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Deed of Compromise for the Solara Rights Proceeding

Australia and New Zealand Banking Group Limited (ACN 005 357 522)
OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) as
trustee for Timbercorp Orchard Trust #2
Michael Fung (in his capacity as receiver and manager of OIM#2 Pty Ltd
(Receivers and Managers Appointed) as trustee for Timbercorp Orchard
Trust #2)
Paul William Kirk (in his capacity as receiver and manager of OIM#2 Pty Ltd
(Receivers and Managers Appointed) as trustee for Timbercorp Orchard
Trust #2)
Robert Budgen and Elizabeth Bugden (in their capacity as representatives
of the Participant Growers in the
2005 Timbercorp Citrus Project (ARSN 114 091 299))
Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469)

Allens
Level 37
101 Collins Street
Melbourne VIC 3000
Tel +61 3 9614 1011
Fax +61 3 9614 4661
www.allens.com.au

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Date	25 July 2012
Parties	
1.	Australia and New Zealand Banking Group Limited (ACN 005 357 522) c/- Allens, 101 Collins Street, Melbourne, Victoria, 3000 (ANZ)
2.	OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) as trustee for Timbercorp Orchard Trust #2 c/- Maddocks, 140 William Street, Melbourne, Victoria, 3000 (OIM#2)
3.	Michael Fung (in his capacity as receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #2) c/- Norton Rose, Level 15, RACV Tower, 485 Bourke St, Melbourne VIC 3000 (Fung)
4.	Paul William Kirk (in his capacity as receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) as trustee for Timbercorp Orchard Trust #2) c/- Norton Rose, Level 15, RACV Tower, 485 Bourke St, Melbourne VIC 3000 (Kirk)
5.	Robert Bugden and Elizabeth Bugden (in their capacity as representatives of the Participant Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299)) c/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (the Representative Growers)
6.	Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) c/- Arnold Bloch Leibler, Level 20, 333 Collins Street, Melbourne, Victoria, 3000 (TSL)
Recitals	
A	Timbercorp Limited (In Liquidation) (Timbercorp) and its subsidiary entities (together, the Timbercorp Group) conducted various agribusiness projects involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus, including the Citrus Project.
B	Each entity in the Timbercorp Group is currently in liquidation.
C	OIM#2 is currently in receivership.
D	The Participant Growers are investors in the Citrus Project which was conducted (in part) on the Solara Property.
E	TSL is the responsible entity for the Citrus Project.
F	ANZ provided financial accommodation to OIM#2 and obtained the Solara Security over the assets of OIM#2 used in the Citrus Project, including the Solara Property (Citrus Assets).
G	In the course of the receivership of OIM#2, and with Court approval, the Citrus Assets were sold (Citrus Sale) and the Fund constituted.

H	A dispute exists between, ANZ, OIM#2 and the Participant Growers regarding the allocation amongst them of the Fund.
I	The Receivers are, jointly and severally, the stakeholders of the Fund and await the orders of the Court regarding disbursement of the Fund.
J	TFL claims that a number of the Participant Growers are TFL Debtors.
K	TSL claims that a number of the Participant Growers are Timbercorp Debtors.
L	On 6 December 2011, ANZ commenced Supreme Court of Victoria Proceeding No. S CI 2011 6606, seeking, among other things, declarations as to its, and other relevant parties', rights, if any, to the Fund (<i>Solara Rights Proceeding</i>).
M	The interests of OIM#2 in the Solara Rights Proceeding are represented by the directors of that company.
N	By order made on 16 December 2011 in the Solara Rights Proceeding, pursuant to rule 16.01(2) of the Rules, the Representative Growers were appointed as representatives of the Participant Growers in the Citrus Project.
O	The Parties have agreed to compromise the Solara Rights Proceeding on the terms set out in this Deed.
P	The Representative Growers consider that it is for the benefit of the class of persons whom they represent that the Solara Rights Proceeding be compromised on the terms set out in this Deed.
Q	ANZ and OIM#2 each supports the Solara Rights Proceeding being compromised on the terms set out in this Deed and, together with the Representative Growers, will seek the Court's approval of the Compromise.

It is agreed as follows.

1. Definitions and interpretation

1.1 Definitions

In this Deed:

- (a) ***Almond Land Appeal Deed of Compromise*** means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Almond Land Rights Appeal Proceeding;
- (b) ***Almond Land Rights Appeal Proceeding*** means Supreme Court of Victoria Proceeding No. APCI 2011 0103;
- (c) ***Approval Application*** means the application or applications to the Court for the orders referred to in clause 3.1(a);
- (d) ***BB Olives Deed of Compromise*** means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the BB Olives Rights Proceeding;

- (e) **BB Olives Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2010 1354;
- (f) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Victoria;
- (g) **Citrus Project** means the 2005 Timbercorp Citrus Project (ARSN 114 091 299);
- (h) **Claim** includes any claim or liability of any kind (including one which is prospective or contingent and the amount of which is not ascertained) and costs (whether or not the subject of a court order);
- (i) **Compromise** means the compromise set out in clause 2;
- (j) **Court** means the Supreme Court of Victoria;
- (k) **Costs** includes legal fees and disbursements;
- (l) **Deed** means this document, including any schedule or annexure to it;
- (m) **Draft Orders** means the draft orders set out in schedule 2 to this Deed;
- (n) **Fenceport Deed of Compromise** means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Fenceport Rights Proceeding;
- (o) **Fenceport Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2011 6777;
- (p) **First Notice to Participant Growers** has the meaning set out at clause 6.1(b);
- (q) **Fund** means the net sale proceeds of the Citrus Sale (including, for the avoidance of doubt, inclusive of all interest) held on trust by the Receivers, from time to time, in the Solara Account pursuant to orders of Justice Davies made on 26 February 2010 and taking into account any other amount which may be deducted pursuant to any subsequent order of the Court including, for the avoidance of doubt, the Receivers' Unpaid Costs;
- (r) **Gross Sale Proceeds** means \$13,000,000, being the agreed consideration for the Citrus Sale;
- (s) **Liparoo and Yungera Deed of Compromise** means the deed of compromise dated on or about the date of this Deed to give effect to the compromise of the Liparoo and Yungera Rights Proceeding;
- (t) **Liparoo and Yungera Rights Proceeding** means Supreme Court of Victoria Proceeding No. S CI 2011 6604;
- (u) **Lot** means a Citruslot as that term is defined in the constituent documents of the Citrus Project;
- (v) **Participant Growers** means each "Participant Grower" as that term is defined in the constituent documents of the Citrus Project including, for the avoidance of doubt, where applicable, the Participant Grower's legal personal representatives;
- (w) **Party** means a party to this Deed;
- (x) **Receivers** means Fung and Kirk;
- (y) **Receivers' Account** means the following bank account:
Account name: PricewaterhouseCoopers
Bank: ANZ Banking Group Limited
BSB: 014002
Account number: 833468126
- (z) **Receivers' Unpaid Costs** means, to the extent approved by the Court for deduction from the Fund, up to and including the date on which the payments provided by clause 4 are

made, the amount of unpaid costs incurred by the Receivers in connection with and arising from:

- (i) their appointment as receivers and managers of OIM#2;
- (ii) their management, maintenance and, in accordance with this deed, disbursement of the Fund; and
- (iii) their costs of and incidental to the Approval Application and the Solora Rights Proceeding,

excluding any such costs to which paragraph 4 of the order of Justice Davies made on 26 February 2010 applies;

(aa) **Representative Growers' Costs Correspondence** means:

- (i) the letter from Clarendon Lawyers (solicitors for the Representative Growers) to Arnold Bloch Leibler dated 18 January 2012, including the Framework as referred to and defined in that letter; and
- (ii) the letter from Arnold Bloch Leibler to Clarendon Lawyers dated 3 February 2012;

(bb) **Rules** means the *Supreme Court (General Civil Procedure) Rules 2005* (Vic);

(cc) **Second Notice to Participant Growers** has the meaning set out at clause 6.3(b);

(dd) **Solora Account** means the interest bearing account styled as OIM NO 2 Pty Ltd ATF the Timbercorp Orchard Trust No 2 (Receivers and Managers Appointed) NAB Term Deposit (BSB 083 004; Account number 17751 5157);

(ee) **Solora Extinguishment Date** means 9 April 2010, being the date on which the liquidators of TSL extinguished all of the rights of the Participant Growers in respect of the Citrus Project conducted (in part) on the Solora Property;

(ff) **Solora Facility** means a \$9.398 million loan facility provided by ANZ to OIM#2 on or about 30 September 2005 which was later varied to \$11.4 million by deed of variation dated 18 April 2007;

(gg) **Solora Property** means the land the subject of the Solora Rights Proceeding which was owned by OIM#2 and being part of the land on which the Citrus Project was conducted;

(hh) **Solora Secured Debt** means the sum of:

- (i) the total amount owed to ANZ in respect of the Solora Facility secured by the Solora Security as at 31 October 2011, including ANZ's costs in preparation for the Solora Rights Proceeding to that date;
- (ii) interest accruing on the amount referred to in item (i) above from 1 April 2012 until the date the payment referred to in clause 4(d) is made to ANZ;
- (iii) ANZ's costs in preparation for, and of, the Solora Rights Proceeding including the Approval Application after 31 October 2011; and
- (iv) after deduction of the costs referred to in (iii) above, one-half of the interest accruing on the Solora Account after 31 October 2011;

(ii) **Solora Security** means the security set out in schedule 1 to this Deed;

(jj) **Solora Settlement Amount** means \$650,000.00;

(kk) **Solora Settlement Entitlement** means, in respect of a Participant Grower, its entitlement, from time to time, to the Solora Settlement Amount (together with any applicable interest on that amount from the date on which the payment provided by clause 4(b) is made by the

Receivers to TSL) on the basis of a rateable distribution of that amount between the Participant Growers in the Citrus Project in accordance with the number of Lots they held in that project as at the Solora Extinguishment Date;

- (ll) **TFL** means Timbercorp Finance Pty Ltd (in Liquidation) (ACN 054 581 190);
- (mm) **TFL Debtor** means a Participant Grower who entered into a loan agreement with TFL:
 - (i) pursuant to which TFL agreed to lend a specified amount or amounts to that Participant Grower to be used by that Participant Grower to pay liability owed to TSL relating to that Participant Grower's investment in the Citrus Project; and
 - (ii) under which TFL claims that indebtedness to TFL remains outstanding;
- (nn) **TFL Indebtedness** means, in respect of a TFL Debtor, its indebtedness to TFL from time to time according to the books and records of TFL;
- (oo) **Timbercorp Debtor** means a Participant Grower who TSL claims is indebted to TSL; and
- (pp) **Timbercorp Indebtedness** means, in respect of a Timbercorp Debtor, its indebtedness, from time to time, to TSL according to the books and records of TSL.

1.2 Interpretation

- (a) Reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) a Party includes the Party's successors, permitted substitutes and permitted assigns (and, where applicable, the Party's legal personal representatives); and
 - (iii) a thing includes the whole and each part of it separately.
- (b) 'Including' and similar expressions are not words of limitation.
- (c) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (d) A provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

1.3 Parties

- (a) If a Party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation in favour of more than 1 person is for the benefit of them separately and jointly.
- (c) A Party that is a trustee is bound both personally and in that Party's capacity as a trustee.
- (d) A Party holds the benefit of any release provided for in this Deed for themselves and, where applicable, for that Party's present and former, directors, officers, employees, contractors, agents and partners and, in the case of the Receivers, for any former appointee to that position.

2. Compromise

Subject to the condition precedent set out in clause 3 being satisfied, the Parties agree to compromise the Solora Rights Proceeding by:

- (a) the making of the payments in accordance with clause 4; and

- (b) the giving of releases in accordance with clause 5.

3. Condition Precedent

3.1 Court Orders

It is a condition precedent to the Compromise that, on or before 31 December 2012:

- (a) the Court in the Solora Rights Proceeding:
- (i) pursuant to rule 16.01(4) of the Rules, approves the Compromise and orders that the Compromise shall be binding on the absent persons who are represented respectively by the Representative Growers, in the form of, or substantially to the effect of, paragraph 1 of the Draft Orders;
 - (ii) pursuant to rule 54.02 of the Rules, approves OIM#2 agreeing to the Compromise, in the form of, or substantially to the effect of, paragraph 2 of the Draft Orders; and
 - (iii) makes orders in the form of, or substantially to the effect of, paragraphs 3 and 4 of the Draft Orders;
- (b) the Court makes orders in the Liparoo and Yungera Rights Proceeding in accordance with clause 3.1(a) of the Liparoo and Yungera Deed of Compromise;
- (c) the Court makes orders in the BB Olives Rights Proceeding in accordance with clause 3.1(a) of the BB Olives Deed of Compromise;
- (d) the Court makes orders in the Fenceport Rights Proceeding in accordance with clause 3.1(a) of the Fenceport Deed of Compromise; and
- (e) the Court makes orders in the Almond Land Rights Appeal Proceeding in accordance with clause 3.1(a) of the Almond Land Appeal Deed of Compromise.

3.2 Procuring Court Orders

The parties will do all things reasonably necessary to procure the Court to make orders in the terms referred to in clause 3.1.

4. Payments

- (a) As soon as practicable after the condition precedent set out in clause 3.1 is satisfied, the Receivers will pay from the Solora Account the Receivers' Unpaid Costs by direct deposit into the Receivers' Account.
- (b) On the same date as the payment under clause 4(a) is made to the Receivers Account, the Receivers will pay to TSL from the Solora Account the Solora Settlement Amount by direct deposit into the following interest bearing bank account:
- Account name: Mark Korda and Leanne Chesser as Liquidators of Timbercorp Securities Limited (in Liquidation)
TSL – Citrus (Solora)
- Bank: Macquarie Bank Limited
- BSB: 183334
- Account number: 301881678.
- (c) TSL will hold the Solora Settlement Amount on trust (as applicable) for the Participant Growers in the Citrus Project for distribution to, or on behalf of, those Participant Growers in accordance with their respective Solora Settlement Entitlements on the following basis.

- (i) In respect of each Participant Grower who is not a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause, TSL will pay its Solora Settlement Entitlement as soon as practicable to or at the direction of that Participant Grower (in each case, into a bank account nominated by each such Participant Grower).
- (ii) In respect of each Participant Grower who:
 - (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
 - (B) directs and authorises TSL by notice in writing to pay its TFL Indebtedness to the extent possible out of its Solora Settlement Entitlement,TSL will, as soon as practicable, pay to TFL that Participant Grower's TFL Indebtedness (to the extent possible) out of the Participant Grower's Solora Settlement Entitlement and remit the balance of that Participant Grower's Solora Settlement Entitlement (if any) to the Participant Grower.
- (iii) In respect of each Participant Grower who:
 - (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
 - (B) has a Solora Settlement Entitlement for a sum greater than its TFL Indebtedness and directs and authorises TSL by notice in writing to pay only part of its TFL Indebtedness out of its Solora Settlement Entitlement,TSL will, as soon as practicable, pay to TFL that part of that Participant Grower's TFL Indebtedness out of the Participant Grower's Solora Settlement Entitlement and retain the balance of that Participant Grower's Solora Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.
- (iv) In respect of each Participant Grower who:
 - (A) is a TFL Debtor immediately prior to the time of distribution to each such Participant Grower in accordance with this clause; and
 - (B) does not give a direction or authorisation to TSL in relation to payment of its TFL Indebtedness,TSL will continue to hold that Participant Grower's Solora Settlement Entitlement on trust pending agreement in writing between TFL and the relevant Participant Grower, or court order, as to the manner in which it is to be disbursed.
- (d) On the same date as the payments under clauses 4(a) and 4(b) are made to the Receivers' Account and TSL respectively, the Receivers will pay to ANZ (to the extent possible), from the balance of the Solora Account after the payments referred to in clauses 4(a) and 4(b) have been made, the Solora Secured Debt into the following bank account:

Account name: Lending Services Manager Account
Bank: ANZ Banking Group Limited
BSB: 013089
Account number: 832959222.
- (e) On the same date as the payments under clauses 4(a), 4(b) and 4(d) and are made to the Receivers' Account, TSL and ANZ respectively, the Receivers will pay to Maddocks on behalf of OIM#2, any amounts remaining in the Solora Account after the payments referred to in clauses 4(a), 4(b) and 4(d) have been made, into the following bank account:

Account name: Maddocks Trust Account
Bank: Commonwealth Bank
BSB: 063010
Account number: 10476466.

(f) For the purposes of clause 4(c)(i):

(i) if a Participant Grower:

- (A) is a Timbercorp Debtor and not a TFL Debtor; and
- (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(c)(i),

TSL will:

- (C) deduct from the payment due to that Participant Grower under clause 4(c)(i) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(c)(i) out of the Participant Grower's Solara Settlement Entitlement to the Participant Grower's nominated bank account; and
- (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(f), TSL will have discharged its obligations to that Participant Grower under clause 4(c)(i) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.

(g) For the purposes of clause 4(c)(ii):

(i) if a Participant Grower:

- (A) is a Timbercorp Debtor and a TFL Debtor; and
- (B) so directs and authorises TSL by notice in writing prior to the date on which TSL would otherwise make a payment to the Participant Grower under clause 4(c)(ii),

TSL will:

- (C) deduct from the payment due to that Participant Grower under clause 4(c)(ii) such amount of that Participant Grower's Timbercorp Indebtedness as is specified in the notice and pay that deducted amount to TSL in full or part satisfaction (as the case may be) of that Participant Grower's Timbercorp Indebtedness; and
 - (D) pay the balance (if any) of the payment due to the Participant Grower under clause 4(c)(ii) out of the Participant Grower's Solara Settlement Entitlement to the Participant Grower's nominated bank account; and
- (ii) for the avoidance of doubt, upon TSL making all applicable payments in respect of a Participant Grower in accordance with clause 4(g), TSL will have discharged its obligations to that Participant Grower under clause 4(c)(ii) and thereupon will be entitled to the benefit of the release in clause 5.2 from that Participant Grower.

(h) For the purposes of clauses 4(c)(iii) and (iv), if a Participant Grower is a Timbercorp Debtor and a TFL Debtor, the Participant Grower will not give any direction or authorisation to TSL

to pay any part of that Participant Grower's Timbercorp Indebtedness out of its Solora Settlement Entitlement pending agreement in writing between TFL and the relevant Participant Grower, or relevant Court Order, as to the manner in which that entitlement is to be disbursed.

- (i) The giving of any authorisation or direction by a Participant Grower to TSL under clause 4(c):
 - (i) does not constitute an admission of liability by the Participant Grower to TFL in respect of the Participant Grower's TFL Indebtedness; and
 - (ii) is without prejudice to the Participant Grower's rights (if any) against TFL in relation to the Participant Grower's TFL Indebtedness.
- (j) Nothing in the receipt by TFL of any payment from TSL in accordance with clause 4(c) constitutes a waiver of any rights which TFL may have against a Participant Grower in respect of that Participant Grower's remaining TFL Indebtedness. The benefit of this clause is held by TSL on trust for TFL.
- (k) TSL (in its personal capacity) will pay the Representative Growers' costs:
 - (i) of and incidental to the Approval Application; and
 - (ii) of and incidental to the directions hearing before the Honourable Justice Davies on 16 December 2011 in the Solora Rights Proceeding,in accordance with the terms agreed in the Representative Growers' Costs Correspondence. For the avoidance of doubt, payment of the Representative Growers' costs in accordance with this clause is not to be made out of the Fund or any of the funds received by TSL and held on trust for the Participant Growers in accordance with clauses 4(b) and (c).

5. Releases

5.1 Representative Growers, ANZ, OIM#2 and the Receivers

Upon satisfaction of the condition precedent in clause 3.1, and the making of the payments in clauses 4(a), (b), (d) and (e), the Representative Growers on behalf of the Participant Growers, ANZ, OIM#2 and the Receivers release and discharge each other from all Claims in relation to:

- (a) their respective entitlements to the Fund; and
- (b) the allocation and disbursement of the Fund under the Compromise,

and this Deed may be pleaded by any Party as a full and complete defence to any such Claim.

5.2 TSL

Upon:

- (a) the releases in clause 5.1 taking effect; and
- (b) the making of a payment or, as applicable, all payments to, or at the direction of, or on the authorisation of, a Participant Grower under clauses 4(c), 4(f) or 4(g) by which that Participant Grower's Solora Settlement Entitlement is disbursed in full,

the Representative Growers for that Participant Grower release TSL on behalf of that Participant Grower from all Claims in relation to:

- (a) that Participant Grower's entitlement to the Fund;

- (b) the allocation and disbursement of the Fund under the Compromise in respect of that Participant Grower; and
- (c) TSL's obligations to that Participant Grower under clauses 4(c), 4(f) or 4(g) (as the case may be),

and this Deed may be pleaded by TSL as a full and complete defence to any such Claim.

6. Notices to Participant Growers

6.1 First Notice to Participant Growers

- (a) As soon as practicable after this Deed is executed, the Representative Growers will seek the other Parties' comments on the terms of a first notice to Participant Growers, and to this end:
 - (i) the Representative Growers will prepare and circulate among the Parties a draft of the first notice; and
 - (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the first notice.
- (b) The Parties will thereafter confer in good faith in relation to any necessary further comments on the draft first notice and the Representative Growers will finalise the form of the first notice (the finalised form being the **First Notice to Participant Growers**).
- (c) The First Notice to Participant Growers will, among other things:
 - (i) provide information about the Solora Rights Proceeding;
 - (ii) explain that the interests of the Participant Growers are represented in the Solora Rights Proceeding by the Representative Growers;
 - (iii) refer to the Compromise reached between the Parties and explain the key features of this Deed including the various payments contemplated under the Deed;
 - (iv) explain that the Compromise is considered by the Representative Growers as being in the best interests of the Participant Growers;
 - (v) alert the Participant Growers to consider any potential tax consequences of the Compromise;
 - (vi) explain that if the Court approves the Compromise the Participant Growers will be bound by the Compromise in respect of their individual entitlements (if any) out of the Fund;
 - (vii) explain the various roles being undertaken by TSL at the request of, and on the instruction of, the Representative Growers in connection with the Approval Application and under this Deed;
 - (viii) explain when the Participant Growers may expect to receive a payment under the Compromise from TSL;
 - (ix) explain the mechanism by which each Participant Grower is to provide their individual bank account details to TSL for the purposes of receipt of a payment under the Compromise;
 - (x) explain that some Participant Growers are TFL Debtors and Timbercorp Debtors and how the Compromise will apply to the individual circumstances of the Participant Growers (having regard, amongst other things, to the offer of settlement made by TFL to TFL Debtors (amongst others) by letter dated 8 February 2012);

- (xi) explain how each Participant Grower can access private information in relation to their individual circumstances in respect of the Compromise including the number of Lots they held in the Citrus Project as at the Solara Extinguishment Date and, where applicable, their TFL Indebtedness and Timbercorp Indebtedness (as the case may be);
- (xii) explain, in respect of any payment due to the Participant Growers under the Compromise:
 - (A) the right of each Participant Grower to make a direction and authorisation to TSL in accordance with clauses 4(c), 4(f) and 4(g); and
 - (B) the consequences, where applicable, of making or not making such a direction or authorisation;
- (xiii) explain the consequences if the Court does not approve the Compromise;
- (xiv) explain to the Participant Growers what their options are in connection with the Approval Application;
- (xv) inform the Participant Growers that, without prejudice to any other course they may be advised to take, they may:
 - (A) address any comments or questions in relation to the Compromise, the Approval Application, or their individual circumstances;
 - (B) raise any objection to the Compromise,to the Representative Growers through TSL using either a specified telephone hotline facility or by a specified email address, and that a reply will be provided to their comments or questions and, as appropriate, their comments and objections will be noted for the purposes of the hearing of the Approval Application;
- (xvi) refer the Participant Growers to a set of 'frequently asked questions' and related answers which they should review before considering whether it is necessary to ask any questions of the Representative Growers through TSL relating to the Compromise or in connection with the Approval Application; and
- (xvii) inform the Participant Growers that a further notice will be provided to them as soon as practicable after it becomes known whether or not the condition precedent to the Compromise has been satisfied.

6.2 Provision of the First Notice to Participant Growers

As soon as practicable after it has been finalised in accordance with clause 6.1(b), the Representative Growers will provide to TSL the First Notice to Participant Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the First Notice to Participant Growers to be uploaded to the pre-existing Timbercorp section of the Clarendon Lawyers website <http://www.clarendonlawyers.com.au/timbercorp.php>; and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers):
 - (i) cause the First Notice to Participant Growers to be uploaded to:
 - (A) a new section within the Timbercorp section of the KordaMentha website <<http://www.kordamentha.com/creditor-information/australia/51>> which will address the Compromise;

- (B) the pre-existing "Timbercorp Almond Schemes" section of the KordaMentha website <<http://www.kordamentha.com/creditor-information/australia/51/03>>; and
 - (C) a new section within the Timbercorp section of the Arnold Bloch Leibler website <<http://www.abl.com.au/timbercorp/timbercorp.htm>> which will address the Compromise;
- (ii) send to the Participant Growers, by post and by email to their last known postal and email addresses most recently communicated to TSL and recorded in its books and records, a short letter bringing to their attention that the First Notice to Participant Growers has been uploaded to the websites referred to in clauses 6.2(a) and 6.2(b) and specifying the relevant links to those websites; and
 - (iii) cause to be published an advertisement on a business day in 'The Australian' newspaper containing information similar to that to be set out in the letter referred to in clause 6.2(b)(ii).

6.3 Second Notice to Participant Growers

- (a) As soon as practicable after it becomes known whether the condition precedent in clause 3 has been satisfied, the Representative Growers will seek the other Parties' comments on the terms of a second notice, and to this end:
 - (i) the Representative Growers will prepare and circulate among the other Parties a draft of the second notice; and
 - (ii) the other Parties will, as soon as practicable thereafter, provide any comments to the Representative Growers on the draft of the second notice.
- (b) The Parties will confer in good faith in relation to any necessary further comments on the draft of the second notice and the Representative Growers will finalise the form of the second notice (the finalised form being the **Second Notice to Participant Growers**).
- (c) The Second Notice to Participant Growers will, among other things:
 - (i) explain whether the condition precedent to the Compromise set out in clause 3 has been satisfied; and
 - (ii) if the condition precedent to the Compromise set out in clause 3:
 - (A) has been satisfied, confirm when the Participant Growers may expect to receive a payment under the Compromise; and
 - (B) has not been satisfied, confirm the consequences.

6.4 Provision of the Second Notice to Participant Growers

As soon as practicable after it has been finalised in accordance with clause 6.3(b), the Representative Growers will provide to TSL the Second Notice to Participant Growers and, as soon as practicable thereafter:

- (a) the Representative Growers will cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(a); and
- (b) TSL will (on instruction from, and on behalf of, the Representative Growers) cause the Second Notice to Participant Growers to be circulated in the same manner as is set out in respect of the First Notice to Participant Growers under clause 6.2(b).

7. Application for Court approval

- (a) Each of the Parties (as applicable) will use their best endeavours to do all things necessary, including steps contemplated by this Deed, to make the Approval Application and to enable the Court to hear the Approval Application at the earliest opportunity convenient to the Court, including, for the avoidance of doubt, seeking the orders set out in the Draft Orders (or orders substantially to the same effect).
- (b) On the hearing of the Approval Application, subject to the Court making the orders in paragraphs 1 and 2 of the Draft Orders (or orders substantially to the same effect), the Parties will consent to the Court making each of the other orders set out in paragraphs 3 and 4 of the Draft Orders (or orders substantially to the same effect).
- (c) Nothing in clause 7(b) will preclude:
 - (i) the Representative Growers from informing the Court of any matter which they, or either of them, consider appropriate to disclose to the Court in connection with the Approval Application in their role as representative parties; or
 - (ii) OIM#2 from informing the Court of any matter which it considers appropriate to disclose to the Court in connection with the Approval Application in its role as trustee.

8. Failure to satisfy condition precedent

If the condition precedent in clause 3.1 is not satisfied by 31 December 2012 then this Deed ceases to have any effect. In that event:

- (a) no Party will have any right or entitlement as a result of or by reason of the Parties having entered into this Deed or having conditionally agreed to the Compromise; and
- (b) this Deed, any documents prepared or circulated pursuant to this Deed, and any other documents prepared or circulated in anticipation of, or for the purpose of, the Approval Application may not be referred to or tendered in evidence in the Solara Rights Proceeding, the Liparoo and Yungera Rights Proceeding, the BB Olives Rights Proceeding, the Fenceport Rights Proceeding or the Almond Land Rights Appeal Proceeding.

9. Role of TSL

At the request of the Representative Growers, TSL will perform the following administrative roles in connection with the Compromise and the Approval Application:

- (a) to distribute the First Notice to Participant Growers in accordance with clause 6;
- (b) to establish and operate effectively an appropriate telephone hotline facility and email facility to:

-
- (i) receive and, in accordance with instructions from the Representative Growers, address comments and questions from the Participant Growers in connection with the Compromise and the Approval Application; and
 - (ii) receive any objections to the Compromise made by the Participant Growers;
 - (c) in respect of the Participant Growers who have raised comments, questions or made objections, to record with appropriate detail:
 - (i) the identity of those Participant Growers;
 - (ii) the comments and questions raised by those Participant Growers and the responses provided to those Participant Growers; and
 - (iii) any objections made by those Participant Growers and any response provided in relation to those objections;
 - (d) to act in accordance with a protocol agreed with the Representative Growers regarding:
 - (i) the comments and questions which:
 - (A) may be answered by TSL without further reference to the Representative Growers;
 - (B) will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (ii) the objections:
 - (A) to which TSL may respond without further reference to the Representative Growers;
 - (B) which will be required to be provided by TSL to the Representative Growers for the preparation of an appropriate response;
 - (iii) the confidentiality of communications between TSL, the Participant Growers and the Representative Growers in relation to comments, questions and any objections raised by any Participant Growers;
 - (e) to provide to the Representative Growers, on a timely basis, a record, with appropriate detail, of:
 - (i) all comments, questions and answers given by TSL in accordance with the protocol which do not require preparation of a response by the Representative Growers;
 - (ii) all comments and questions requiring preparation of a response from the Representative Growers;
 - (iii) any objections by the Participant Growers to which TSL has provided a response in accordance with the agreed protocol; and
 - (iv) any objections requiring the preparation of a response by the Representative Growers;
 - (f) to provide on a timely basis to relevant Participant Growers any responses to comments, questions or objections settled by the Representative Growers;
 - (g) to record, with appropriate detail, in an affidavit to be filed on behalf of the Representative Growers in connection with the Approval Application:
 - (i) the tasks which TSL has undertaken at the request and on the instruction of the Representative Growers;

- (ii) the substance of all comments and questions raised to TSL by the Participant Growers and the responses provided by TSL to those Participant Growers; and
- (iii) the nature of any objections made to TSL by Participant Growers and the responses provided by TSL to those Participant Growers;
- (h) to provide the Second Notice to Participant Growers in accordance with clause 6;
- (i) to make the payments referred to in clause 4(c);
- (j) to act in accordance with any direction or authorisation given by Participant Growers in accordance with clause 4(c);
- (k) to perform such other administrative roles as agreed with the Representative Growers or the other parties in connection with the Compromise and the Approval Application; and
- (l) to provide appropriately qualified personnel to undertake the foregoing.

10. No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

11. Execution of counterparts

This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same instrument.

12. Electronic delivery of document

If a party delivers an executed counterpart of this document or any other document executed in connection with it ("**Relevant Document**") by facsimile or other electronic means:

- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

13. Entire Agreement

This Deed contains the entire agreement between the Parties with respect to its subject matter.

14. Further Assurances

At the reasonable request of another Party, each Party will do anything reasonably necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

15. Stamp Duty

All stamp duty (including fines, penalties and interest) payable on or in connection with the declarations of trust provided in clause 4(c) is payable by TSL.

16. Goods and Services Tax

All payments to be made under this Deed are inclusive of GST, if any.

17. Execution by Attorney or Agent

Any Party may execute this Deed by its attorney or agent. Each attorney or agent executing this Deed that, as at the date of executing this Deed, it has no notice of the revocation or suspension of its power of attorney or agency.

18. Governing law and exclusive jurisdiction

This Deed is governed by the law in force in Victoria. The Parties submit to the exclusive jurisdiction of the courts of Victoria or any competent Federal court exercising jurisdiction in Victoria and waive any right to claim that those courts are an inconvenient forum.

Schedule 1

Solara Security

1. First ranking fixed and floating charge dated 30 September 2005 from OIM#2 over all rights, property and undertaking of OIM#2.
2. Real property mortgage dated 27 October 2005 from OIM#2 over the Solara Property.
3. Deed of Guarantee and Indemnity from OIM#2 (as trustee for TOT#3) providing a continuing guarantee in respect of all money which OIM#2 (as trustee for TOT#2) owes to ANZ for any reason under or in relation to the relevant transaction documents.

Schedule 2

Draft Orders

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

LIST D
SCI 2011 6606

B E T W E E N

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS TRUSTEE FOR
TIMBERCORP ORCHARD TRUST #2 AND ORS ACCORDING TO THE SCHEDULE ATTACHED

Defendants

DRAFT MINUTE OF ORDER

JUDGE:

DATE MADE:

ORIGINATING PROCESS:

HOW OBTAINED:

ATTENDANCE:

OTHER MATTERS:

By a deed of compromise, a copy of which is annexed to this Order (***Deed of Compromise***), the parties have agreed to compromise the proceeding (the ***Compromise***) conditional upon, among other things, the Court making orders satisfying the condition precedent set out in clause 3 of the Deed of Compromise (including ordering that the Compromise shall be binding on the absent persons represented by the Fourth Defendants pursuant to rule 16.01(4) of Chapter 1 of the *Supreme Court (General Civil Procedure) Rules 2005* (the ***Rules***)).

THE COURT ORDERS THAT:

1. Pursuant to rule 16.01(4) of Chapter 1 of the Rules, the Court approves the Compromise and orders that it shall be binding on the absent persons who are represented by the Fourth Defendants.
2. Pursuant to Order 54.02 of the Rules, the Court approves the First Defendant agreeing to the Compromise.

THE COURT ORDERS FURTHER BY CONSENT THAT:

3. The proceeding is dismissed.
4. There be no order as to costs.

DATE: 2012

Allens
Solicitors for the plaintiff

Maddocks
Solicitors for the first defendant

Norton Rose
Solicitors for the second and third
defendants

Clarendon Lawyers
Solicitors for the fourth defendants

SCHEDULE

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

LIST D

SCI 2011 6606

B E T W E E N

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

**OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS TRUSTEE FOR
TIMBERCORP ORCHARD TRUST #2**

First Defendant

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD (RECEIVERS
AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP
ORCHARD TRUST #2**

Second Defendant

and

**PAUL WILLIAM KIRK IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD
(RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS TRUSTEE FOR
TIMBERCORP ORCHARD TRUST #2**

Third Defendant

and

**ROBERT BUGDEN AND ELIZABETH BUGDEN IN THEIR CAPACITY AS REPRESENTATIVES OF THE
GROWERS IN THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)**

Fourth Defendants

Deed of Compromise

Allens > < Linklaters

Executed and delivered as a Deed on 25 July 2012.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed Sealed and Delivered for Australia and New Zealand Banking Group Limited (ACN 005 357 522), by its attorney in the presence of:

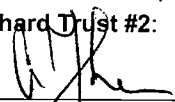
Witness Signature

Attorney Signature

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **OIM#2 (Receivers and Managers Appointed) (ACN 112 691 997)** as trustee for Timbercorp Orchard Trust #2:



Director Signature

Print Name



~~Director~~ Secretary Signature

ANDREW ASHBOLT

Print Name

Executed and delivered as a Deed on 25 July 2012.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

Signed Sealed and Delivered for Australia and New Zealand Banking Group Limited (ACN 005 357 522), by its attorney in the presence of:



Witness Signature

JONATHAN GUY JOSEPHI

Print Name



Attorney Signature

Sony Ephen

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **OIM#2 (Receivers and Managers Appointed) (ACN 112 691 997) as trustee for Timbercorp Orchard Trust #2:**

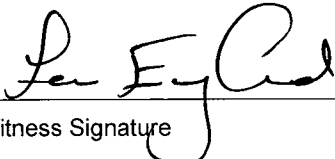
Director Signature

Print Name

Director/Secretary Signature

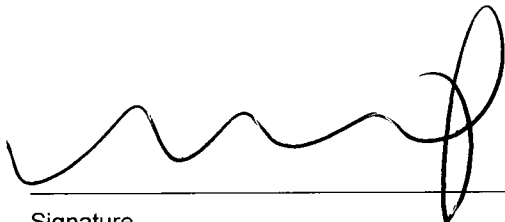
Print Name

Signed by Michael Fung in his capacity as joint and several receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) in its capacity as trustee for Timbercorp Orchard Trust #2, in the presence of:



Witness Signature
IAN ENGLAND

Print Name



Signature

42 WENTWORTH ST DOVER HEIGHTS

Address of witness

Signed by Paul William Kirk in his capacity as joint and several receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) in its capacity as trustee for Timbercorp Orchard Trust #2, in the presence of:

Witness Signature

Print Name

Address of witness

Signature

Deed of Compromise

Allens & Linklaters

Signed by Michael Fung in his capacity as joint and several receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) in its capacity as trustee for Timbercorp Orchard Trust #2, in the presence of:

Witness Signature

Signature

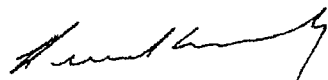
Print Name

Address of witness

Signed by Paul William Kirk in his capacity as joint and several receiver and manager of OIM#2 Pty Ltd (Receivers and Managers Appointed) (ACN 112 691 997) in its capacity as trustee for Timbercorp Orchard Trust #2, in the presence of:



Witness Signature



Signature



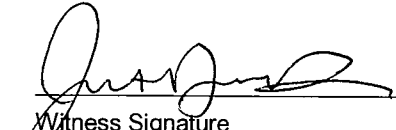
Print Name

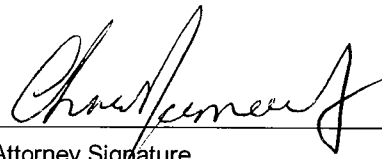
PWC

2 Southbank Blvd, Southbank, VIC

Address of witness

Signed Sealed and Delivered for Robert Bugden and Elizabeth Bugden in their capacity as representative of the Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299) by their attorney **Christopher Garnaut** under power of attorney dated 21 May 2012 in the presence of:


 Witness Signature
 JULIET DZEMAICALI
 Print Name


 Attorney Signature
 CHRISTOPHER GARNAUT
 Print Name

Executed by Timbercorp Securities Limited (in liquidation) (ACN 092 3111 469) by being signed sealed and delivered in its name by **Leanne Kylie Chessier** in her capacity as liquidator in the presence of:

 Witness Signature

 Print Name

 Signature

 Print Name

Deed of Compromise

Allens > < Linklaters

Signed Sealed and Delivered for Robert Bugden and Elizabeth Bugden in their capacity as representative of the Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299) by their attorney Christopher Garnaut under power of attorney dated 21 May 2012 in the presence of:


Witness Signature

Print Name

Attorney Signature

Print Name

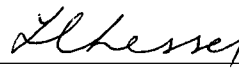
Executed by Timbercorp Securities Limited (in liquidation) (ACN 092 3111 469) by being signed sealed and delivered in its name by Leanne Kylie Chessier in her capacity as liquidator in the presence of:



Witness Signature



Print Name



Signature

LEANNE CHESSER

Print Name