

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 '**PWK8**' 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 'PWK8'

**Copy of Parent Lease between
TOT RE and Timbercorp dated 28
April 2005**

Original



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

SUB

LEASE

New South Wales
 Real Property Act 1900

AB528478W

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information 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

12-05-2005

0002653940-001

LEASE - GENERAL

DUTIABLE AMOUNT \$ *****47,759,096.00

DUTY \$ *****167,156.85

HEAD LEASE AB528477

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises
 Lot 2 DP 1067588

(B) LODGED BYDelivery
Box

Name, Address or DX and Telephone

481

LL. N. MOORE
 CITYLINK

Reference (optional):

KS / S. Dixon / Costa

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 005 185 067

(F)

TENANCY:

(G) 1. TERM:

2. COMMENCING DATE: 28 April 2005

3. TERMINATING DATE: 29 June 2020

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 Annexure A

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

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

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

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

DATE

28 April 2005

(H) I certify that the lessor, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

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

Signature of witness:

Gideon Meltzer

Signature of lessor:

[Signature]

SEE PAGE 46 of Annexure A for execution

Name of witness:

Gideon Meltzer

Address of witness:

of Level 8, 461 Bourke Street Melbourne
a current practitioner within the meaning
of the Legal Practice Act 1996.

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

I certify that the lessee, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

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

Signature of witness:

Gideon Meltzer

Signature of lessee:

[Signature]

Name of witness:

Gideon Meltzer

Address of witness:

of Level 8, 461 Bourke Street, Melbourne
a current practitioner within the meaning
of the Legal Practice Act 1996

(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.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

2/71

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 (ARSN 106 557 297), 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 Lot 2 of DP 1067588 (Bella Vista #2).

**Timbercorp Orchard Trust– Bella Vista #2
Lease [600 acre vineyard]**

Table of Contents

DETAILS OF THIS LEASE.....	5
1. DEFINITIONS AND INTERPRETATION.....	6
1.1 DEFINITIONS	6
1.2 INTERPRETATION.....	11
1.2 HEADINGS.....	11
2. CAPACITY AND LIABILITY OF THE LESSOR.....	11
2.1 CAPACITY OF LESSOR	11
2.2 BENEFIT TO LESSOR.....	11
2.3 LIMITATION OF LIABILITY	11
3. GRANT AND TERM OF LEASE	12
3.1 GRANT AND TERM OF LEASE.....	12
3.2 REPRESENTATIONS	12
3.3 TERMINATION OF BELLA VISTA LEASE	12
3.4 OPTION TO RENEW	12
4. ESTABLISHMENT OF VINEYARD.....	13
4.1 AGREEMENT BY LESSOR AS THE VINEYARD	13
4.2 ACKNOWLEDGMENTS BY THE LESSEE	14
4.3 ACKNOWLEDGMENTS BY THE LESSOR	14
4.4 CULTIVATION AND MAINTENANCE OBLIGATIONS IN RELATION TO THE VINEYARD.....	14
4.5 LESSEE'S OBLIGATIONS UPON TERMINATION	15
4.6 LICENCE TO THE LESSOR.....	16
5. WATER LICENCES	16
5.1 REQUIRED WATER LICENCES.....	16
5.2 USE OF REQUIRED WATER LICENCES.....	16
5.3 ACKNOWLEDGMENTS.....	16
6. RENT PAYMENTS	17
6.1 RENT.....	17
6.2 ADJUSTMENTS TO RENT FOR INDEXATION.....	17
6.3 DISCONTINUANCE OR SUSPENSION OF CPI.....	18
6.4 COST INCLUSIVE PRICE	18
6.5 DEFINITIONS	18
6.6 PURPOSE OF THIS CLAUSE 6.....	19
7. LESSOR'S OBLIGATIONS AND RIGHTS	19
7.1 OBLIGATIONS.....	19
7.2 RIGHTS.....	20
8. RATES, TAXES AND CHARGES	20
9. INSURANCE.....	21
9.1 LESSEE MUST MAINTAIN INSURANCE	21
9.2 CLAIMS UNDER INSURANCE POLICIES.....	21
9.3 INSURANCE PROCEEDS.....	21
9.4 PARTIES NOT TO AFFECT RIGHTS UNDER INSURANCE.....	21
9.5 DAMAGE TO, OR DESTRUCTION OF, OF THE GRAPELOTS.....	22
10. USE OF BELLA VISTA.....	22
10.1 PERMITTED USE	22
10.2 LESSEE'S DUTIES	23
10.3 INDEMNITY	23
10.4 STRUCTURAL WORK	23

11. ASSIGNMENTS, SUB-LEASES AND MORTGAGES	24
11.1 ASSIGNMENT BY LESSEE	24
11.2 LESSOR CONSENTS TO LESSEE SUB-LETTING.....	24
11.3 LESSEE MUST NOT MORTGAGE ITS INTEREST	24
11.4 ASSIGNMENT OR MORTGAGE BY LESSOR	24
11.5 DELEGATION	24
12. DEFAULT AND RE-ENTRY	25
12.1 DEFAULT BY LESSEE	25
12.2 RE-ENTRY BY LESSOR.....	25
12.3 RE-ENTRY DOES NOT PREJUDICE LESSOR'S RIGHTS	25
12.4 LESSOR DISCHARGED FROM OBLIGATIONS	25
12.5 LESSOR'S RIGHTS SUBJECT TO GROWERS' RIGHTS	25
13. TERMINATION	26
13.1 TERMINATION OF LEASE BY THE LESSOR	26
13.2 TERMINATION OF LEASE BY THE LESSEE.....	26
13.3 EFFECT OF TERMINATION	27
13.4 ATTORNEYS	27
13.5 LIMITED RIGHT OF TERMINATION	27
14. LEGAL COSTS.....	27
15. NOTICES	27
15.1 FORM OF NOTICE	27
15.2 RECEIPT OF NOTICE	27
16. PROPER LAW	28
17. SEVERANCE.....	28
18. ENTIRE AGREEMENT	28
19. GST 28	
20. STATUTORY PROVISIONS.....	29
20.1 GENERAL.....	29
20.2 CONVEYANCING ACT 1919 (NSW)	29
20.3 AGRICULTURAL TENANCIES ACT (NSW).....	29
20.4 AMENDMENTS REQUIRED BY THE LAND AND PROPERTY INFORMATION OFFICE (NSW).....	29
21. CAVEAT.....	29
22. FURTHER ASSURANCES	30
23. DISPUTES	30
24. PLANT BREEDERS' RIGHTS.....	30
24.1 THE LICENCE GRANT.....	30
24.2 MARKETING	31
24.3 QUALITY ASSURANCE	31
24.4 INTELLECTUAL PROPERTY RIGHTS	32
24.5 LABELLING AND PACKAGING	32
24.6 TURNOVER RENT	33
24.7 PLANTING AND RE-PLANTING OF VINES	33
24.8 SALES AGENTS.....	33
24.9 BOOKS AND RECORDS.....	33
24.10 INDEMNITY AND INFRINGEMENT	34
24.11 FURTHER ASSURANCES	35
24.12 USE OF NAMES	35
24.13 UNDERTAKINGS OF THE LESSEE.....	36

24.14	DISPOSITION OF INVENTORY AND.FORFEITURE OF OTHER RIGHTS	36
24.15	WARRANTY AND ACKNOWLEDGMENTS	37
24.16	FURTHER RESTRICTIONS	37
24.17	EXPIRY OF TERM	38
24.18	CAPACITY OF TIMBERCORP	38
24.19	DEFINITIONS	38
25.	LESSEE'S WORKS	40
25.1	LESSEE'S WORKS	40
25.2	LESSEE'S APPROVALS	41
25.3	APPROVALS BY LESSOR	41
25.4	CHANGES TO LESSEE'S PLANS AND SPECIFICATIONS, THE LESSEE'S BUDGET AND LESSEE'S APPROVALS	42
25.5	FITNESS OF LESSEE'S WORKS	42
25.6	RENT	42
25.7	COMMENCEMENT OF LESSEE'S WORKS	42
25.8	EXECUTION OF WORKS	42
25.9	INDEMNITY	43
25.10	REIMBURSEMENT OF COST OF LESSEE'S WORKS	43
25.11	OWNERSHIP OF LESSEE'S WORKS	44
25.12	DEDUCTIONS FROM REIMBURSEMENT	45
26.	SURRENDER	45
27.	PAYMENTS	45
27.1	INTEREST	45
27.2	SET-OFF	46
	SCHEDULE 1	48
	PLAN (CLAUSE 26)	48
	ANNEXURE A	49
	BELLA VISTA (INTERIM) LEASE	49

Details of this Lease

Date of this Lease:

This Deed is made on 28 April 2005

Parties to this Lease:

1. Orchard Investments Management Limited

ACN 105 684 231
Level 2, 613 St Kilda Road
Melbourne, Victoria, 3004

in its capacity as responsible entity
of the Timbercorp Orchard Trust (ARSN 106 557 297)

(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 a contract of sale with the vendor of the Bella Vista Subdivided Land.
- B. Pending completion of the contract of sale, the Lessor, as lessee, has entered into the Bella Vista (Interim) Lease, being an interim lease substantially in the form of the lease annexed as Annexure "A".
- C. Upon the Bella Vista Transfer being registered, the Lessor will become the registered proprietor of Bella Vista.
- D. The Lessor (as lessee of Bella Vista and thereafter as registered proprietor of Bella

Vista) will lease Bella Vista, to the Lessee in accordance with this Lease.

- E. The Lessee will sub-lease Bella Vista to TSL under Project Sub-leases for use in the Projects TSL establishes.
- F. The Lessor consents to the Lessee entering into the Sub-leases and TSL entering into the Occupancy Agreements with the Growers in the Projects.
- G. The Lessee will pay rent in respect of Bella Vista 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 Bella Vista Subdivided Land or any part of them or anything about them;
Bella Vista:	Lot 2 in DP 1067588 until title to the Bella Vista Subdivided Land is transferred as a discrete lot to the Lessor and from that time, the Bella Vista Subdivided Land;
Bella Vista Subdivided Land:	the proposed lot of approximately 295 hectares to be carved out of Lot 2 in DP 1067588;
Bella Vista (Interim) Lease:	the interim lease from the Costas to the Lessor substantially in the form of the lease comprising Annexure A;
Bella Vista Transfer:	the transfer of: <ul style="list-style-type: none"> (a) if registration of the plan of subdivision of the proposed lot of 295 hectares (ie. the Bella Vista Subdivided Land) does not occur on or before 30 June 2007, the whole of Lot 2 in DP 1067588; (b) if registration of the said plan of subdivision occurs on or before 30 June 2007, the lot of approximately 295 hectares created by such registration;
Best Viticultural Practice:	sound viticultural and environmental practices and industry practices that have been adopted in relation to 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:	(a) the infrastructure and capital works, including any Irrigation Infrastructure on the Vineyard as at the date of

	<p>this Deed or which the Lessor has agreed to carry out, at its cost, on the Bella Vista Subdivided Land;</p> <p>(b) any Lessee's Works that the Lessee may in its absolute discretion carry out;</p>
Commencement Date:	the date of this deed;
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 and the Corporations Regulations;
Costas:	Carmel Costa and Paul Costa, both of Block 15 Kilpatrick Euston in the State of New South Wales;
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;</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>
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>
Force Majeure:	<p>(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</p> <p>(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);</p>
Further Term:	the further term of 5 years after the Initial Term which is described in clause 3.4(a);

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>
Grapelot:	an area of land which in total comprises 0.25 acres on the Vineyard 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:	<p>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:</p> $A_t = A_0 \times \text{CPI}_t / \text{CPI}_0$ <p>where:</p> <p>A_t = the amount on the Adjustment Date;</p> <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>
Infrastructure Sharing Agreements:	any agreement entered into by the Lessor for the sharing of infrastructure, including the Capital Works;
Initial Term:	the period commencing on the Commencement Date, and, subject to clause 13, expiring on 30 June 2020;
Irrigation Infrastructure:	water pumps, mainlines and other irrigation infrastructure

	situated, constructed or installed on the Bella Vista Subdivided Land or on other lands for use in connection with the Bella Vista Subdivided Land;
Lease:	the lease granted by this Deed;
Lessee's Approvals:	all certificates, consents, approvals, licences and permits that will be necessary or required by any Authority in order for the Lessee's Works to be carried out;
Lessee's Budget:	the costs budget prepared by the Lessee in connection with the execution of the Lessee's Works approved by the Lessor under clause 25;
Lessee's Plans and Specifications:	the plans and specifications prepared by the Lessee for the execution of the Lessee's Works approved by the Lessor under clause 25;
Lessee's Works:	<p>(a) the Vines planted in place of existing Vines;</p> <p>(b) the replacement of any infrastructure, including Irrigation Infrastructure; and</p> <p>(c) any other improvements of a structural nature, authorised by the Lessor, and undertaken at the Lessee's cost and expense, in accordance with clause 25;</p>
Orchard Trust:	the Timbercorp Orchard Trust;
Orchard Trust Constitution:	the trust deed of the Orchard Trust;
Occupancy Agreements:	the sub-leases, licences or other occupancy rights proposed to be granted by TSL over parts of the Bella Vista Subdivided 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;
Pre-Planting Capital Works	the capital works described in clause 4.1(a)(i)-(vi) which have been or will be carried out on the Vineyard by the Lessor;
Projects:	Table Grape Projects and such other projects undertaken on the Bella Vista Subdivided 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 granted or to be granted by the Lessee to TSL in relation to a 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> <p>(b) the last Quarter which commences on the day after the</p>

	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 or water allocations that are, or will be, owned or acquired by the Lessor and that are for use on the Bella Vista Subdivided Land as required from time to time, and as specified in clause 5.1, that provide for a maximum entitlement specified in clause 5.1, as reduced by any variation in the maximum 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 of the Orchard Trust, which at the date of this Deed is 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 Bella Vista Subdivided Land;
Table Grape Projects:	the table grape managed investment schemes to be conducted by TSL on the Bella Vista Subdivided 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);
Vines:	the vines growing or to be grown on the Bella Vista Subdivided Land; and
Vineyard:	the vineyard on the Bella Vista Subdivided Land to be established in accordance with a Project Sub-lease on or about 30 June 2005 and comprising approximately 450 Vines per acre.

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 Deed 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 Deed under the terms of the Orchard Trust Constitution.

2.2 Benefit to Lessor

The parties to this Deed acknowledge and agree that every agreement and condition in this Deed 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 Deed 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) Subject to the terms of this Deed, the Lessor grants to the Lessee a lease of Bella Vista, the Capital Works and the Required Water Licences to use and occupy Bella Vista, 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 2020.
- (b) The parties agree and acknowledge that:
 - (i) the Bella Vista (Interim) Lease will either be surrendered or will merge in the fee simple on or after completion of the purchase of the Bella Vista Subdivided Land by the Lessor; and
 - (ii) notwithstanding anything to the contrary in this Deed such surrender or merger will in no way affect the operation or validity of this Lease which shall continue notwithstanding the surrender or merger of the Bella Vista (Interim) Lease on or after completion of the purchase of the Bella Vista Subdivided Land by the Lessor.

3.2 Representations

The Lessor represents and warrants that:

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

3.3 Termination of Bella Vista Lease

Notwithstanding anything to the contrary contained in this Deed, this Lease is deemed to have come to an end if the Bella Vista (Interim) Lease comes to an end otherwise than as a result of the Lessor completing its purchase of and becoming registered proprietor of Bella Vista.

3.4 Option to renew

- (a) This Deed will automatically be renewed for a further term of 5 years if the Lessee:
 - (i) gives notice in writing to the Lessor at least three months before the end of the Initial Term that it wishes to take a new lease;
 - (ii) has during the Initial Term duly and promptly paid the Rent;
 - (iii) the Tenant has not during the Initial Term been frequently in default of its material obligations under this Deed, even though those defaults may have been rectified; and
 - (iv) is not in default of this Deed at the time it gives the notice under clause 3.4(a)(i) and at the expiry of the Initial Term,

unless this Deed has been previously terminated.

- (b) If the requirements in clause 3.4(a) are satisfied, the Lessor will, at the Lessee's cost (inclusive of stamp duty and the Landlord's reasonable legal costs), grant a new lease to the Lessee on the same terms and conditions that are contained in this Deed, except that:
- (i) this clause 3.4 will be deleted;
 - (ii) the Commencement Date and the Term, and the obligations imposed on the parties upon the expiry of the Initial Term, are to be adjusted to reflect the renewal of the Lease for the Further Term;
 - (iii) the Rent during the Further Term is to continue to be determined and adjusted in accordance with clause 6, but with any references to "**Commencement Date**" in clause 6 being to the commencement date under this Deed; and
 - (iv) the new deed must reflect any variations to this Deed that become effective during the Initial Term.

4. ESTABLISHMENT OF VINEYARD

4.1 Agreement by Lessor as the Vineyard

- (a) The Lessor must, at its own cost, establish, or procure the establishment of the Vineyard on the Bella Vista Subdivided Land for the Project in accordance with Best Viticultural Practice and construct the necessary infrastructure and carry out the necessary capital works, and without limiting the generality of this clause 4.1, it must:
- (i) organise various soil surveys, including reconnaissance surveys, detailed soil surveys and contour plans;
 - (ii) prepare that part of the Bella Vista Subdivided Land on which the Vineyard is located to ensure that the Vines can grow satisfactorily subject to any Force Majeure;
 - (iii) acquire rights to or construct and install appropriate irrigation equipment and carry out the necessary irrigation works to ensure proper reticulation of water to the Vines on the Vineyard;
 - (iv) carry out drainage work and other works to help prevent soil erosion on all the Bella Vista Subdivided Land on which the Vineyard is to be located;
 - (v) eradicate as far as reasonably possible any pests and competitive weeds which may affect the growth or yield of the Vines on the Vineyard;
 - (vi) rip and mound vine rows;
 - (vii) construct posts and trellising;
- (collectively, '*Pre-Planting Capital Works*')
 (viii) ensure that it has available sufficient labour and equipment to enable planting of all the Vines as follows:
- (A) as to 60% of the Vineyard by 23 June 2005, subject to planting taking place in appropriate climatic and horticultural conditions; and

- (B) as to the balance of Vineyard on or before 31 July 2005 subject to planting taking place in appropriate climatic and horticultural conditions;
 - (ix) acquire for use on the Vineyard the Required Water Rights; and
 - (x) 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 4.1(a) above.
- (b) The Lessor will use its best endeavours to complete the Pre-Planting Capital Works by 30 April 2005 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) The Lessee agrees and acknowledges that the Pre-Planting Capital Works (and therefore any grape production) will take place only on the Bella Vista Subdivided Land.

4.2 Acknowledgments by the Lessee

- (a) The Lessee acknowledges that the Capital Works and Vines on, and the Required Water Licences for use on 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 any Lessee's Works that are the property of the Lessee.
- (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 4.2(a) will not apply in the case of wilful default, dishonesty or fraud or breach of this Lease.

4.3 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).

4.4 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 Bella Vista Subdivided Land, in a good workmanlike and commercially responsible manner and to a standard consistent with Best Viticultural Practice including the following, having regard to good workmanlike and commercially responsible standards and Best Viticultural 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 Bella Vista Subdivided 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 Viticultural Practice
- (i) **Other Viticultural activities:** otherwise use the Vineyard and the Bella Vista Subdivided Land in accordance with the Constitution, the Grapelot Management Agreement and the Licence Agreements in respect of the Project.

4.5 Lessee's Obligations upon Termination

- (a) At the end, or on termination, of this Lease, subject to the Growers' rights to continue to occupy Bella Vista Subdivided Land in accordance with clause 12.5, the Lessee must return Bella Vista Subdivided 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 4.4, 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, other than the Lessee's Works, must be removed from the relevant Grapelots within 30 days after the end, or on termination, of this Lease, subject to any rights the Growers have to continue to occupy Bella Vista Subdivided 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 4.5(b).
- (d) The Lessee must ensure that the Required Water Licences in existence throughout the Term are preserved in full force and effect and on termination are returned to the Lessor.

4.6 Licence to the Lessor

For as long as Bella Vista comprises more than the Bella Vista Subdivided Land:

- (a) the Lessee has no obligations to farm, crop, graze, develop or maintain that part of Bella Vista other than the Bella Vista Subdivided Land; and
- (b) the Lessee grants the Lessor a licence to come onto that part of Bella Vista other than the Bella Vista Subdivided Land to farm, crop, graze, develop or maintain it.

5. WATER LICENCES

5.1 Required Water Licences

The required water licences are:

	2005/06 (by 15 August 2005)	2006/07 (by 15 August 2006)	2007/08 (by 15 August 2007)	2008/09 ongoing (by 15 August 2008)
Vineyard: Bella Vista Subdivided Land – ML/acre	1.8	3.0	3.0	3.0
Vineyard: Bella Vista Subdivided Land – Total for 600 acres	1,080	1,800	1,800	1,800

5.2 Use of Required Water Licences

The Lessor must at its cost:

- (a) 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;
- (b) 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
- (c) 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:

- (a) 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;
- (b) the Lessor may, at its cost, purchase water licences or water allocations, in addition to the Required Water Licences, and provide water to the Lessee using such additional water licences or water allocations; and
- (c) such additional water licences or water allocations 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 June 2005 Quarter and thereafter	<p>the aggregate of:</p> <p>(i) <u>Bella Vista Subdivided Land:</u> the amount which is 11% of the Bella Vista Subdivided Land CIP;</p> <p>(ii) <u>Vineyard Development Budget:</u> the amount which is 11% of the Vineyard Development Budget; plus</p> <p>(iii) <u>Vineyard Development Excess Cost:</u> the amount which is 11% of the Vineyard Development Excess Cost, if any, as at the last day of the immediately preceding Quarter; plus</p> <p>(iv) <u>Vineyard Water Budget:</u> the amount which is 11% of the Vineyard Water Budget; plus</p> <p>(v) <u>Vineyard Excess Water Cost:</u> the amount which is 11% of the Vineyard Excess Water Cost, if any, as at the last day of the immediately preceding Quarter; plus,</p> <p>multiplied by the number of days in the relevant Quarter divided by 365;</p>

- (b) The Rent for the June 2005 Quarter is payable on the Commencement Date.
- (c) The Rent payable under this Deed is subject to any adjustments under clauses 6.2 and 6.4.

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 Bella Vista Subdivided Land CIP must be Indexed as at 31 December of each year, beginning on 31 December 2006, using 31 December 2005 as the Base Date with any adjustments to the Bella Vista Subdivided Land CIP under clause 6.4 also being adjusted under this paragraph 6.2(a);
- (b) the Vineyard Development Budget must be Indexed as at 31 December of each year, beginning on 31 December 2006, using 31 December 2005 as the Base Date;
- (c) the Vineyard Development Excess Cost must be Indexed as at 31 December of each year, beginning on 31 December 2006, using 31 December 2005 as the Base Date;

- (d) the Vineyard Water Budget must be Indexed as at 31 December of each year, beginning on 31 December 2006, using 31 December 2005 as the Base Date;
- (e) the Vineyard Excess Water Cost must be Indexed as at 31 December of each year, beginning on 31 December 2006,
 - (i) by calculating the Vineyard 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 Vineyard Excess Water 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 Cost Inclusive Price

- (a) Subject to paragraph 6.4(c), the Cost Inclusive Price of purchasing the Bella Vista Subdivided Land is estimated as at the Commencement Date to be \$3,544,800.
- (b) The Cost Inclusive Price of purchasing the Bella Vista Subdivided Land and the Rent is to be re-calculated once the actual cost included in the Cost Inclusive Price of the Bella Vista Subdivided Land is ascertained.
- (c) Upon the Cost Inclusive Price of purchasing the Bella Vista Subdivided Land 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 Bella Vista Subdivided Land. 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 6.4 on more than one occasion.

6.5 Definitions

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

Bella Vista Subdivided Land CIP:	the Cost Inclusive Price of acquiring the Bella Vista Subdivided Land;
Cost Inclusive Price:	the total cost inclusive price (excluding GST) paid by the Lessor in purchasing the Bella Vista Subdivided Land, including all stamp duty, registration and legal costs;

Half Year:	the 6 month period ending on the last day of June or December with the exception of: (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 Deed;
Vineyard Development Budget:	\$15,465,000, which has been budgeted as the cost (excluding GST) of establishing the Vineyard on the Bella Vista Subdivided Land;
Vineyard Development Excess Cost:	the cost (excluding GST) of establishing the Vineyard on the Bella Vista Subdivided Land in excess of the Vineyard Development Budget.
Vineyard Excess Water Cost:	the cost (excluding GST) of purchasing the Required Water Licences to be used on the Vineyard after its development, in excess of the Vineyard Water Budget;
Vineyard Water Budget:	\$2,610,000, which has been budgeted as the cost (excluding GST) of acquiring the Required Water Licences for use on the Vineyard after its development during that period.

6.6 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 Bella Vista Subdivided Land CIP in relation to the Bella Vista Subdivided Land;
- (b) the Vineyard Development Budget in respect of the Vineyard to be established on the Bella Vista Subdivided Land;
- (c) the Vineyard Development Excess Cost in respect of the Vineyard to be established on the Bella Vista Subdivided Land;
- (d) the Vineyard Water Budget in relation to the Required Water Licences to be used on the Vineyard;
- (e) the Vineyard Excess Water Cost in relation to the Required Water Licences to be used on the Vineyard,

as adjusted for CPI.

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 Bella Vista 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) not create any Encumbrances over Bella Vista or the Vineyard or any part of Bella Vista or the Grapelots ranking in priority to the interests of the Lessee, TSL or the Growers who may sub-lease, licence or otherwise occupy Bella Vista or the Vineyard 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;
- (f) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor; and
- (g) assist the Lessee to obtain the benefit of the rights granted to the Lessor under clause 6.1(h) of the Bella Vista (Interim) Lease.

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 Bella Vista along any road or track or any neighbouring land owned or occupied by the Lessor, the Lessee, TSL or Growers which gives access to Bella Vista ;
- (b) is entitled to full and free access with or without vehicles to Bella Vista 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 Bella Vista 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 taxes, charges and assessments levied upon Bella Vista, including local authority rates, sewerage rates and land tax and other State taxes, as and when requested by the Lessor, other than taxes, charges and assessments that are paid by the Costas to the Lessor under the Bella Vista (Interim) Lease.
 - (b) The Lessor must promptly deliver to the Lessee all rates and notices received by the Lessor in respect of Bella Vista.
 - (c) The Lessee must pay to the Lessor, or as the Lessor directs, an amount equal to any liability that the Lessor has under, or in connection with, any Infrastructure Sharing Agreement.
-

9. INSURANCE

9.1 Lessee must maintain insurance

The Lessee must:

- (a) in connection with Bella Vista , 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 Bella Vista .

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, matter or thing which may prejudice or render void or voidable any insurances in respect of Bella Vista, 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 Viticultural Practice.

10. USE OF BELLA VISTA

10.1 Permitted use

- (a) The Lessee must only use Bella Vista in accordance with this Lease and Best Viticultural Practice, including:
 - (i) planting and tending vines on the Bella Vista Subdivided Land 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 clause 4.6 and 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 Bella Vista 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 Bella Vista 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 Viticultural Practice and this Lease;
- (b) comply with all laws and regulations relating to the use and occupancy of the relevant Grapelots and Bella Vista;
- (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 Viticultural 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 Viticultural Practice;
- (f) permit the Lessor and its employees, agents and contractors to enter upon the relevant Grapelots and Bella Vista 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 Bella Vista 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 wheresoever occurring arising from:

- (a) an occurrence at Bella Vista, other than that attributable to act or omission of the Lessor and its officers, directors, employees or agents; or
- (b) the use by the Lessee or the Lessee's invitees, employees and agents of Bella Vista,

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 Bella Vista 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 Viticultural Practice.

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 Bella Vista or any part of Bella Vista, 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

The Lessor consents to:

- (a) the Lessee entering into Project Sub-leases with TSL in its absolute discretion;
- (b) TSL entering into Occupancy Agreements in its absolute discretion; and
- (c) the Lessee and TSL granting sub-leases, licences or other occupancy rights to any other person over the Bella Vista Sub-divided 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 Bella Vista.
- (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 that 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:
 - (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 Bella Vista 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 Bella Vista, 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.

13.2 Termination of Lease by the Lessee

- (a) The Lessee may terminate this Lease by notice in writing to the Lessor immediately, if:
- (i) the Lessor goes into liquidation, other than for the purposes of reconstruction or amalgamation, or a Controller or Administrator is appointed in relation to the undertaking of the Orchard Trust or any part of its undertaking;
 - (ii) the Lessor ceases to carry on business as Responsible Entity of the Orchard Trust;
 - (iii) the Lessor fails or neglects to make a payment within the time required under this Lease and such amount is not paid within 60 days after the Lessee has served a written notice on the Lessor requiring the Lessor to pay the amount;
 - (iv) the Lessor is in default of any material obligation under this Lease and such default continues for a period of 60 days after receipt by the Lessor of written notice from the Lessee specifying the default and requesting that the default be remedied, except where the Lessor:
 - (A) has within the period of 60 days after receipt of the written notice from the Lessee:
 - (1) advised the Lessee 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 Lessor implements the whole plan of remedial action as soon as reasonably practicable; or
 - (v) the Orchard Trust is terminated.
- (b) Damage to, or destruction of, part or all of the Vineyard, by fire or any other cause whatsoever, will not entitle the Lessee to terminate this Lease.
- (c) Upon damage to, or destruction of, part or all of the Vineyard, the Lessor and the Lessee must:
- (i) negotiate in good faith to determine how to best replace and reinstate the Vineyard;
 - (ii) the Lessor and Lessee must use any insurance proceeds they receive in respect of such damage or destruction to replace and reinstate the Vineyard, as agreed under paragraph 13.2(c)(i).

13.3 Effect of Termination

- (a) Termination of the whole of this Lease under clauses 13.1 or 13.2, 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.

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 Bella Vista 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.
- (i) This clause 19 does not apply to any amount payable by the Lessor under clause 25.10.

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 Bella Vista 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 Bella Vista 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 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 Society of NSW at a place in Sydney 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.
-

24. PLANT BREEDERS' RIGHTS

24.1 The licence grant

- (a) The Lessor grants the Lessee the following rights, subject to the terms of this Lease and the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement:
 - (i) the right to plant and grow the Licensed Vines on the Bella Vista Subdivided 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 described in the Andriske Exclusive Licence Agreement, 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 Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement;

- (iii) the exclusive rights granted under Andriske Exclusive 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 Exclusive 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 Bella Vista Subdivided 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 Bella Vista Subdivided 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 Bella Vista Subdivided 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 Exclusive Licence Agreement and the Andriske Non-Exclusive 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 Exclusive Licence Agreement and the Andriske Non-Exclusive 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 Exclusive Licence Agreement and the Andriske Non-Exclusive Licence Agreement;
- (b) not by act or omission cause the Lessor to be in breach of its obligations under the Andriske Exclusive Licence Agreement and the Andriske Non-Exclusive 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 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 Viticultural 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 by sale or otherwise 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 Bella Vista Subdivided Land or the Vineyard, 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 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 Exclusive Licence Agreement and the Andriske Non-Exclusive 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 Exclusive Licence Agreement:	means the exclusive licence agreement between Andriske as licensor and each of the Lessor and Timbercorp as licensees made on 9 October 2003 (as varied by a deed of variation made on 12 November 2004);
Andriske Non-Exclusive Licence Agreement:	means the non-exclusive licence agreement between Andriske as licensor and each of the Lessor and Timbercorp as licensees made on 12 November 2004;
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 Products:	<p>(a) White Seedless Grape Cultivar known as "Stanley 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); and</p> <p>(c) 45,000 White Seeded Grape Cultivar known as "BW41/5" and Table Grapes from such vines (Plant Breeders Rights Application No. 1996/018 and granted 27th March, 2002, and Numbered 1910);</p>
Licensed Territory:	<p>(a) <u>For planting of Licensed Vines:</u> 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 Exclusive 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</p>

	"Red Rob" and granted 11th June, 2003, and Numbered 2263; and (c) Plant Breeders Rights Application No. 1996/018 in respect of the "Golden Globe" Grape cultivar and granted 27th March, 2002, and Numbered 1910);
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:	(a) the sale price of the Licensed Fruit; less (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), 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;
Subsidiary:	has the same meaning as in the Corporations Act;
Turnover Rent:	3% 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.

25. LESSEE'S WORKS

25.1 Lessee's Works

- (a) The Lessee may:
- (i) plant Vines in place of existing Vines;
 - (ii) replace any infrastructure on the Bella Vista Subdivided Land, including Irrigation Infrastructure; or
 - (iii) undertake other improvements of a structural nature, at its own cost and expense in accordance with this clause 25.
- (b) This clause 25 does not apply to any works that must be undertaken in accordance with:
- (i) clause 4.4
 - (ii) clause 9.5; and / or
 - (iii) clauses 10.4(a) and 10.4(b).

25.2 Lessee's Approvals

The Lessee must, at its own expense, seek all Lessee's Approvals required by law in connection with the Lessee's Works.

25.3 Approvals by Lessor

- (a) Before commencing to carry out the Lessee's Works:
 - (i) the Lessee must submit to the Lessor for approval:
 - (A) the name of the contractors that will carry out the Lessee's Works, and which may include related entities of the Lessee;
 - (B) the form of contract between the Lessee and the contractors in relation to the Lessee's Works;
 - (C) the Lessee's Approvals;
 - (D) the Lessee's Budget; and
 - (E) the Lessee's Plans and Specifications.
 - (ii) the Lessor must not unreasonably withhold approval to the contractors where the Lessee has demonstrated to the Lessor that the contractors have the suitable skill, resources, experience and industrial relations record for the proper execution of the Lessee's Works;
 - (iii) the Lessor may refer the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications to the Lessor's advisers;
 - (iv) the Lessor must acting reasonably and without unnecessary delay either:
 - (A) grant approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications;
 - (B) grant approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications subject to such conditions or modifications as may be considered necessary by the Lessor and the Lessor's advisers having regard to Best Viticultural Practice; or
 - (C) refuse approval to the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications in which case the Lessor must give written notice to the Lessee with reasons for the disapproval and giving the Lessee reasonable time to provide further Lessee's Approvals, the Lessee's Budget and Lessee's Plans and Specifications.
- unless the Lessor exercises its discretion under clause 25.3(c).
- (b) The Lessee must pay to the Lessor, on demand, the reasonable costs of the Lessor's advisers reviewing the Lessee's Approvals, the Lessee's Budget the Lessee's Plans and Specifications.
- (c) The Lessee agrees and acknowledges that the Lessor may in its absolute discretion determine that it will carry out the proposed Lessee's Work at the Lessor's own cost and expense, in which case the parties must negotiate in good faith to agree on any additional rent to be paid by the Lessee having regard to the cost of the works and the purpose outlined in clause 6.6.
- (d) The Lessee may in its absolute discretion determine that it is no longer wishes to carry out the Lessee's Work, and it will be under no obligation to carry out

such Lessee's Works provided it has not commenced carrying out such Lessee's Works.

25.4 Changes to Lessee's Plans and Specifications, the Lessee's Budget and Lessee's Approvals

The Lessee must not make or permit to be made any amendments to the Lessee's Plans and Specifications, whether the same are required by any Authority or for any other reason, without the prior approval in writing of the Lessor first being obtained.

25.5 Fitness of Lessee's Works

The Lessee acknowledges, warrants and agrees that:

- (a) the Lessor has no responsibility for the design of the Lessee's Works or that the Lessee's Works will be suitable to the intended purpose of the Lessee;
- (b) the Lessee's Works will be sound and fit for the intended purpose of the Lessee;
- (c) the Lessee must indemnify and keep indemnified, and the Lessee hereby indemnifies the Lessor, from and against all claims, losses and damages in relation to, or arising from, the design or carrying out of the Lessee's Works, whether or not the Lessee's Works are fit for the intended purpose of the Lessee.

25.6 Rent

The Lessee agrees and acknowledges that the Rent payable to the Lessor under this Leases will not be adjusted for any Lessee's Works undertaken by the Lessee.

25.7 Commencement of Lessee's Works

The Lessee may only commence the execution of the Lessee's Works on the last of:

- (a) the date on which the Lessor has approved the contractors and the form of contract between the Lessee and the contractors;
- (b) the date on which the Lessor has approved the Lessee's Approvals, the Lessee's Budget and the Lessee's Plans and Specifications;
- (c) the Lessee has given to the Lessor all insurance policies the Lessor reasonably requires in the name of the Lessor and the Lessee to cover them each as the insured against any loss or damage to property or injury to any person which may arise in the course of the Lessee's Works;
- (d) the date on which the Lessee has secured all approvals required under clause 25.2;
- (e) the date on which the Lessee has paid the Lessor all costs payable under clause 25.3(b).

25.8 Execution of Works

In executing the Lessee's Works, the Lessee must:

- (a) comply with all laws and the requirements of Authorities (including all occupational health and safety requirements);
- (b) comply with all reasonable directions of the Lessor and the Lessor's advisers;
- (c) ensure that the Lessee's Works are carried out:
 - (i) substantially in accordance with the Lessee's Plans and

- Specifications and the Lessee's Budget approved by the Lessor;
- (ii) in accordance with Best Viticultural Practice;
 - (iii) in accordance with the Lessee's Approvals;
 - (iv) by the contractors approved by the Lessor;
 - (v) in a proper and workmanlike manner and with the most suitable materials of good quality for the time being available for this purpose and to the satisfaction of the Lessor; and
 - (vi) by the date specified in the Lessee's Plans and Specifications approved by the Lessor.
- (d) cause as little inconvenience as possible to other persons on Bella Vista; and
 - (e) use all reasonable endeavours to not interfere with the remainder of the Capital Works and Vineyards.

25.9 Indemnity

The Lessee indemnifies 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:

- (a) the Lessee's Works;
- (b) delays in completing the Lessee's Works;
- (c) a failure to complete the Lessee's Works; and
- (d) any action taken (whether directly or indirectly) by the Lessor or any other person in relation to the Lessee's Works

except to the extent to which it is caused or contributed to by the negligence of the Lessor and its officers, directors, employees or agents.

25.10 Reimbursement of cost of Lessee's Works

- (a) Upon completion of the Lessee's Works, the Lessee must provide verification of the actual cost of the Lessee's Works to the reasonable satisfaction of the Lessor (including the Lessee producing documentary evidence and the Lessee's tax invoices in respect of all such costs) ("**Cost**").
- (b) The Lessor will pay to the Lessee an amount equal to the lower of the Cost and the net book value of the Lessee's Works in the Lessee's books and records (inclusive of GST) ("**Reimbursement**") upon:
 - (i) the sale of any part of Bella Vista on which such Lessee's Works are situated ("**Event 1**");
 - (ii) the expiry of the Term (as extended if the Lessee exercises its option to renew under clause 3.4) ("**Event 2**");
 - (iii) lawful termination of the Lease by the Lessee ("**Event 3**"),provided that:
 - (iv) the Lessee's Works are completed in accordance with the requirements of this Deed; and
 - (v) the Lessee is not in breach of this Deed.
- (c) Upon Event 1 occurring, the Lessor must pay the Reimbursement to the Lessee within 30 days of the later of the Lessor receiving:
 - (i) the full purchase price in respect of the sale of the relevant part of

Bella Vista; and

- (ii) the Lessee's tax invoice which complies with the GST legislation in respect of the Reimbursement.
- (d) Upon Event 2 or 3 occurring, the Lessor must pay the Reimbursement to the Lessee within the earlier of:
 - (i) the expiry of 15 months from the occurrence of Event 2 or 3; and
 - (ii) the date, if any, upon which the Lessor advises the Lessee in writing that the Lessor has decided that it will not be selling any part of Bella Vista upon which Lessee's Works are situated,

provided that the Lessee must first give the Lessor a tax invoice which complies with the GST legislation in respect of the Reimbursement.
- (e) If the Lessor has decided that it will not be selling any part of Bella Vista upon which Lessee's Works are situated, it must advise the Lessee in writing within a reasonable time after it makes such a decision.
- (f) The Lessee agrees and acknowledges that the Lessor may pay the Reimbursement using a combination of:
 - (i) immediately available funds; and / or
 - (ii) units in the Orchard Trust credited as fully paid (with the number of units to be issued being calculated on the basis that the Lessor and the Lessee are deemed to have reached an agreement for the issue of such units on the date that the Lessor advises the Lessee in writing that the payment of some or all of the Reimbursement is to be satisfied by the issue of units in the Orchard Trust).
- (g) In the event that only part of Bella Vista on which the Lessee's Works are situated is sold, the Reimbursement to be paid to the Lessee in respect of the Lessee's Works is to be adjusted proportionately.
- (h) No Reimbursement will be payable under this clause 25.10 in respect of any Lessee's Works that are removed, replaced or destroyed.
- (i) No Reimbursement will be payable under this clause 25.10 in the event that the Lease is lawfully terminated by the Lessor.
- (j) The amount of the Reimbursement will be calculated as at the date Event 1, Event 2 or Event 3 occurs.
- (k) Each stage of the Lessee's Works is to be treated separately for the purposes of this clause 25.10.
- (l) Upon the Lessor giving reasonable notice, the books and records of the Lessee and its subsidiaries and related bodies corporate must be made available for inspection and audit by the Lessor during regular business hours for the purpose of verifying any Reimbursement to be paid by Lessor under this clause 25.10.
- (m) The Lessee must provide such verification of any matter disclosed in the books and records as may be reasonably required by the Lessor.

25.11 Ownership of Lessee's Works

- (a) The parties agree and acknowledge that the Lessee's Works will be tenant fixtures owned by the Lessee.
- (b) At the end, or on termination, of this Deed:
 - (i) the Lessee's Works will become the absolute property of the Lessor;

and

- (ii) the Lessor has no obligation to pay the Lessee any compensation at the end, or on termination, of this Deed in respect of such Lessee's Works, except as required under clause 25.10.
- (c) Upon the sale of any part of Bella Vista on which Lessee's Works are situated before the end, or on termination, of this Deed:
- (i) the relevant Lessee's Works will become the absolute property of the Lessor immediately before the completion of the sale; and
- (ii) the Lessor has no obligation to pay the Lessee any compensation in respect of such Lessee's Works, except as required under clause 25.10.

25.12 Deductions from Reimbursement

The Lessor may deduct from any Reimbursement any moneys then owing by the Lessee to the Lessor under this Deed.

26. SURRENDER

The Lessee agrees with the Lessor to execute a surrender of lease ("**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 the Bella Vista Subdivided Land of approximately 295 hectares in terms of the Plan comprising Schedule 1;
- (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 the Bella Vista Subdivided Land of approximately 295 hectares;
- (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; and
- (e) to the extent that it is appropriate to vary the terms of this Lease (otherwise than in respect of the description of the leased property) 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.

27. PAYMENTS

27.1 Interest

If the Lessee fails to make a payment of any amount under this Deed:

- (a) the Lessee must pay interest on such amounts not paid on the due date;
- (b) the rate of interest will be the Bank Bill Swap Reference Rate (being the 90

day rate from time to time published in the Australian Financial Review) plus 3.0%;

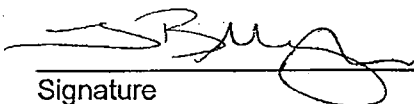
- (c) the interest is to be calculated on and from the day after the due date until the date payment is made.

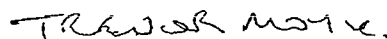
27.2 Set-off


All payments by the Lessee under this Deed must be made to the Lessor without set-off or counterclaim.

Executed as a Deed:

EXECUTED by ORCHARD
INVESTMENTS MANAGEMENT
LIMITED in its capacity as
responsible entity for the
TIMBERCORP ORCHARD TRUST
in accordance with section 127 of
the Corporations Act:

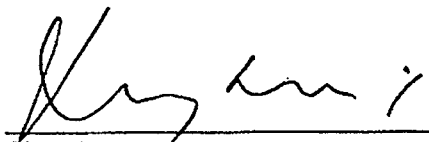

Signature


Full Name
Director



Signature
Sol Rabinowicz

Full Name
Director/Secretary

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

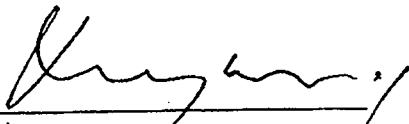

Signature
John Vaughan

Full Name
Director


Signature
Sol Rabinowicz

Full Name
Director/Secretary

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



Signature

John Vaughan

Full Name
Director



Signature

Sol Rabinowicz

Full Name
Director/Secretary

SCHEDULE 1

Plan (Clause 26)

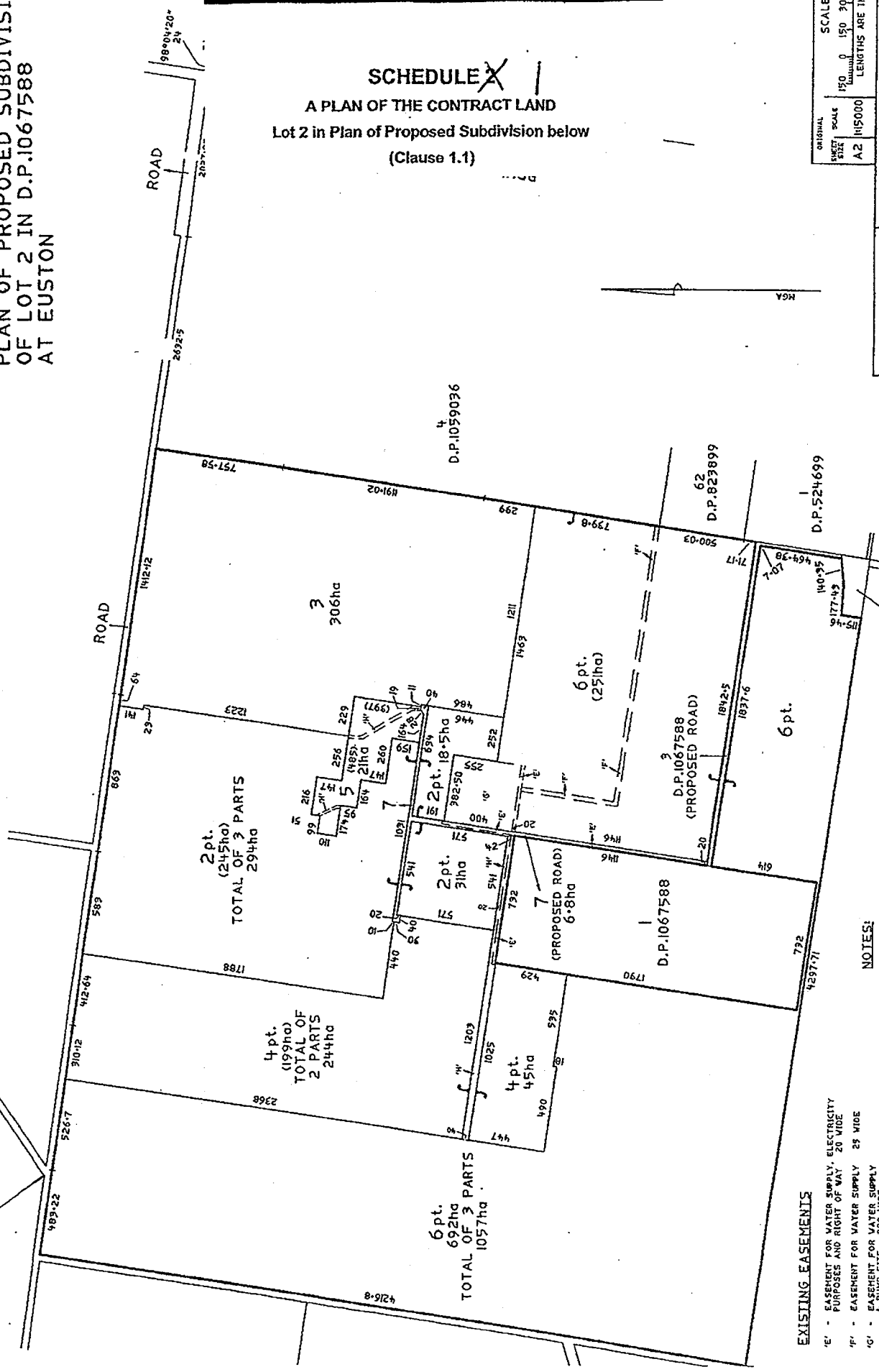
PLAN OF PROPOSED SUBDIVISION
OF LOT 2 IN D.P.1067588
AT EUSTON

SCHEDULE X
A PLAN OF THE CONTRACT LAND
Lot 2 in Plan of Proposed Subdivision below
(Clause 1.1)

ORIGINAL	SHEET	SCALE	DATE
A2	115000	1:5000	150 0 150 300 450 600
LENGTHS ARE IN METRES			

FREEMAN & FREEMAN
LAND SURVEYORS
PO BOX 2155 MILDURA VIC 3502
TELEPHONE (03) 50236299

REF 6851/5/P
DATE APRIL 2005
VERSION 4



EXISTING EASEMENTS

- 'E' - EASEMENT FOR WATER SUPPLY, ELECTRICITY PURPOSES AND RIGHT OF WAY 20 WIDE
- 'F' - EASEMENT FOR WATER SUPPLY 25 WIDE
- 'G' - EASEMENT FOR WATER SUPPLY & PUMP SITE 300 WIDE

PROPOSED EASEMENT

- 'H' - EASEMENT FOR WATER SUPPLY, ELECTRICITY PURPOSES AND RIGHT OF WAY VARIABLE WIDTH

NOTES:

PLAN FOR PLANNING PURPOSES ONLY.

DIMENSIONS AND DETAILS SHOWN ARE APPROXIMATE ONLY AND ARE SUBJECT TO FINAL SURVEY & APPROVAL.

D.P.46645

11/5

Annexure A

Bella Vista (Interim) Lease

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)

Table of Contents

[INTERIM LEASE – 2005 SUBDIVISION LAND]	4
LEASE	4
1. BACKGROUND, DEFINITIONS AND INTERPRETATION	4
1.1 BACKGROUND	4
1.2 DEFINITIONS	4
1.2 INTERPRETATION	6
1.3 HEADINGS	7
2. CAPACITY AND LIABILITY OF THE LESSEE	7
2.1 CAPACITY OF LESSEE	7
2.2 BENEFIT TO LESSEE	7
2.3 LIMITATION OF LIABILITY	7
3. GRANT AND TERM OF LEASE	8
3.1 GRANT AND TERM OF LEASE	8
3.2 REPRESENTATIONS	8
4. MAINTENANCE OF LAND AND VINEYARD	8
4.1 USE OF THE LAND	8
4.2 CULTIVATION AND MAINTENANCE OBLIGATIONS IN RELATION TO THE VINEYARD	8
4.3 ACKNOWLEDGMENTS BY THE LESSOR	9
5. RENT PAYMENTS	9
5.1 RENT	9
6. LESSOR'S OBLIGATIONS AND RIGHTS	9
6.1 OBLIGATIONS	9
6.2 RIGHTS	10
7. RATES, TAXES AND CHARGES	10
8. INSURANCE	11
8.1 LESSEE MUST MAINTAIN INSURANCE	11
8.2 PARTIES NOT TO AFFECT RIGHTS UNDER INSURANCE	11
8.3 INDEMNITY	11
9. ASSIGNMENTS, SUB-LEASES AND MORTGAGES	12
9.1 ASSIGNMENT BY LESSEE	12
9.2 LESSOR CONSENTS TO LESSEE, LEASING, SUB-LETTING AND LICENSING	12
9.3 ASSIGNMENT BY LESSOR	12
9.4 DELEGATION	12
10. DEFAULT AND RE-ENTRY	12
10.1 TERMINATION BY LESSOR	12
11. TERMINATION	13
11.1 TERMINATION OF LEASE BY THE LESSEE	13
11.2 EFFECT OF TERMINATION	13
11.3 ATTORNEYS	13
12. LESSEE'S RISK	13
13. LEGAL COSTS	13
14. NOTICES	13

LEASE – 2005 SUBDIVISION LAND (600 plantable acres)

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) 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 part 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.

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 Sydney, New South Wales;
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 of approximately 295 hectares to be created from a sub-division of Lot 2 DP 1067588, as shown in the plan attached as Schedule 2;
Contract Land:	means the land the subject of the Contract of Sale together with the Capital Works and other improvements installed on that land from time to time;
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: <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

	<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 Contract Land or on other land for the purpose of servicing the Contract 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 (in their personal capacity) or manager of a Project;</p> <p>(c) a responsible entity (in their personal capacity) 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 (ARSN 106 557 297);

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:	means the responsible entity for the time being of the Orchard Trust;
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 Contract Land;</p> <p>(b) 30 June 2020; and</p> <p>(c) the exercise by Timbercorp of the option described in clause 3.3;</p>
Timbercorp:	means Timbercorp Limited ACN 055 185 067;
Vinlot:	each separate identifiable area of the Contract 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 Contract Land;
Vines:	the Vines growing or to be grown on the Contract Land; and
Vineyard:	the table grape vineyard or vineyards established or to be established on the Contract 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.

3.3 Exercise of Timbercorp option

The parties agree that this Lease shall ipso facto terminate on the exercise of the option granted on or about the date hereof between the Lessors and Timbercorp.

4. MAINTENANCE OF LAND AND VINEYARD

4.1 Use of the Land

The Lessee may:

- (a) procure the establishment of a Vineyard on the Contract Land and use the Contract Land or any part of the Contract Land for the growing of table grapes;
- (b) sub-lease or licence the Contract Land or any part of the Contract 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 Contract Land or any part of it 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 Contract 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 Vinelots, the Vineyard and the Contract Land in accordance with the constitution, the occupancy agreements and any management agreements relating to a Project.

4.3 Licence to the Lessor

For as long as the Land comprises more than the Contract Land, the Lessee shall have no obligations to farm, crop, graze, develop or maintain that part of the Land other than the Contract Land and the Lessee licences the Lessor to come onto such land to farm, crop, graze, develop or maintain it.

4.4 Acknowledgments by the Lessor

The Lessor acknowledges and agrees with the Lessee that during Term of this Lease the table grapes growing on the Contract 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 Contract 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 4.4(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;
- (g) comply with all laws and regulations relating to the use and occupancy of any neighbouring land occupied by the Lessor; and
- (h) permit the Lessee to use as and when the Lessee deems fit and for such purposes in connection with its operations on the Land as the Lessee determines, any land of the Lessor nominated by the Lessee and structures of the Lessor thereon which are owned by the Lessor at the date of this Lease (whether or not such land and/or structures are sold after the date of this Lease) AND must if so requested by the Lessee grant or procure the grant to the Lessee, at the cost of the Lessor, easements in registrable form for such uses and purposes appurtenant to the land or part thereof as specified by the Lessee, and procure the registration of such easements on the titles to the relevant lands. This paragraph, for the avoidance of doubt, is also for the benefit of all those persons taking under the Lessee.

6.2 Rights

The Lessor:

- (a) is entitled to full and free access to the Land for the purposes of carrying out its obligations and exercising its rights under this Lease with or without vehicles 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 to the Land with or without vehicles 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 or in respect of the Contract 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 Contract 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) insurance for the replacement value of the Capital Works on the Contract Land, including the Vines and the Irrigation Infrastructure¹; 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 or the Contract 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 as aforesaid, including the Vinelots or the Vines or result in the premiums for such insurances being increased.

8.3 Indemnity

- (a) 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 Contract Land or the use by the Lessee of the Contract 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.
- (b) The Lessor must indemnify the Lessee from and against all claims, demands,

proceedings, judgments, damages, costs and losses of any nature which the Lessee 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, other than the Contract Land, or the use by the Lessor of the Land, other than the Contract 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 Lessee or the Lessee'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. RISK

- (a) The Lessee is to assume all risk of loss, damage or injury by fire or otherwise to person or the Lessee's property by reason of the condition of the Contract Land or any plant, equipment, fixtures or fittings on the Contract Land.
 - (b) The Lessor 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, other than the Contract Land, or any plant, equipment, fixtures or fittings on the Land, other than the Contract 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 or caveats at the Land Titles Office in respect of its interests 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 such caveats.

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 Society of NSW at a place in Sydney 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 2 being the Contract Land;
- (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 Contract Land;
- (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; and
- (e) to the extent that it is appropriate to vary (consistently with the terms of this clause) 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

Carmelo Costa

Print Name of Witness

EXECUTED by PAUL COSTA in the presence
of:

Signature of Witness

Carmelo Costa

Print Name of Witness

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 2 in DP 1067588.

PLAN OF PROPOSED SUBDIVISION
OF LOT 2 IN D.P.1067588
AT EUSTON

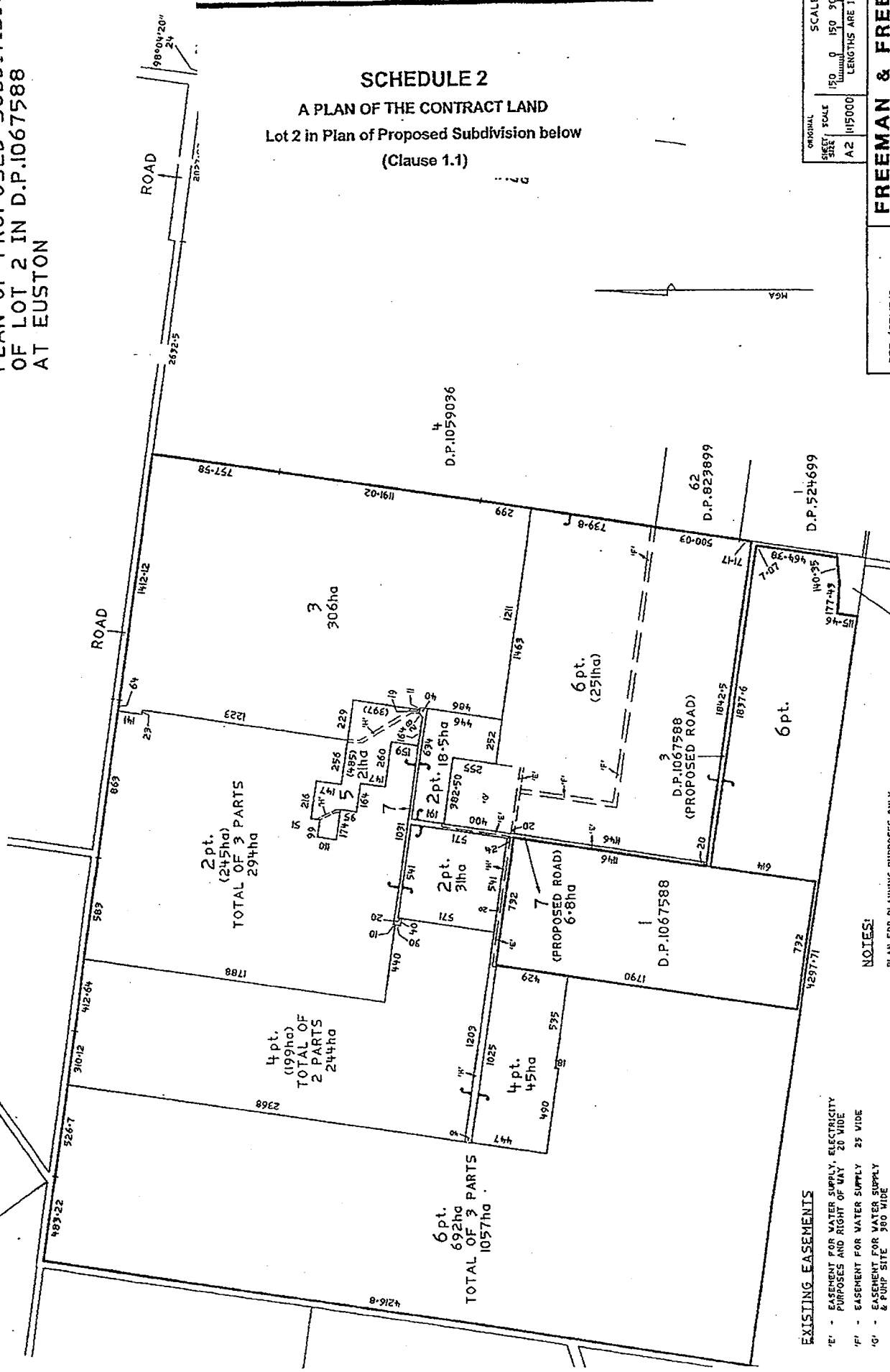
SCHEDULE 2

A PLAN OF THE CONTRACT LAND
Lot 2 in Plan of Proposed Subdivision below
(Clause 1.1)

ORIGINAL	SHEET	SCALE	SCALE
A2	115000	150 0 150 300 450 600	LENGTHS ARE IN METRES

FREEMAN & FREEMAN
LAND SURVEYORS
PO BOX 2135 MILDURA VIC 3502
TELEPHONE: (03) 50236299

REF 6851/5/P
DATE APRIL 2005
VERSION 4



NOTES:

PLAN FOR PLANNING PURPOSES ONLY.

DIMENSIONS AND DETAILS SHOWN ARE APPROXIMATE ONLY
AND ARE SUBJECT TO FINAL SURVEY & APPROVAL.

EXISTING EASEMENTS

'E' - EASEMENT FOR WATER SUPPLY, ELECTRICITY
PURPOSES AND RIGHT OF WAY 20 MIDE

'F' - EASEMENT FOR WATER SUPPLY 25 MIDE

'G' - EASEMENT FOR WATER SUPPLY
& PUMP SITE 900 MIDE

PROPOSED EASEMENT

'H' - EASEMENT FOR WATER SUPPLY, ELECTRICITY
PURPOSES AND RIGHT OF WAY VARIABLE WIDTH

17/12