Fruit for which the Lessee, TSL or the Grower, as the case requires, has received payment during the Quarter;</p> |

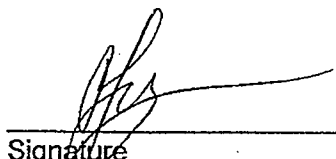
Executed as a Deed:

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


Signature

MICHAEL EMERY
Full Name


DIRECTOR
Position Held


Signature

Richard O'Brien
Full Name

Director
Position Held

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



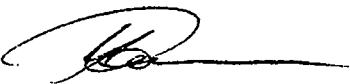
Signature

SOL RABINOWICZ

Full Name

DIRECTOR

Position Held



Signature


Robert Hance

Full Name

Director

Position Held

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




Signature

SOL RABINOWICZ

Full Name

DIRECTOR

Position Held



Signature

Robert Hance

Full Name

Director

Position Held

SCHEDULE 1

DESCRIPTION OF THE LAND (Clause 1.1)

1. The "Costa Land" being leased under this Lease comprises the following pieces of land"
 - (a) Lot 2 Deposited Plan 1046695 (**Costa's Crest**); and
 - (b) the land described as **Bella Vista** in clause 1.1.
2. References to the "Table Grape Land" and "Vacant Land" under this Lease are to the following pieces of land within the Costa Land.

| Property Name | Particulars | Area (Ha) |
|---|--|--|
| Table Grape Land | | |
| Costa's Crest (plantable) | Lot 2 Deposited Plan 1046695, Parish of Euston | 38 Ha of Costa's Crest, being the area on which the Existing Vineyard has been established |
| Costa's Crest (non-plantable) | Lot 2 Deposited Plan 1046695, Parish of Euston | 56 Ha of Costa's Crest adjacent to the Existing Vineyard |
| Vacant Land | | |
| Costa's Crest Extension (plantable) | Lot 2 Deposited Plan 1046695, Parish of Euston | 10 Ha of Costa's Crest, being the area on which part of the New Vineyard is to be established |
| Costa's Crest Extension (non-plantable) | Lot 2 Deposited Plan 1046695, Parish of Euston | 13 Ha of Costa's Crest adjacent to the New Vineyard to be established on Costa's Crest Extension |
| Bella Vista | either: (a) Lot 3 DP1059036; or (b) the lot of 134 hectares to be carved out of the | Total area of 1,959 ha to be subdivided into a 131 Ha lot |

Im
(Lessee's & Lessor's Solicitor)

Py

| | | |
|--|---|--|
| | said Lot 3; as the case requires under the Bella Vista Contract; | |
|--|---|--|

A

Form: 07L
Release: 1.1
www.lpi.nsw.gov.au

LEASE

New South Wales
Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: this information is legally required and will become part of the public record

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

3/1059036

(B) LODGED BY

| | | |
|-----------------|-----------------------------------|------|
| Delivery Box | Name, Address or DX and Telephone | CODE |
| | Reference: | L |

(C) LESSOR

Carmelo COSTA and Paul COSTA

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

(D)

Encumbrances (if applicable):

(E) LESSEE

ORCHARD INVESTMENTS MANAGEMENT LIMITED ACN 105 684 231

(F)

TENANCY:

- (G) 1. TERM: 15 years months days
2. COMMENCING DATE: 15 April 2004
3. TERMINATING DATE: 30 June 2019
4. ~~With an OPTION TO RENEW for a period of~~
~~set out in clause~~ of
5. ~~With an OPTION TO PURCHASE set out in clause~~ of
6. ~~Together with and reserving the RIGHTS set out in clause~~ of
7. Incorporates the provisions set out in ANNEXURE A hereto.
8. ~~Incorporates the provisions set out in MEMORANDUM filed at Land and Property Information New South Wales as~~
~~No.~~
9. The RENT is set out in clause No. 5 of Annexure A

All handwriting must be in block capitals.

Total Pages (office use only) _____

49
Page 7 of 95

LAND AND PROPERTY INFORMATION NSW

DATE

2004

(H)

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.


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

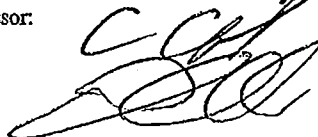
Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:


Bryan Byrnes



Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: ORCHARD INVESTMENTS MANAGEMENT LIMITED

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

(I) STATUTORY DECLARATION

I

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended;
2. The lessee under that lease has not exercised the option

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

Made and subscribed at _____ in the State of New South Wales

on _____

in the presence of—

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness:

This is Annexure A referred to in the lease made between Carmelo Costa and Paul Costa, as Lessor, and Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust, as Lessee.

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LEASE – SUBDIVISION LANDS

Lease

The Parties Agree as Follows:

1. BACKGROUND, DEFINITIONS AND INTERPRETATION

1.1 Background

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

1.2 Definitions

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

| | |
|-------------------------------------|---|
| Best Horticultural Practice: | sound horticultural and environmental practices and industry practices for similar vineyards; |
| Business Day: | any day other than a Saturday, Sunday or a public holiday in Victoria; |
| Capital Works: | means the infrastructure and capital works erected or to be erected on the Land including, without limitation, an internal irrigation system, trellis infrastructure, vines and Irrigation Infrastructure; |
| Commencement Date: | the date of this Lease; |
| Constitution: | the constitution of a Project; |
| Contract of Sale: | means the contract of sale between the Lessor as vendor and the Lessee as purchaser for the sale of Lot 1 of 131 hectares to be created from a sub-division of Lot 4378 DP 767245 and Lot 1 DP1046695, as shown in the plan attached as Schedule 2; |
| Corporations Act: | the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations; |
| Costa's Crest Land | means Lot 2 DP1046695; |
| Encumbrance: | in relation to any property means anything which: <ul style="list-style-type: none">(a) reserves, constitutes or evidences any interest in or right over the property or a claim to any interest or right; or |

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

| | |
|----------------------------|---|
| Constitution: | the constitution of the Orchard Trust; |
| Project: | one or more table grape managed investment schemes to be conducted by a sub-lessee or licensee of the Lessee or Timbercorp on the Land, whether registered or unregistered, including table grape managed investment schemes promoted by Timbercorp Securities Limited; |
| Responsible Entity: | the responsible entity for the time being under the Orchard Trust Constitution, which is currently the Lessee; |
| Security Interest: | <p>an interest or right:</p> <p>(a) reserved over property; or</p> <p>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</p> <p>by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;</p> |
| Term: | <p>means the period of this Lease commencing on the Commencement Date and ending on the earlier of:</p> <p>(a) the date on which the Lessee becomes the registered proprietor of the Land;</p> <p>(b) 30 June 2019;</p> |
| Timbercorp | means Timbercorp Limited ACN 055 185 067; |
| Vinlot: | each separate identifiable area of the Land comprising part of a Grapelot which is an area of approximately 0.25 acres of Vines (and comprising approximately of 270 vines) on the Land and the Costa's Crest Land; |
| Vines: | the Vines growing or to be grown on the Land; and |
| Vineyard: | the table grape vineyard or vineyards established or to be established on the Land. |

1.2 Interpretation

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

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;

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

1.3 Headings

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

2. CAPACITY AND LIABILITY OF THE LESSEE

2.1 Capacity of Lessee

The parties acknowledge that:

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

2.2 Benefit to Lessee

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

2.3 Limitation of Liability

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

3. GRANT AND TERM OF LEASE

3.1 Grant and Term of Lease

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

3.2 Representations

The Lessor represents and warrants that:

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

4. MAINTENANCE OF LAND AND VINEYARD

4.1 Use of the Land

The Lessee may:

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

4.2 Cultivation and maintenance obligations in relation to the Vineyard

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

- (a) **Irrigation and fertilisation:** provide the Vineyard with necessary irrigation water, irrigate the Vineyard and apply fertilisers and nutrients at the appropriate times. This includes efficient irrigation application management and salinity and groundwater monitoring and control;
- (b) **Weed control:** ensure no impediment to Vine development and table grape production;
- (c) **Vermin:** keep the Vineyard free from Vermin;
- (d) **Insects and Diseases:** use its reasonable endeavours to keep the Vines free from Insects and diseases, which might damage or inhibit the growth of the Vines;

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

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

4.3 Acknowledgments by the Lessor

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

- (a) the Lessee
- (b) Timbercorp;
- (c) any manager or responsible entity of a Project;
- (d) any sub-lessee or licensee of all or part of the Land;
- (e) the Growers; or
- (f) any other person or entity deriving title to the table grapes through any of the persons described in paragraphs 4.3(a) to (e).

5. RENT PAYMENTS

5.1 Rent

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

6. LESSOR'S OBLIGATIONS AND RIGHTS

6.1 Obligations

The Lessor must:

- (a) procure and maintain for the benefit of the Lessee for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and management of the Vineyard;
- (b) allow the Lessee to peaceably and quietly hold and enjoy the Land without any interruption by the Lessor or any person claiming through or under the Lessor;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Vineyard;
- (d) take all steps to avoid interfering with the supply of water to Vinelots and to avoid any actions that would prejudice Growers' rights under Occupancy Agreements and where it is able to do so assist the Lessee at the cost of the

Lessee to supply water to the Vinelots;

- (e) not create any Encumbrances over the Land or the Vineyard or any part of the Land or the Vineyard without the prior consent in writing of the Lessee, which may be given or withheld in its absolute discretion, and if given by the Lessee will be subject to the interests of the Lessee, any sub-lessee or licensee of the Lessee or the Growers;
- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Lessor are properly controlled and supervised; and
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor.

6.2 Rights

The Lessor:

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

7. RATES, TAXES AND CHARGES

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

8. INSURANCE

8.1 Lessee must maintain insurance

The Lessee must:

- (a) in connection with the Land, maintain with insurers in the names of the Lessee, the Lessor and any other person named by the Lessee:

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

8.2 Parties not to affect rights under insurance

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

8.3 Indemnity

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

9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

9.1 Assignment by Lessee

The Lessee may assign its interest under this Lease:

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

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

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

9.3 Assignment by Lessor

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

9.4 Delegation

The Lessor and the Lessee are each entitled to:

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

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

10. DEFAULT AND RE-ENTRY

10.1 Termination by Lessor

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

11. TERMINATION

11.1 Termination of Lease by the Lessee

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

11.2 Effect of Termination

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

11.3 Attorneys

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

12. LESSEE'S RISK

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

13. LEGAL COSTS

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

14. NOTICES

14.1 Form of Notice

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

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

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

14.2 Receipt of Notice

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

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

15. PROPER LAW

This Lease is governed by and to be interpreted in accordance with the laws of New South Wales and the parties to this Lease submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them for determining any dispute concerning this Lease or the transactions contemplated by this Lease.

16. SEVERANCE

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

17. ENTIRE AGREEMENT

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

18. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Lease (other than the supply of the Land by the Lessor to the Lessee) is a taxable supply (according to GST Law) so that the Lessor is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
 - (b) In addition to the GST Exclusive Amount for a taxable supply under this Lease, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate.
 - (c) The GST payable under paragraph 18(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Lease.
 - (d) The right of a Supplier to payment under this clause 18 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
 - (e) If a payment to satisfy a claim or a right to claim under or in connection with this Lease, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 18(b).
 - (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Lease, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
 - (g) If a party has a claim under or in connection with this Lease for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
 - (h) If a party has a claim under or in connection with this Lease and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.
-

19. STATUTORY PROVISIONS

19.1 Conveyancing Act 1919 (NSW)

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

20. CAVEAT

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

21. FURTHER ASSURANCES

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

22. DISPUTES

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

23. SURRENDER OF LEASE


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

- (a) the Surrender of Lease shall be prepared by the solicitor for the Lessor and submitted to the solicitor for the Lessee for approval and, if approved, for execution by the Lessee;
- (b) the Surrender of Lease shall be submitted to the solicitor for the Lessee within 28 days after registration of the plan of subdivision to create Lot 1 of 131 ha in terms of the Plan comprising Schedule 2;

- (c) the land to be the subject of the Surrender of Lease shall be all of those lands leased hereunder with the exception of the said Lot 1 of 131ha;
- (d) all of the costs and disbursements of both the Lessor and Lessee in connection with the preparation and execution and registration of the Surrender of Lease shall be paid by the Lessor;
- (e) to the extent that it is appropriate to vary the terms of this lease (otherwise than in respect of the description of the demised premises) the parties shall execute and register a Variation of Lease, such document to be prepared by the Lessor and approved by the Lessee with all costs and disbursements relating to the preparation, execution and registration of the Variation of Lease being met by the Lessor.

Executed as a Deed:

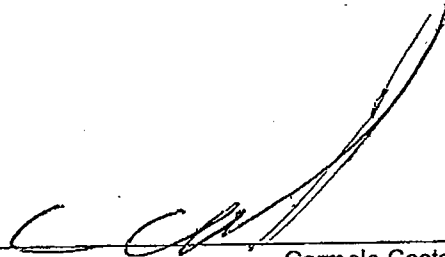
EXECUTED by CARMELO COSTA in the presence of:



Signature of Witness


Bryan Byrnes

Print Name of Witness



Carmelo Costa

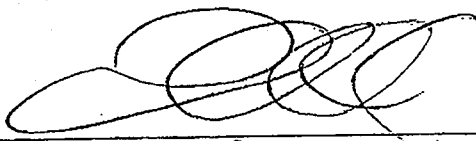
EXECUTED by PAUL COSTA in the presence of:



Signature of Witness

Bryan Byrnes

Print Name of Witness



Paul Carmelo Costa

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

Signature

Signature

Full Name

Full Name

Position Held

Position Held

SCHEDULE 1

DESCRIPTION OF THE LAND (Clause 1.1)

1. The "Land" is Lot 3 in DP 1059036

SCHEDULE 2

A PLAN OF THE LAND SUBJECT TO THE CONTRACT OF SALE (Clause 1.1)

Details of Application.

① 8°02'50" 500 (VIDE D.P.822017 - 8°56'30")
 ② 8°03'30" 555-59 (BY REDUCTION VIDE D.P.822017 & D.P.86645)
 ③ DISTANCE VIDE D.P.86645
 ④ BY REDUCTION VIDE D.P.66845 & 85 - 3060
 ⑤ DISTANCE VIDE 169 - 1979
 ⑥ DISTANCE ASSUMED TO BE ABOUT THE SAME AS THE
 SOUTHERN BOUNDARY VIDE 85-3060



INEL FOR USE ONLY for statements of attention to dedicate public roads, to create public reserves, drainage reserves, sewers, restrictions on the use of land or positive ventane.

ANNEXURE B

Costa's Crest Lease

B

Form: 07L
Release: 1.1
www.lpi.nsw.gov.au

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: this information is legally required and will become part of the public record

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises
2/1046695

(B) LODGED BY

| | | |
|-----------------|-----------------------------------|------|
| Delivery Box | Name, Address or DX and Telephone | CODE |
| | Reference: | L |

(C) LESSOR

Carmelo COSTA and Paul COSTA

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

(D)

Encumbrances (if applicable):

(E) LESSEE

ORCHARD INVESTMENTS MANAGEMENT LIMITED ACN 105 684 231

(F)

TENANCY:

- (G) 1. TERM: 15 years months days
2. COMMENCING DATE: 15 April 2004
3. TERMINATING DATE: 30 June 2019
4. ~~With an OPTION TO RENEW for a period of~~
~~set out in clause of~~
5. ~~With an OPTION TO PURCHASE set out in clause of~~
6. ~~Together with and reserving the RIGHTS set out in clause of~~
7. Incorporates the provisions set out in ANNEXURE A hereto.
8. ~~Incorporates the provisions set out in MEMORANDUM filed at Land and Property Information New South Wales as~~
~~No.~~
9. The RENT is set out in clause No. 5 of Annexure A

All handwriting must be in block capitals.

Total Pages (office use only)

12
Page 1 of 95

LAND AND PROPERTY INFORMATION NSW

DATE

(H)

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

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

Signature of witness:



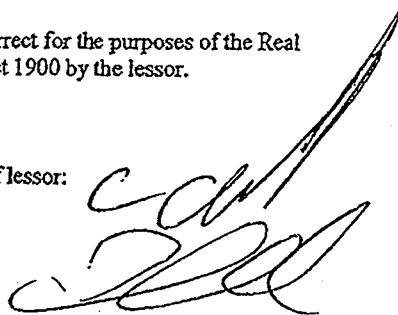
Name of witness:

Bryan Byrnes

Address of witness:

18 Upland Drive,
Mildura

Signature of lessor:



Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: ORCHARD INVESTMENTS MANAGEMENT LIMITED

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

(I) STATUTORY DECLARATION

I, _____

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended;
2. The lessee under that lease has not exercised the option

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

Made and subscribed at _____

in the State of New South Wales

on _____

in the presence of—

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Qualification of witness:

This is Annexure A referred to in the lease made between Carmelo Costa and Paul Costa, as Lessor, and Orchard Investments Management Limited (ACN 105 684 231) in its capacity as responsible entity of the Timbercorp Orchard Trust, as Lessee.

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LEASE – VINEYARD LANDS

Lease

The Parties Agree as Follows:

1. BACKGROUND, DEFINITIONS AND INTERPRETATION

1.1 Background

- (a) The Lessor is the registered proprietor of the Land.
- (b) On 9 October 2003, the Lessee, as purchaser, entered into a Contract of Sale with the Lessor, as vendor, under which the Lessee has agreed to purchase the Land.
- (c) The Lessor wishes to grant a lease of the Land to the Lessee on the terms and conditions contained in this Lease pending settlement of the acquisition of the Land by the Lessee in accordance with the Contract of Sale.
- (d) The Lessor consents to the Lessee entering into the Occupancy Agreements with the Growers in the Project.

1.2 Definitions

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

| | |
|-------------------------------------|--|
| Bella Vista Land | Lot 1 of 131 hectares to be created from a sub-division of Lot 4378 DP 767245 and Lot 1 DP1046695 such land designated as Lot 1 on the copy unregistered plan annexed hereto; |
| Best Horticultural Practice: | sound horticultural and environmental practices and industry practices for similar vineyards; |
| Business Day: | any day other than a Saturday, Sunday or a public holiday in Victoria; |
| Capital Works: | means the infrastructure and capital works erected or to be erected on the Land including, without limitation, an internal irrigation system, trellis infrastructure, vines and Irrigation Infrastructure; |
| Commencement Date: | the date of this Lease; |
| Constitution: | the constitution of a Project; |
| Contract of Sale: | means the contract of sale between the Lessor as vendor and the Lessee as purchaser for the sale of Lot 2 DP1046695; |
| Corporations Act: | the <i>Corporations Act 2001</i> of the Commonwealth of Australia and the Corporations Regulations; |
| Encumbrance: | in relation to any property means anything which: |

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

| | |
|------------------------------------|---|
| Orchard Trust: | the Timbercorp Orchard Trust; |
| Orchard Trust Constitution: | the constitution of the Orchard Trust; |
| Project: | one or more table grape managed investment schemes to be conducted by a sub-lessee or licensee of the Lessee or Timbercorp on the Land, whether registered or unregistered, including table grape managed investment schemes promoted by Timbercorp Securities Limited; |
| Responsible Entity: | the responsible entity for the time being under the Orchard Trust Constitution, which is currently the Lessee; |
| Security Interest: | <p>an interest or right:</p> <p>(a) reserved over property; or</p> <p>(b) created or otherwise arising over property under a mortgage, charge, bill of sale (as defined in any relevant statute), lien, pledge, trust or right,</p> <p>by way of security for the payment of a debt or other monetary obligation or the performance of any other obligation, but excluding any charge or lien arising in favour of any Government Body by operation of law provided there is no default in payment of moneys owing under such charge and any possessory lien arising in the ordinary course of business whether arising by operation of law or by contract;</p> |
| Term: | <p>means the period of this Lease commencing on the Commencement Date and ending on the earlier of:</p> <p>(a) the date on which the Lessee becomes the registered proprietor of the Land; and</p> <p>(d) 30 June 2019;</p> |
| Timbercorp | means Timbercorp Limited ACN 055 185 067; |
| Vinelot: | each separate identifiable area of the Land comprising part of a Grapelot which is an area of approximately 0.25 acres of Vines (and comprising approximately of 270 vines) on the Land and the Bella Vista Land; |
| Vines: | the Vines growing or to be grown on the Land; and |
| Vineyard: | the table grape vineyard or vineyards established or to be established on the Land. |

1.2 Interpretation

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

- (a) a reference to this or any other document includes a variation or replacement of it;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) if a word is defined, cognate words have corresponding definitions;

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

1.3 Headings

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

2. CAPACITY AND LIABILITY OF THE LESSEE

2.1 Capacity of Lessee

The parties acknowledge that:

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

2.2 Benefit to Lessee

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

2.3 Limitation of Liability

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

3. GRANT AND TERM OF LEASE

3.1 Grant and Term of Lease

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

3.2 Representations

The Lessor represents and warrants that:

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

4. MAINTENANCE OF LAND AND VINEYARD

4.1 Use of the Land

The Lessee may:

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

4.2 Cultivation and maintenance obligations in relation to the Vineyard

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

- (a) **Irrigation and fertilisation:** provide the Vineyard with necessary irrigation water, irrigate the Vineyard and apply fertilisers and nutrients at the appropriate times. This includes efficient irrigation application management and salinity and groundwater monitoring and control;
- (b) **Weed control:** ensure no impediment to Vine development and table grape production;
- (c) **Vermin:** keep the Vineyard free from Vermin;
- (d) **Insects and Diseases:** use its reasonable endeavours to keep the Vines free from insects and diseases, which might damage or inhibit the growth of the Vines;
- (e) **Destruction:** destroy any Vines which a reasonable horticulturist would destroy having regards to the best interests of the remaining unaffected Vines.

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

4.3 Acknowledgments by the Lessor

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

- (a) the Lessee;
- (b) Timbercorp;
- (c) any manager or responsible entity of a Project;
- (d) any sub-lessee or licensee of all or part of the Land;
- (e) the Growers; or
- (f) any other person or entity deriving title to the table grapes through any of the persons described in paragraphs 4.3(a) to (e).

5. RENT PAYMENTS

5.1 Rent

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

6. LESSOR'S OBLIGATIONS AND RIGHTS

6.1 Obligations

The Lessor must:

- (a) procure and maintain for the benefit of the Lessee for the Term all local, State and Commonwealth government approvals, licences or permits required for the establishment and management of the Vineyard;
- (b) allow the Lessee to peaceably and quietly hold and enjoy the Land without any interruption by the Lessor or any person claiming through or under the Lessor;
- (c) not store or use any chemical, inflammable, noxious or dangerous substances in a manner which is likely to result in damage to vegetation, crops or water reserves on the Vineyard;
- (d) take all steps to avoid interfering with the supply of water to Vinelots and to avoid any actions that would prejudice Growers' rights under Occupancy Agreements and where it is able to do so assist the Lessee at the cost of the Lessee to supply water to the Vinelots;
- (e) not create any Encumbrances over the Land or the Vineyard or any part of

the Land or the Vineyard without the prior consent in writing of the Lessee, which may be given or withheld in its absolute discretion, and if given by the Lessee will be subject to the interests of the Lessee, any sub-lessee or licensee of the Lessee or the Growers;

- (f) take all necessary measures to ensure that any fires which may occur or be lit on any neighbouring land owned or occupied by the Lessor are properly controlled and supervised; and
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor.

6.2 Rights

The Lessor:

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

7. RATES, TAXES AND CHARGES

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

8. INSURANCE

8.1 Lessee must maintain insurance

The Lessee must:

- (a) in connection with the Land, maintain with insurers in the names of the Lessee, the Lessor and any other person named by the Lessee:
 - (i) public liability insurance for at least \$10 million (as varied by notice from the Lessor to the Lessee);

- (ii) the replacement value of the Capital Works, including the Vines and the Irrigation Infrastructure; and
 - (iii) other insurances required by law or that, in the Lessor's reasonable opinion, a prudent Lessee would take out having regard to the cost of such insurance;
- (b) give the Lessor evidence when asked to do so that the Lessee has complied with paragraph 8.1(a); and
- (c) notify the Lessor immediately if an insurance policy required by this clause 8.1 is cancelled or an event occurs that allows a claim or affects rights under an insurance policy in connection with the Land.

8.2 Parties not to affect rights under insurance

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

8.3 Indemnity

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

9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES

9.1 Assignment by Lessee

The Lessee may assign its interest under this Lease:

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

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

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

9.3 Assignment by Lessor

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

9.4 Delegation

The Lessor and the Lessee are each entitled to:

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

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

10. DEFAULT AND RE-ENTRY

10.1 Termination by Lessor

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

11. TERMINATION

11.1 Termination of Lease by the Lessee

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

11.2 Effect of Termination

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

11.3 Attorneys

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

12. LESSEE'S RISK

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

13. LEGAL COSTS

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

14. NOTICES

14.1 Form of Notice

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

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

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

14.2 Receipt of Notice

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

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

15. PROPER LAW

This Lease is governed by and to be interpreted in accordance with the laws of New South Wales and the parties to this Lease submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them for determining any dispute concerning this Lease or the transactions contemplated by this Lease.

16. SEVERANCE

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

17. ENTIRE AGREEMENT

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

this Lease.

18. GST

- (a) If any supply made by a party ("**Supplier**") to another party ("**Recipient**") under this Lease (other than the supply of the Land by the Lessor to the Lessee) is a taxable supply (according to GST Law) so that the Lessor is liable to GST, the parties agree that the consideration payable for that taxable supply represents the value of the taxable supply (the "**GST Exclusive Amount**") and not the price for that taxable supply.
- (b) In addition to the GST Exclusive Amount for a taxable supply under this Lease, the Recipient must pay to the Supplier a further amount in respect of the taxable supply calculated as an amount equal to the GST Exclusive Amount multiplied by the GST rate.
- (c) The GST payable under paragraph 18(b) is payable by the Recipient without deduction or set-off of any other amount, at the same time and on the same basis as the GST Exclusive Amount is payable by the Recipient under this Lease.
- (d) The right of a Supplier to payment under this clause 18 is subject to a valid tax invoice, which complies with GST Law, being issued and delivered by the Supplier to the Recipient.
- (e) If a payment to satisfy a claim or a right to claim under or in connection with this Lease, for example, a claim for damages for breach of contract, gives rise to a liability to pay GST, the payment is the GST Exclusive Amount and an additional amount must be paid to the Supplier in accordance with paragraph 18(b).
- (f) If a decision making body orders that a payment be made to a party to satisfy a claim under or in connection with this Lease, and such payment will give rise to a liability to pay GST, the parties authorise the decision making body to order that a further amount, calculated as an amount equal to the payment multiplied by the GST Rate, be paid to the party in whose favour the order is made.
- (g) If a party has a claim under or in connection with this Lease for a cost on which that party must pay GST, the claim is for the cost plus all GST, except any GST for which that party is entitled to an input tax credit, including a reduced input tax credit or an adjusted input tax credit.
- (h) If a party has a claim under or in connection with this Lease and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST, whether that amount is separate or included as part of a larger amount.

19. STATUTORY PROVISIONS

19.1 Conveyancing Act 1919 (NSW)

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

20. CAVEAT

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

21. FURTHER ASSURANCES

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


22. DISPUTES

- (a) If any dispute, question or difference of opinion arises out of or in connection with this Lease then the party asserting the dispute must give the other parties a notice of dispute in writing adequately identifying and providing details of the dispute (the "**Notice of Dispute**").
- (b) Within 7 days after service of the Notice of Dispute the parties must confer on a "without prejudice" basis to attempt to resolve the dispute.

If the dispute is not settled promptly by the parties in accordance with paragraph 22(b), any party may by notice in writing to the other parties require that the matter be referred to a person nominated by the President for the time being of Law Institute of Victoria at a place in Melbourne and the nominee's determination will be final and binding and he must be deemed to be acting as an expert and not as an arbitrator.

Executed as a Deed:

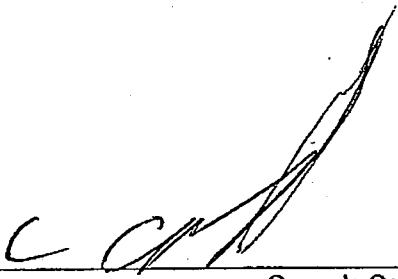
EXECUTED by CARMELO COSTA in the presence of:



Signature of Witness

Bryan Byrnes

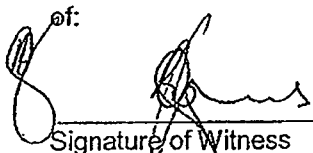
Print Name of Witness



Carmelo Costa

EXECUTED by PAUL COSTA in the presence


of:



Signature of Witness

Bryan Byrnes

Print Name of Witness



Paul Carmelo Costa

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

Signature

Full Name

Position Held

Signature

Full Name

Position Held

SCHEDULE 1

DESCRIPTION OF THE LAND (Clause 1.1)

1. The "Land" is Lot 2 in DP1046695.

SCHEDULE 2

A PLAN OF THE LAND SUBJECT TO THE CONTRACT OF SALE (Clause 1.1)

PLAN OF SUBDIVISION OF LOT 6440 IN R.P. 822017

1 (pt.) (1383ha) TOTAL OF 2 PARTS 1497ha AREA BY DEDUCTION

62 D.P. 823899

6820 D.P. 823920

1 D.P. 25647

2 D.P. 266987

PRINCIPLE ROAD

HIGHWAY

STREET

Scale: 1:10,000

| FILE | NCA CO-ORDINATES | ZONE | ACC. | CLASS | ORDER | CSF |
|-----------|------------------|------|------|-------|-------|----------|
| SSM 60685 | 664026-099 | 18N | 2 | A | 1 | 0.999923 |
| SSM 60682 | 664412-782 | 18N | 2 | A | 1 | 0.999923 |
| SSM 71768 | 662126-462 | 18N | 2 | B | 2 | 0.999923 |
| SSM 71767 | 662278-119 | 18N | 2 | B | 2 | 0.999918 |

SOURCE: NCA CO-ORDINATES & DETAILS - S.C.I.M.S. 07/03/2002

-076-30° TO D.P. 822017 (EXCEPT WHERE SHOWN OTHERWISE)

WARNING: CHANGING OR FOLDING WILL LEAD TO REJECTION

Scale: 1:10,000

galloways
legal services

your agents

Galloways Legal Services hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with Section 96B(2) of the Real Property Act.

Information provided through Tri-Search an approved LPN/SW Information Broker

LAND AND PROPERTY INFORMATION NEW SOUTH WALES - TITLE SEARCH

FOLIO: 2/1046695

| SEARCH DATE | TIME | EDITION NO | DATE |
|-------------|---------|------------|-----------|
| 8/7/2003 | 9:57 AM | 3 | 11/3/2003 |

LAND

LOT 2 IN DEPOSITED PLAN 1046695
AT EUSTON

LOCAL GOVERNMENT AREA: BALRANALD
PARISH OF EUSTON COUNTY OF TAILA
TITLE DIAGRAM: DP1046695

FIRST SCHEDULE

ESTATE: PERPETUAL LEASE

PAUL COSTA

AS TENANTS IN COMMON IN EQUAL SHARES

SECOND SCHEDULE (5 NOTIFICATIONS)

1. LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND

CONDITIONS IN FAVOUR OF THE CROWN - SEE MEMORANDUM S700000C

2. 9075900 WESTERN LANDS LEASE 14362

3. SUBJECT TO THE PROVISIONS OF THE WESTERN LANDS ACT 1901 PARTICULARLY AS REGARDS PAYMENT OF ANNUAL RENT AND

IN PARTICULAR AS REGARDS PAYMENT OF ANNUAL RENT AND OTHER DUES,
FUTURE PROVISIONS AND RESTRICTIONS ON DEALINGS - SEE SECTION
18G

9286614 PURPOSE OF LEASE: CULTIVATION & CONSERVATION

9075900 AREA OF LEASE: 82.10HA

4. INQUIRIES, PARTICULARLY IN RESPECT OF LEASE CONDITIONS AND/OR SUBDIVISION OF THE LEASE, SHOULD BE MADE

SUBDIVISION OF THE LEASE, SHOULD BE MADE OF THE DEPARTMENT OF LAND AND WATER CONSERVATION (EAR WESTERN REGION) BEFORE THE

THIS FOLIO

5. 9439632 MORTGAGE TO WESTPAC BANKING CORPORATION

NOTATIONS

DP640372 NOTE: PLAN OF PROPOSED EASEMENT

UNREGISTERED DEALINGS: NIL

END OF SEARCH

<http://www.galloway.com.au/galloway/ito.nsf/Search+Results/0F7B13D2DD8FD057CA25605C00839F6...> 718103

Reg:RDS6389 /Doc:DL 9075900 /Ref:19246 /Rev:09-Aug-2004 /Sts:SC.OK /Prt:09-Nov-2009 15:15 /Pgs:AM /Seq:95 of 95

Form: 19MA
Licence: 98X111
Edition: 008

**APPLICATION FOR RECORDING OF
ACTION AFFECTING A CROWN HOLDING**

New South Wales
Section 13X Real Property Act 1900

9075900M

PRIVACY NOTE: this information is legally required and will become part of the public record

TORRENS TITLE

LOANED BY

DELIVER TO

APPLICANT

6888/822017, 4378/767245
now being 2/1046695

Delivery Box 469S

Name, Address or DX and Telephone
DEPARTMENT OF LAND AND WATER CONSERVATION
PO BOX 1840
DUBBO NSW 2830
Reference (optional): WILL 9829

CODE
MA

469S

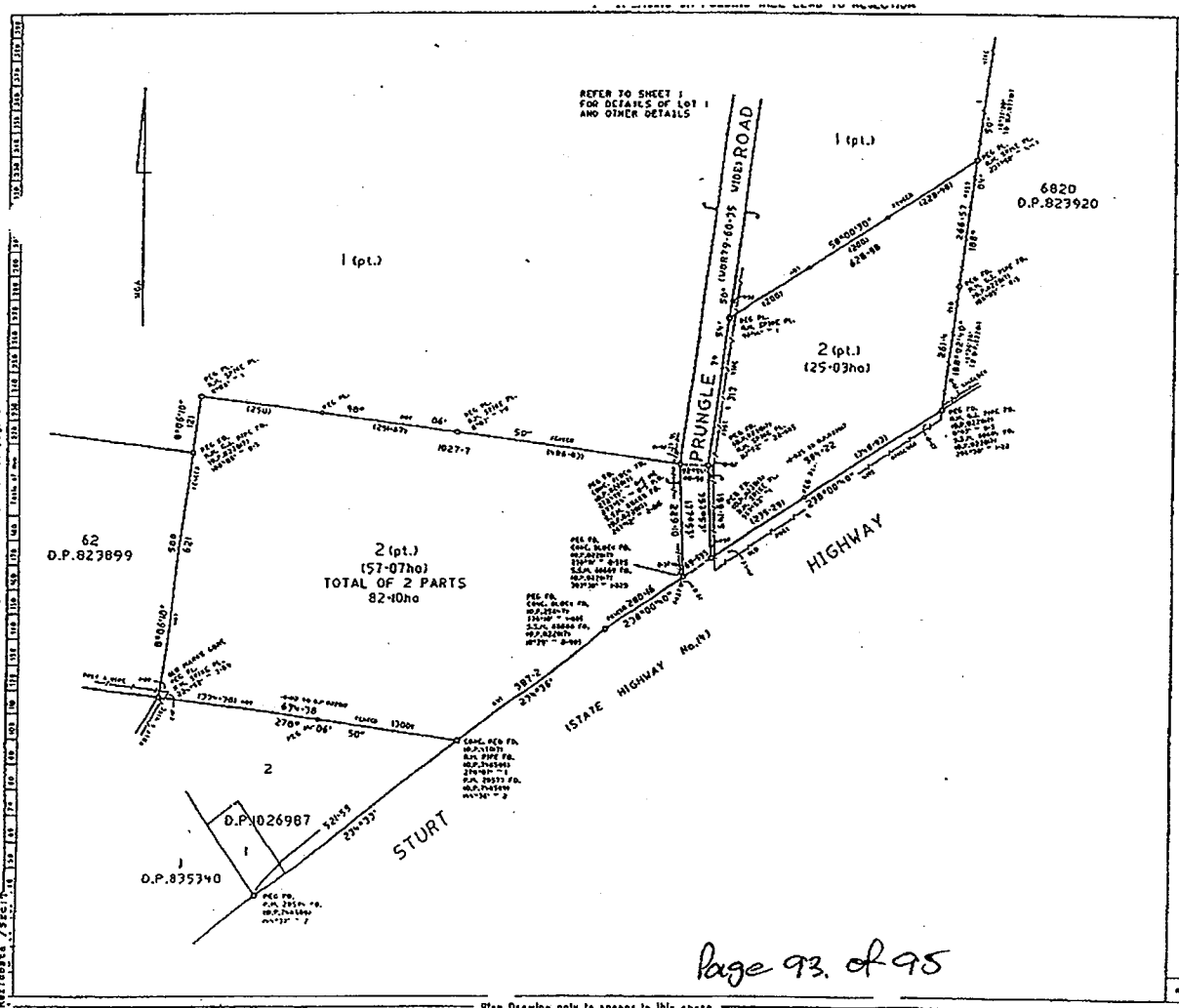
DEPARTMENT OF LAND AND WATER CONSERVATION

The applicant advises that the action detailed in annexure "A" has been taken in respect of the land referred to above and pursuant to section 13X of the Real Property Act 1900 requests the Registrar General to make all necessary recordings in the Register to give effect to this action.

DATE 30 AUG 2002
dd mm yy

I certify this application correct for the purposes of the Real Property Act 1900.
Signed on behalf of the Minister administering the Crown Lands Act.

Signature of authorised officer
Name of authorised officer
REX MILLER
SALES & LEASES COORDINATOR
FAR WEST REGION



DP1046695

Registerable d. 15/11/2002

This is sheet 2 of my plan in 2 sheets

Survey registered under Survey Act 1920

This is sheet 2 of my plan in 2 sheets
created by subdivision certificate No. 2
of 2002.

Referenced Particulars shown in attached Certificate

For any other space in booklet to any part of the
Plan 2.

Registration Fee: \$1990

SURVEYOR'S DECLARATION

CONSENT TO LEASE

AA729264

R.P.A.

WESTPAC BANKING CORPORATION ABN 33 007 457 141 (hereinafter called "the Bank") being the Mortgagee under Mortgage No. of the premises demised by the within Lease hereby consents to such Lease as from the registration thereof and not otherwise and subject to the following conditions and provisions namely:

1. THAT this consent shall be without prejudice to the rights powers and remedies of the Bank and its assigns under the said Mortgage which shall remain in full force and effect as if this consent had not been given except that so long as the covenants and provisions of the said Lease are duly observed and performed the Bank will in the event of the exercise of the power of sale or other power or remedy of the Bank or its assigns on default under the said Mortgage exercise the same subject to the then subsisting rights of the Lessee his executors administrators and assigns under the said Lease.
2. THAT so long as the Bank or its assigns is or are registered as Mortgagee of the said premises the Lessee shall obtain the consent or approval of the Bank or its assigns in addition to the consent or approval of the Lessor in all cases where under the said Lease the consent or approval of the Lessor is required.
3. THAT upon the Bank or its assigns giving notice to the Lessee of demanding to enter into receipt of the rents and profits of the said premises the covenants on the part of the Lessee expressed or implied in the said Lease shall be deemed to have been entered into by the Lessee with the Bank and its assigns and all the rights powers and remedies of the Lessor under the said Lease shall vest in and be exercisable by the Bank and its assigns until such notice be withdrawn or the said Mortgage be discharged.
4. The Bank shall in no way be bound to perform and shall not incur any liability in respect of the covenants and agreements expressed or implied in the said Lease and on the part of the Lessor to be performed and observed.
5. The word "Lessee" where used herein shall mean and include the Lessee his executors administrators or permitted assigns.

DATED this 15 April 2004

I certify that the Attorney for the Mortgagee, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the Mortgagee
SIGNED by Line Lucarelli
as attorney for Westpac Banking Corporation under power of attorney Book 4299 No.332.

Signature of Witness: [Signature]

Name of Witness: Aaron Williams

Address of Witness: 360 COLLINS ST, MELBOURNE

[Signature]
Signature
By executing this agreement the attorney states that the attorney has received no notice of the revocation of the power of attorney.

SIGNED by
Orchard Investments Management Limited ACN 105 684
231
by authority of its directors

[Signature]
*Secretary/Director

MICHAEL EMERY
Name in full (BLOCK LETTERS)


*Delete whichever is not applicable

[Signature]
Director

Sol Rabinowicz
Name in full (BLOCK LETTERS)

(Lessor)

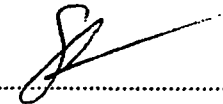
SIGNED by
Timbercorp Limited ACN 055 185 067
by authority of its directors


.....
*Secretary/Director

Mark H Pryn

.....
Name in full (BLOCK LETTERS)

**Delete whichever is not applicable*


.....
Director

Sol Rabinowicz

.....
Name in full (BLOCK LETTERS)

(Lessee)