

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

IN THE MATTER OF THE TIMBERCORP RIGHTS PROCEEDINGS

S APCI 2011 0103 (Almond Land Rights Appeal Proceeding)

S CI 2011 6777 (Fenceport Rights Proceeding)

S CI 2011 6604 (Liparoo & Yungera Rights Proceeding)

S CI 2011 6606 (Solara Rights Proceeding)

S CI 2010 1354 (BB Olives Rights Proceeding)

EXHIBIT NOTE

Date of document:  
Filed on behalf of:  
Prepared by:  
Clarendon Lawyers  
Level 17, Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

12 October 2012  
The Representative Growers

Tel: 03 8681 4400  
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Solicitors Code: 101294  
MJF 1100412

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "exhibit CJA-Z" now produced and shown to CELIA JANE ARMSTRONG at the time of swearing her affidavit on 12 October 2012.



Before me:.....

**SARAH DORN**  
of Clarendon Lawyers Pty Ltd  
Level 17, Rialto North Tower  
525 Collins St, Melbourne Victoria 3000  
an Australian Legal Practitioner within the  
meaning of the *Legal Profession Act 2004*

**CJA-Z**

**Bundle of documents relating to crop sale  
agreement**

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## CROP SALE AGREEMENT

# COVERING FUNDING

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+ PWC THREAT

+ "IMMINENT SALE"

THWARTING CHANGING "RE"

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Dear Matthew,

I refer to your email to Jane Sheridan and myself on 19<sup>th</sup> November 2010 regarding the sale of the Kangara Property to Costa and water rights to another party. The latter is a concern as Michael Fung had previously advised me that the land and water were not being spilt and were being sold as one package. Robert Costa confirmed that they were buying the property.

It is now 25<sup>th</sup> November and we have yet to hear from you on the execution of the contract(s) for both land and water.

Our discussion and agreement with Jane and Antony was based upon :-

- (1) the sale being imminent and preferably being concluded by 22<sup>nd</sup> November 2010;
- (2) the sale being to Costa and not two different parties; and
- (3) being able to review the "Sale of Citrus Agreement" (which has now been provided) ; and  
(A MONTH PLUS LATER)
- (4) FABAL being able to represent the residual grower's rights and interests should the underlying land and water to their projects being sold on an unencumbered basis.

Please be aware that the agreement with Jane and Antony is not open ended and there is no agreement with PWC.

We request immediately the identification of the two parties to the transaction and the terms, timing, conditions and sale price. Further, we state that if the contracts are not to be executed prior to 30<sup>th</sup> November 2010, we will have to re-address the position we have taken.

I look forward to hearing from you over the next 24 hours.

Kind regards

Chris Day

**Kerree Bezencon**

---

**From:** Chris Day [chris.day@fabal.com.au]  
**Sent:** Monday, 8 November 2010 12:52 PM  
**To:** Kerree Bezencon  
**Cc:** Rex Booker  
**Subject:** RE:

Dear Kerree

I have had two very interesting telephone calls from KM and AAH this morning.

KM know nothing of a pending sale but Antony says that he may not be told.

AAH wanted to know if the meeting was proceeding tomorrow and whether KM would be attending.

CD

**Chris Day**

Chief Executive Officer

Email: [chris.day@fabal.com.au](mailto:chris.day@fabal.com.au)

Direct line: 08 8208 4020

Mobile: 0418 552 200

Food And Beverage Australia Limited

PO Box 719

5-7 King William Road

UNLEY SA 5061

P: (08) 8208 4000 | F: (08) 8208 4099

Email: [admin@fabal.com.au](mailto:admin@fabal.com.au)

Website: [www.fabal.com.au](http://www.fabal.com.au)

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please consider the environment before printing this email.

**From:** Irene Kamm

**Sent:** Monday, 8 November 2010 10:43 AM

**To:** 'Kerree Bezencon'

**Cc:** Chris Day

**Subject:** RE:

Hi Kerree,

There is no legal requirement to let KM know about the adjournment- however, Peter Kerin has advised that it would be courteous to do so.

Rgds,

Irene.

**Irene Kamm**

Corporate Compliance Manager

Client Services Manager

Email: [irene.kamm@fabal.com.au](mailto:irene.kamm@fabal.com.au)

Food And Beverage Australia Limited

PO Box 719

5-7 King William Road

**Extraordinary Resolution 1 - Removal of Current Responsible Entity**

*Subject to Extraordinary Resolution 2 being passed and ASIC varying the Australian Financial Services Licence (No. 246650) of Food And Beverage Australia Limited (ACN 007 996 081) to permit it to be the Responsible Entity of the Project, the current responsible entity of the Project, Timbercorp Securities Limited (ACN 092 311 469) (in liquidation) be removed as the Responsible Entity of the Project.*

Michael Pointer moved to pass Extraordinary Resolution 1, Kerree Bezencon seconded the motion.

The proxy votes were read out:

Proxy votes in favour of the resolution were: 1,223 votes out of 1,550 (78%) "For"; nil "Against".

The motion was carried.

The following extraordinary resolution was put to the meeting and voted upon:

**Extraordinary Resolution 2 - Appointment of New Responsible Entity**

*Subject to Extraordinary Resolution 1 being passed and ASIC varying its current Australian Financial Services Licence (No. 246650) to permit it to operate the Project, Food And Beverage Australia Limited (ACN 007 996 081) be appointed as the Responsible Entity of the Project.*

Chris Day added that such appointment is to take effect on 22<sup>nd</sup> November 2010, subject to either the satisfactory execution of an unconditional contract between CostaExchange and Align or the failure to conclude such a contract by that date.

Michael Pointer moved to pass Extraordinary Resolution 2, Kerree Bezencon seconded the motion.

The proxy votes were read out:

Proxy votes in favour of the resolution were: 1,223 votes out of 1,550 (78%) "For"; nil "Against".

The motion was carried.

Antony Munro stated that the Agreement is signed and that precedent says that we must have the Court decide. He advised that this will not happen in two weeks.

NOT AT THAT POINT SEE KM/DAY EMAIL

Chris Day requested that the minutes record that Food And Beverage Australia Limited's AFS Licence No. 246650 was, with effect from the 16<sup>th</sup> of September 2010 varied to include an "in kind" horticulture authorisation in addition to its existing "in kind" viticulture authorisation. ASIC CAPACIT

**4. CLOSURE**

There being no further business, the meeting closed at 3.55 pm.

Adopted as a true and correct record of the meeting:

Peter Holt

Chairman

Date:

**Kerree Bezencon**

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**From:** Kerree Bezencon [kerree@siger.com.au]  
**Sent:** Tuesday, 7 December 2010 8:19 PM  
**To:** 'peter.kerin@fabal.com.au'; 'Rex Booker'; 'Michael Pointer'  
**Cc:** 'Chris Day'  
**Subject:** FW: Timbercorp - citrus crop sale agreements

Hi Peter ,

You will see at the time of discussion re the crop-sale agreements being presented to the COI that, Antony clearly states that Align agree to a reduced rent in lieu of the normal rent as a compromise to keeping the asset preserved – they would not to be entitled to back rent, see below. In particular he states ( and this has been reiterated by Jane Sheridan at the COI meeting, another meeting of 2 hrs re the clauses in the crop-sale agreement where I made notes and also in a meeting with Rex & myself), the following:

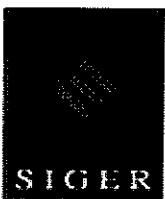
Growers are not being asked to pay additional cash for management services or rent - instead, the proceeds which Growers (who had paid their management and licence fees) would otherwise receive from the crop are reduced accordingly

Surely this means no liabilities exist that are not covered by the crop-sale agreement, where Costa's costs are covered firstly then, Align's "reduced rent"!!! We may have an argument about whether they can take any shortfall out of the final sale proceeds (where the harvest proceeds are not enough), but they cannot impose back rent or other costs up to the point where the crop sale agreement falls over

Hope this helps in your assessment

Kerree

Kerree A Bezencon, Director  
B.Ec (Accounting & Finance),  
ASIA (Gr Dip Applied Finance & Investment),  
CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),  
CFP (Certified Financial Planner),  
SSA (Specialist SMSF Advisor)



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Mobile 0419 10 15 20  
Email – [mail@siger.com.au](mailto:mail@siger.com.au)



**Date** 14 September 2010

ABN 47 702 595 758

**From** Clint Hinchin

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530 Collins Street  
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Australia  
T +61 3 9614 1011  
F +61 3 9614 4661

**To** **Ms Kerree Bezencon**, Siger Super Services Pty Ltd,  
Healesville, Victoria

**Email** kerree@siger.com.au

Correspondence  
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Melbourne VIC 3001  
Australia  
DX 30999 Melbourne

**Copy To** Mr Christopher Dundon, COO and Company Secretary,  
Food and Beverage Australia Limited, Unley South  
Australia

www.aar.com.au

[chris.dundon@fabal.com.au](mailto:chris.dundon@fabal.com.au); [admin@fabal.com.au](mailto:admin@fabal.com.au)

**Copy To** **Michelle Reid**, Senior Manager, Investment Manager &  
Super Funds, Australian Securities and Investments  
Commission

**Fax** (03) 9280 3444

**Copy To** **Jane Sheridan**, Partner, Arnold Bloch Leibler

**Email** JSheridan@abl.com.au

Confidential Email

Dear Kerree and Christopher

**Notice of meeting of Members of 2004 Timbercorp Citrus  
Project (ARSN 108 887 538) and 2005 Timbercorp Citrus  
Project (ARSN 114 091 299)**

Please see attached.

Attach

**Our Ref** CTSM:306250099

cism A0115532914v5 306250099 14.9.2010

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Singapore  
Sydney



14 September 2010

Ms Kerree Bezencon  
Siger Super Services Pty Ltd  
PO Box 1147  
Healesville VIC 3777

Mr Christopher Dundon  
Food and Beverage Australia  
Limited  
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Dear Kerree and Christopher

**Notice of meeting of Members of 2004 Timbercorp  
Citrus Project (ARSN 108 887 538) and 2005  
Timbercorp Citrus Project (ARSN 114 091 299)**

We act as legal advisers to Paul William Kirk and Michael Fung in their capacities as receivers and managers (**Receivers and Managers**) appointed to Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (**Receivers and Managers Appointed**) (**Align**).

It has come to our attention that certain members of the 2004 Timbercorp Citrus Project (ARSN 108 887 538) (**2004 Project**) and the 2005 Timbercorp Citrus Project (ARSN 114 091 299) (**2005 Project**) (together, **Projects**), have convened a meeting on Tuesday 14 September 2010 at 2.30pm to consider removing Timbercorp Securities Limited (ACN 092 311 469) (In Liquidation) in its capacity as responsible entity of the Projects (**TSL RE**) and appointing Food and Beverage Australia Limited (ACN 007 996 081) (**FABAL**) as responsible entity of the Projects (**RE**).

As you are aware, the 2005 Project was established on the properties called Kangara and Solora and the 2004 Project established only on Kangara. Solora was sold by the Receivers and Managers and the growers rights in respect of the assets the subject of the Sale Contract were extinguished effective from 9 April 2010. The Receivers and Managers are conducting a sale process for the Kangara property, which is currently well advanced. These steps have been undertaken consistently with "the defacto winding up" process that has been used for other Timbercorp projects under the supervision of the Supreme Court of Victoria.

We assume that you are aware of the RE obligations contained in all the Project documents that would be inherited by a new RE, including the following agreements:

- Sale of Citrus Agreement – 2011 Financial Year 2004 Timbercorp Citrus Project – Kangara;
- Sale of Citrus Agreement – 2011 Financial Year 2005 Timbercorp Citrus Project – Kangara;

KM + PWC  
WOULDN'T PROVIDE  
THIS TO FABAL  
(IRRESPECTIVE COI  
MEETING + DISCUSSIONS  
STATED NO RE ISSUE)

Our Ref CTSM:306250099

ctsm A0115532914y5 306250099 14.9.2010

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- Sale of Citrus Agreement – 2010 Financial Year 2004 Timbercorp Citrus Project – Kangara;
- Sale of Citrus Agreement – 2010 Financial Year 2005 Timbercorp Citrus Project – Kangara;

dated 16 July 2010 between TSL RE, Timbercorp Securities Limited (In Liquidation) ACN 092 311 469, Timbercorp Limited (In Liquidation) (ACN 055 185 067), Mark Anthony Korda and Leanne Kylie Chesser in their capacities as liquidators of each of the above entities, Align, the Receivers and Managers, CostaExchange Limited (ACN 002 687 961) (**Costa**) and AgriExchange Murtho Pty Ltd (ACN 093 583 049) (together, the **Sale of Citrus Agreements**).

The Sale of Citrus Agreements include provisions that are triggered in the event of a change of RE and these provisions may, in certain circumstances, require the replacement RE to pay the outstanding management costs and use of occupancy fees of Costa and the Receivers and Managers respectively. Despite their materiality, we note that there is no reference to the Sale of Citrus Agreements (and other Project documents) in the notice of meeting and would expect that the impact of a change of RE would be fully disclosed to growers at any meeting that is held to consider a change of RE.

OPPOSITE TO  
SHERIDAN +  
MONRO EMAIL  
+ DISCUSSIONS

Given our clients' interest as Receivers and Managers of Align, the land holding entity, we expect that you will provide us with a detailed account of today's meetings including voting procedures in respect of the resolutions and voting results so that the Receivers and Managers can consider their next steps.

IMPLIED  
THREAT

Yours sincerely

Clint Hinchin

Partner

Clint.Hinchin@aar.com.au

T +61 3 9613 8924

6.4

FORGOTTEN / CROP SALE TERMS  
(LIABY) /  
NOT APPLICABLE

**From:** Antony Munro [mailto:amunro@kordamentha.com]

**Sent:** Wednesday, 28 July 2010 7:09 PM

**To:** Kerree Bezencon

**Cc:** Bryan Webster; cpvchelsea@bigpond.com.au; gk@axisfinancial.net.au; neil.cox@financialfoundations.com.au; NeilW@afpn.net.au; richardauricht@rrcut.com.au

**Subject:** Timbercorp - citrus crop sale agreements

Dear Kerree

I can confirm that I've organised for Jane Sheridan of ABL to join us on a call at 4pm tomorrow (Thursday) to discuss the crop sale agreements that are the subject of Friday's COI meeting. I'll call your Queensland office number at 4pm.

In the meantime, I refer to your email of 27 July 2010 and to our previous discussions in relation to the COI meeting and the sale of citrus agreements.

Your email does not correctly describe the process which has led to the sale of citrus agreements being put to the COI for approval. Given this, it is important that you and all members of the COI understand that process.

The Kangara orchard is situated on land which is owned by the Timbercorp Orchard Trust ("TOT"). TOT is not part of the Timbercorp group over which the Liquidators have been appointed. It forms part of the Align group and the responsible entity is Align Funds Management Limited. Partners of PWC have been appointed as receivers and managers to Align in its capacity as RE of TOT ("Receivers"). As you are aware from your own participation as a potential purchaser in the sale process, the Receivers have been attempting to sell the Kangara property, in the same way that the Receivers sold the TPIF properties on which the almond schemes were conducted.

The Kangara orchard is leased from TOT by Timbercorp Limited and rent is payable under that lease, regardless of whether licence fees are invoiced to or paid by Growers. The rent is not based on the licence fees received by the RE under the Grower licence agreements. Timbercorp Limited, in turn, subleases the land to TSL for a rent equal to the licence fees received from Growers.

CostaExchange Limited ("Costa") managed the Kangara orchard as part of the arrangements relating to the 2004 and 2005 Timbercorp Citrus Projects, pursuant to the terms of a Citrus Orchard Management Agreement for each Project. That agreement sets out the services to be provided and the consideration payable for those services. [REDACTED]

While the Receiver's sale process has been underway, Costa, who is also participating in that process, agreed to continue providing management services, on the basis that a crop sale agreement would be executed which would allow Costa to recover its fees and expenditure from the crop. It was not clear initially how long this arrangement would need to be in place, as this was dependant on the sale process. Once it became clear it would extend beyond 3 months, the liquidators notified the Receivers and Costa that any crop sale agreement would need to be approved by the COI or the Court under section 477(2B) of the Corporations Act. The parties have been negotiating the sale of citrus agreements for some time. The Liquidators and their solicitors have been actively involved in this negotiation and have, amongst other things, reviewed various drafts, sought and obtained amendments and reviewed financial information relating to the crops. ? BUT NO CASHFLOWS EVER DONE RE VIABY - WHY NOT ?

As the Receiver's sale process is still continuing, it became apparent that a similar arrangement would be required for the 2010/2011 financial year, and a further sale of citrus agreement has also been negotiated for that period.

As the sale of citrus agreements cannot be materially amended once they have been approved by the COI, it was not appropriate to obtain COI approval until the agreements were finalised. Given this, the agreements were executed but contain a condition precedent, pursuant to which they do not become

effective until the Liquidators obtain approval under section 477(2B). If that approval is not obtained, the agreements will not take effect. However, if an agreement does not come into effect, Costa will nonetheless be entitled, under existing legal principles, to receive payment for the services which have been provided by it. The Growers would not be entitled to obtain the benefit of the services provided by Costa, without assuming the burden/costs for those services. The payment for the services will, as a matter of law, be deducted from the proceeds of the crop.

In the same way, TOT has continued, in effect, to make the land available to Growers and will be entitled to receive payment. Growers cannot expect to be able to use the land for free and retain all of the proceeds of the crop.

If an agreement were not entered into, Costa or TOT would be entitled to go to Court to seek reimbursement from the proceeds. This would involve the Liquidators incurring additional litigation costs which would also be deducted from the proceeds. This is not in the Growers' interests. The sale of citrus agreements provide certainty to Growers, which is in the Growers' best interests.

Costa required that a time frame be imposed on obtaining the necessary approval, as Costa is being required to expend further amounts for which it will not be compensated for some time. Costa wanted the certainty, which the crop sale agreement provides, that Costa would not need to go to Court to recover its costs. The time frame imposed was two weeks. Since the COI had previously agreed a one week notice period, the Liquidators considered that this time frame was not unreasonable. The agreements are in a form substantially similar to that previously approved by the COI in relation to other crops including Olives and Almonds. The COI members should therefore be familiar with the format. The Liquidators therefore had no reason to believe that the COI would require any longer notice than had previously been agreed to review the documents. The COI's role is not to negotiate the documents, but, if thought fit, to approve the documents as presented to it.

Obviously, the Liquidators are not aware of the individual travel plans of COI members or whether COI members have access to printers. The Liquidators received your request on Sunday for additional documents and responded to it on Sunday. The Liquidators have also offered to meet with you to discuss your concerns and to explain how the agreements operate. As you are aware, the Citrus Orchard Management Agreements contain confidentiality clauses which prevent their disclosure, without the consent of Costa. As the Liquidator's ability to control the use or disclosure of information by COI members is limited, other parties to disclosure arrangements have been reluctant to authorise the release to COI members.

The amounts which Costa will receive and the services to be provided by Costa under the sale of citrus agreements are in accordance with the fees and services [REDACTED].

In addition, Costa is entitled to receive interest to compensate Costa for its costs of funds in providing services without receiving payments on a monthly basis. The Liquidators and Receivers are entitled to receive information from Costa in relation to the costs and expenses incurred by it and to audit Costa's records. The sale of citrus agreements also contain a dispute resolution mechanism to enable issues in relation to costs to be determined.

TOT is entitled to receive a use and occupancy fee in lieu of the rent it would otherwise receive under its lease. This fee is calculated by reference to the licence fee which would, in the normal course, be payable by Growers. This is less than the rent which TOT would be entitled to receive under the terms of its lease. In addition, TOT has agreed to reimburse Costa in certain circumstances if the proceeds of the crop are insufficient to enable Costa to recover its costs. This shortfall may be met from the proceeds TOT receives from the eventual sale of the land. However, TOT's agreement to reimburse Costa for any shortfall does not prevent the Growers from making a claim for some or all of the proceeds of sale.

As you will appreciate, orchard managers do not normally incur and bear costs without being entitled to regular reimbursement of those costs. That is not the arrangement which is contained in the sale of citrus agreements. Costa incurs and bears costs and receives a portion of an indeterminate crop as

payment. Costa receives payment only if and when that portion of the crop can be ascertained and sold. There is a progressive sale of the crop to Costa over the course of the year. Costa bears the risk that an event occurs which affects the size of the crop or the proceeds which can be obtained. Continuity of management of the Kangara orchards is preserved.

TOT is not seeking to terminate its lease, despite not receiving the full rental to which it is entitled. TOT is prepared to allow Costa to access the Kangara land to provide the ongoing management services. In return for doing so, TOT is receiving a use and occupancy fee calculated by reference to the licence fees otherwise payable by Growers rather than the full rent to which it is entitled. TOT is not receiving the use and occupancy fee in cash. It is also only receiving a portion of the crop, on a progressive basis. TOT is therefore also bearing the risk of crop failure. Continuity of use of the Kangara land is preserved.

In return, the Liquidators have agreed not to terminate any of the existing agreements. Instead, the existing scheme arrangements are preserved to the extent possible pending a sale of the land or a change of RE of the schemes.

Growers are not being asked to pay additional cash for management services or rent - instead, the proceeds which Growers (who had paid their management and licence fees) would otherwise receive from the crop are reduced accordingly. Given the uncertainty which continues to surround the citrus projects, the Liquidators believe that this is in the best interests of Growers. In this regard, the Liquidators note that, on the basis of the latest [REDACTED]

NOT TRUE 83% PNT (SEE FABAL LETTER TO GROWERS)

TOT and Costa have agreed to these arrangements, which the Liquidators believe are reasonable in the circumstances and in the best interests of Growers. Having reached this conclusion, the Liquidators have presented the sale of citrus agreements to the COI for approval.

Kind Regards

Antony

Sent from my iPhone

DISCUSSED TO JANE + ANTONY PRIOR TO  
COI MEETING (2ND) - ASSURED NO "POISON PILLS"  
IE BACK RENT / OPERATING EXPENSES SHOULD  
AN RE BE REPLACED. THEY WERE AWARE OF  
IMPENDING MEETING TO CHANGE RE, SO  
WE DIDN'T WANT ANY POTENTIAL LIABILITY

**Kerree Bezencon**

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**From:** Kerree Bezencon [kerree@siger.com.au]  
**Sent:** Tuesday, 17 August 2010 8:38 PM  
**To:** 'pamelahanrahan@asic.com.au'; 'corinnemckenzie@asic.com.au';  
'vaughan.groves@asic.com.au'; 'mmurray@ipaa.com.au'; 'dnorth@ipaa.com.au'  
**Cc:** 'greg.kachel@aph.gov.au'  
**Subject:** FW: Citrus crop sale agreement

Hi,

Following on from previous emails, I'm afraid to confirm that the lack of information continues. We were offered some figures just prior to the reconvened meeting, which we were unable to open in time – however, they were most unreasonable and scant, lacking any real detail. The rubber stamping of decisions without adequate information just pushed ahead. We were informed that without this agreement being rushed and approved that the crops would die – yet this question of urgency is used inconsistently. The “wastage” issue was starkly contradicted by a time lapse of some 8 months since December 09 in which no agreement existed and crops did not die.

I have a real difficulty in accepting to make a decision on such loose and questionable figures in such a rush. The fact that Korda Mentha themselves have not questioned such a fundamental and seemingly large cost such as water (see below) just fills me with dismay – what else has not been questioned?.

Antony Munro has rung today to say they are trying to get some of the reports that they are entitled to receive from the farm manager – he says these were not available without the crop sale agreement signed. However up to Dec 09 there was a crop sale agreement in place which allowed for reports to be provided. Why weren't they requested? Common sense suggests to me that these are well overdue and should have been demanded back in December. What have they done since to check costs?

I am appalled that it is I, as an unsophisticated committee member who are requesting such – when this firm, Korda Mentha who has far more extensive resources, is not doing the very least to enforce good farm costing principles and the overseeing of this – especially given the extensive documentation that allows them to request such information. It should not fall simply to me or others to request the information that the administrators are expected to cover. Equally they should utilize farm experts to help them as clearly they do not know what to ask. Again, I, a small accountant, without the vast experience of liquidators, would almost appear to know more and at least know who to ask.

More serious is the lack of information and time to digest any documents that is provided to the Committee of Inspection.

I write to ask for assistance, expecting none, given the sad experience and despair of this whole saga. It seems that the very organizations that espouse high standards (IPAA, ASIC, and in this you are not alone - CPA, FPA, SPAA, SIA etc) and who are there to protect the more powerless people in the circumstances, end up either not willing or not having any influence at all. It would appear that only the media, not our well-meaning organizations can perhaps influence events to obtain some justice/fairness.

But it would be wonderful if I am wrong.

Regards

Kerree Bezencon

Kerree A Bezencon, Director  
B.Ec (Accounting & Finance),  
ASIA (Gr Dip Applied Finance & Investment),  
CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),  
CFP (Certified Financial Planner),  
SSA (Specialist SMSF Advisor)



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---

**From:** Kerree Bezencon [<mailto:kerree@siger.com.au>]  
**Sent:** Tuesday, 17 August 2010 4:17 PM  
**To:** 'Antony Munro'; 'Bryan Webster'; 'mkorda@kordamentha.com.au'  
**Cc:** 'gk@axisfinancial.net.au'; 'neil.cox@financialfoundations.com.au'; 'cpvchelsea@bigpond.com.au'  
**Subject:** FW: Citrus crop sale agreement

Dear Antony

I object most strenuously against proceeding with the crop sale agreement **WITHOUT PROPER AND FULL INFORMATION.**

Following our last discussion, you were to provide details of some of the expenses and verification that these are reasonable. To date nothing is forthcoming. I reject your point that because there will be a loss, then it doesn't matter or warrant any investigation of the expenses incurred. This is the worst sort of accounting I can imagine. You are sure that there will be no profit, which might have gone to growers. But you actually **DO NOT KNOW** this because **YOU HAVE NO IDEA**, about the validity of those numbers. The banks have mindlessly just rubber stamped your recommendation, without any evidence demanded of you that your assumptions are correct. You yourselves have said that you have simply taken figures provided to you from the farm operator without checking in any way that these are correct. The very first time some information was demanded, was at my insistence – the COI should not just agree without ANY information or figures. You also, should not be recommending this without such too. In fact you should have got reports, quarterly, monthly and fortnightly on various matters up to Dec 09 – but you haven't insisted it would seem. You cite confidentiality as an excuse - this is just covering the lack of investigation by yourselves. The vague figures that at the end were provided is **still missing** fundamental details. There are some major discrepancies and obvious issues

Let me give you an example – your figures allow for temporary water (this equates to some 8500 megalitres based on current prices (around \$70 mglitre)) – yet there is permanent water (some 9,000 megalitres) available to more than adequately cover this. Everyone knows that there is full 100% allocation of water at this point (best in 4 years plus), so there is no need for temporary water.. Furthermore, that water is calculated on a fully mature orchard requirement which this is not, and has still some time to go before it reaches full maturity – so why on earth have we got expected expenses for this year including temporary water to the tune of almost \$600,000????? What other mistakes have been made??

This simply makes me conclude that you have absolutely no idea of the real expenses and have done no homework whatsoever. It certainly makes me question all the other expenses you have so mindlessly accepted without question.

I believe that this is appalling and strongly wish to object. Please make sure that this is noted in the minutes.

You supposedly have a duty to growers that I believe has been utterly ignored, not just this time but many times in your presentation of figures on the viability of these projects. I can verify that this was just as mindlessly presented to the COI for all the other agreements – almond, olives etc. Again a total lack of documentation

around any real figures occurred, with some documentation eventually provided some 2 hours prior to the meeting - documents that were 50- 100 pages long!

It does seem amazing that once you are removed from being the RE, projects are revived and growers interests are protected. The above might give an indication of why, with so little information, you cannot see any profitability and it actually becomes a self – fulfilling prophecy.

I do take the position on the committee of inspection seriously, and believe that we should reasonably be provided with the necessary information to make decisions. This does not mean that I disagree with implementing a crop sale agreement at all – it means that proper decisions require adequate information and investigation and negotiation. You did negotiate with Select Harvest last October, so there is no reason not to do so in this case. George had repeatedly suggested the same on olives, irrespective that conveniently it wasn't later required due to non payment – but that ignores the point that expenses should be assessed, given you do not know who will finally wear these costs. And it is this that I strongly object to – you do not seem to have done the required homework to ascertain these costs, and you continue to both not give this information, nor seek justification.

I should add, that in this case, I do not see why the banks should have any say in the decision at all, as they are not at all involved with the citrus projects. The fact that TSL had guaranteed TIM is irrelevant – **there is no bank creditor involved at all**, (only debentureholders and growers). Why do they have a vote and have you checked they are entitled to this?

Regards

Kerree

Kerree A Bezencon, Director  
B.Ec (Accounting & Finance),  
ASIA (Gr Dip Applied Finance & Investment),  
CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),  
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---

**From:** Kerree Bezencon [mailto:[kerree@siger.com.au](mailto:kerree@siger.com.au)]  
**Sent:** Tuesday, 3 August 2010 6:19 PM  
**To:** 'Antony Munro'  
**Subject:** RE: Citrus crop sale agreement

Dear Antony,

Thank-you for your email, but it does not answer some of the most necessary questions- see below. I believe that this continues to be something of a snowballing exercise with half information, half truths. This is not the stuff on which you make good decisions.

I object strongly to be forced into agreement without proper information and no time to digest it. I have spoken with ASIC and IPAA for their input in regard to the matter, as making such decisions without the facts really seems unreasonable, and yet you are still not providing what should be a reasonable request. Why are you making it so difficult.?

The following issues are still unanswered prior to any reconvened meeting.

#### FAILURE TO PROVIDE REPORTS ASSOCIATED WITH THE CMA ( & CSA) TO ASCERTAIN THE COSTS TO BE EXPECTED AND INCOME

Antony, you have refused, saying you do not have these - but in fact you do have a CMA to December 09, where under this contract such reports should have been done and budgets prepared etc for the oncoming year – or did you fail to ask for it?. This would certainly be valuable, and then one can extrapolate from this, once received.

As a responsible RE, I would have thought this would have automatically be done prior to signing any agreement.

#### AVOIDING PROVIDING INFORMATION - ASSUMED RECEIVED WHEN ACTING IN OTHER CAPACITIES, UNDER CONFIDENTIALITY

Please tell me which of the information we should possess, via the sale process activities Antony - as I don't believe we have any of this, and it seems you are just avoiding addressing the issue by assigning the problem elsewhere. Please do not continue to assume that I am asking for information you think I already have – these are questions for the surety of the COI, not for any other entity, where CDA's would prohibit this being used in any case – or are you suggesting that I contravene this and share this with the other COI members?. Irrespective we do not have this at present.

#### AVOIDING ANSWERS

1. The costs of any services provided by other Costa entities or independent subcontractors may have been incorporated into the forecast you provided but the reasonable question was, have you as RE, checked these costs or not please?
2. The Kangara packing shed is not owned by the Timbercorp group, we agree, but again, under the CMA in existence to at least December, you should have received information on the packing and processing – see the CMA contract 13.2. Furthermore, before signing up to any new agreement I would think it prudent and a responsibility of the RE to ascertain if the equipment is still appropriate/functional to be able to obtain the best pricing. I shall check with others to see if this is unwarranted, as you obviously think so or would have done this otherwise.
3. I assume that you would have done some cashflows reflecting all the above with a month by month situation on costs and income, as you indicated that these have certainly been considered by Nick Courtney. May I still repeat the request to have these as a check please or are you saying these haven't been done?

You answer to say that Costa's full-year forecast provided sufficient information (i.e. confirmation that there would be an operating shortfall in FY11 (that under the CSA will be borne by Costa/Align)) for the liquidators to form the view that it was in the best interests of growers that TSL enter into the proposed CSA.

1. This is a one page summary and very simplistic for such an extensive project.
2. Antony, if you are saying that this was all Nick has done, I am astounded. Further, there is some inconsistency with Janes' comments that things were checked – which is it?
3. I have never heard of any accountants (acting for the growers in this case) simply accepting and taking for granted that the figures provided by the opposite party are simply true and correct without verifying such, especially again given the enormity of these projects and the RE role.
4. Here you assume that there will be a loss and therefore it's not a problem for the grower. But it might just eventuate that there might be a profit to be had, after proper analysis of the figures - shouldn't they be verified to ascertain this.



5. This refusal to verify the situation would almost seem negligent in your responsibilities as RE. What are we paying Korda Mentha for in that case?

I am really truly concerned. And since you haven't checked these figures, you now ask that the COI to rubber stamp them, without verifying such?

#### INCONSISTENT RENT FIGURES

Any income, as I understand gets applied to the Costa Costs, then the Align liscence costs (if Costa short, some of this gets given back to Costa, but Align can claw back rent shortfall out of Sale proceeds?

1. You say that under the CSA, Align are entitled (after Costa have recovered their costs and fees) to the license fee that pre-liquidation Timbercorp would have collected from growers. In the forecast you sent this license fee was included as \$1,490 per lot on the 2004 scheme and \$1,433 per lot on the 2005 scheme. On this basis, Align is entitled to recover up to \$3.9m from the crop proceeds. Firstly, this does not agree with the previous email sent by Jorja, stating the liscence fee was \$1418.18 for 04 and \$1636.36 for 05. Which is true?
2. You say that if the schemes were still operating the rent payable by Timbercorp Ltd to Align for the land used in the Kangara citrus orchards would be \$3.8m for the 2010 calendar year. As such, the rent payable (if Timbercorp was solvent) of \$3.8m and the licence fee collectable from growers (if the schemes were continuing) of \$3.9m are very similar amounts. If what you say is correct, you are suggesting that growers agree to a deal to pay Align more than they were expecting – ie 3.9 not 3.8!! Furthermore, Jane was suggesting the opposite, that this was a far greater fee than the liscence fee – a “real rent in her terms, but this doesn't match with what you say – what is true?.

#### COST VERSUS INCOME FIGURES

1. As the forecast sent shows, the crop proceeds do not cover Costa's costs and the amount payable to Align. On this forecast, Align would only recover \$0.4m out of the \$3.9m they are entitled to. Your assumption that Align is subject to a loss situation is however not necessarily true at all – this simply is offset by any harvest proceeds and then, from the final sale proceeds to growers/debentureholders – and once again growers are last in line and pay.
2. You say that there will be no residual profit for growers – how can you possibly know if you have not verified the figures?.

#### MEETING SHOULD BE RECONVENED ONCE INFO PROVIDED

You were planning to hold the COI meeting at 11am tomorrow as scheduled. I believe that there are still answers outstanding as listed above and therefore request that this is not reconvened until you actually do provide the answers

This is not trying to be problematic, but given the issues raised in the past and some questions around the numbers (eg figures) it would be prudent to be sure and raise any queries now, so we are agreeing with appropriate knowledge to make a decision.

Regards  
Kerree

See below for my above answers in blue relating to Antony's red responses

---

**From:** Antony Munro [mailto:amunro@kordamentha.com]

**Sent:** Tuesday, 3 August 2010 3:06 PM

**To:** Kerree Bezencon

**Cc:** Bryan Webster

**Subject:** RE: Citrus crop sale agreement

Hi Kerree

Thank you for your email. I've put my comments in red below.

Please call if you would like to discuss the CSAs further.

Kind Regards

Antony Munro | Director  
KordaMentha | Level 24, 333 Collins Street, Melbourne VIC 3000  
t +61 3 8623 3404 | f +61 3 8623 3399 | m +61 406 533 361  
e [amunro@kordamentha.com](mailto:amunro@kordamentha.com) | w [www.kordamentha.com](http://www.kordamentha.com)

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Please consider the environment before printing this email

**From:** Kerree Bezencon [mailto:[kerree@siger.com.au](mailto:kerree@siger.com.au)]

**Sent:** Monday, 2 August 2010 7:28 PM

**To:** Bryan Webster; Antony Munro

**Subject:**

Hi Bryan, Antony,

On reading the document, it too refers to other documents not given, one of which I have already requested. In order to ascertain the likely outcomes/cashflows, further documents referred to in the CMA are requested - they include the following that would have been provided to you under the CMA, on a quarterly, monthly or 14 day basis.

- Horticultural plan and program,
- Operational plan for farm and human resources
- Annual financial and operational budget
- Spray diary – time, quantities, type and concentration,
- Irrigation plan
- Citrus reports that you, KM would have received as to size, variety, grade numbers for
  - o Domestic,
  - o Export, and
  - o Juicing

And also the comparison information that demonstrates that they had achieved the best market outcome

All of the above is information that under the CMA should have been supplied to you, so this should be easy to obtain and provide quickly. Might I also ask that you have checked the costs associated with any associated or sub-entity of Costa, and subcontractors? I assume there is no change or amendment to the Management Plan? Have you a report on inspections of the processing and packaging facilities to say that they are kept in good order – which expert and what are his credentials conducted this please? The delisting of Costa Exchange – has it affected the CMA or any other contract

Due to the insolvency of the Timbercorp group the CMA is not operational and the reports/information you refer to above have not been provided by Costa. Antony, you did have a CMA to December 09, where such reports should have been done and budgets prepared etc for the oncoming year – or did you fail to ask for it?. This would certainly be valuable thank-you if you do have this and then one can extrapolate from this. Presumably, some of this information is available to you (as a bidder for the assets) in the data room established by the Receivers and Managers – please tell me which of the above Antony - as I don't believe we have any of this, and you are just avoiding addressing the issue by assigning the problem elsewhere.

The costs of any services provided by other Costa entities or independent subcontractors are incorporated into the forecast I provided yesterday. The question was, have you as RE checked these costs or not please?

The Kangara packing shed is not owned by the Timbercorp group. It is under the control of the Receivers and Managers for Align. We do not have any reports on the condition of these facilities. Under the CMA in existence to at least December, you should have received this information – see the contract. Furthermore, before signing up to any new agreement I would think it prudent and a responsibility of the RE to ascertain if the equipment is still appropriate/functional to be able to obtain the best pricing. I shall check with others to see if this is unwarranted, as you obviously think so or would have done this otherwise. I assume you have access to the most up to date information on their condition through your involvement in the sale. Please do not continue to assume – these are questions for the surety of the COI, not for any other entity – but irrespective we do not have this at present.

The delisting of Costa Exchange had no implications for the operation of the Kangara orchard or grower's interests in the Citrus schemes.

I assume that you would have done some cashflows reflecting all the above with a month by month situation on costs and income, as you indicated that these have certainly been considered by Nick Courtney. May I have these as a check please?

Costa's full-year forecast provided sufficient information (i.e. confirmation that there would be an operating shortfall in FY11 (that under the CSA will be borne by Costa/Align)) for the liquidators to form the view that it was in the best interests of growers that TSL enter into the proposed CSA. Antony, I am a very simple accountant, but I have never heard of any accountants (acting for the growers in this case) simply accepting and taking for granted that the figures provided by the opposite party are simply true and correct without verifying such, especially given the enormity of these projects. Here you assume that there will be a loss and therefore it's not a problem for the grower. But it might just eventuate that there might be a profit to be had, after proper analysis of the figures- shouldn't they be verified to ascertain this. This refusal to verify the situation would almost seem negligent in your responsibilities as RE. What are we paying Korda Mentha for? I am really truly concerned. And since you haven't checked these figures, you now ask that the COI to rubber stamp them?

Further, there is some inconsistency with Janes' comments that things were checked – which is it?

Any income gets applied to the Costa Costs, then the Align liscence costs (if Costa short, some of this gets given back to Costa, but Align can claw back rent shortfall out of Sale proceeds ( current liscence fees are \$1418.18 per 04 lot and \$1636.36 per 05 lot – what is the "real rent" that can be caught under the claw-back? – can I get an answer to this please?). Can you confirm the number of Citruslots that you have noted?

There are 4 lots per hectare – 1,800 lots in the 2004 scheme and 820 lots on Kangara land in the 2005 scheme.

Under the CSA, Align are entitled (after Costa have recovered their costs and fees) to the license fee that pre-liquidation Timbercorp would have collected from growers. In the forecast I sent you yesterday this license fee was included as \$1,490 per lot on the 2004 scheme and \$1,433 per lot on the 2005 scheme. On this basis, Align is entitled to recover up to \$3.9m from the crop proceeds. Firstly, this does not agree with the previous email sent by Jorja ,stating the liscence fee was \$1418.18 for 04 and \$1636.36 for 05. Which is true?

I reiterate that if you had done an analysis of figures, you may find there is some profit to be had, and this could be used to better the growers position.

If the schemes were still operating the rent payable by Timbercorp Ltd to Align for the land used in the Kangara citrus orchards would be \$3.8m for the 2010 calendar year. As such, the rent payable (if Timbercorp was solvent) of \$3.8m and the licence fee collectable from growers (if the schemes were continuing) of \$3.9m are very similar amounts.

If what you say is correct, you would have us agree to a deal to pay Align more than they were expecting – ie 3.9 not 3.8!!

The schemes are still operating, and liscences will be paid under this agreement .

Then any residual profit goes to growers, which is why these above questions are important and monthly cashflows a concern.

As the forecast I sent you yesterday shows, the crop proceeds do not cover Costa's costs and the amount payable to Align. On this forecast, Align would only recover \$0.4m out of the \$3.9m they are entitled to. Your assumption that Align is subject to a loss situation is also not true at all – this simply comes off any harvest proceeds and then the final sale proceeds to growers/debentureholders – so once again growers are last in line and pay There will be no residual profit for growers – how do you know if you have not verified the figures?.

If you have difficulty getting this info to me quickly or it is voluminous, the meeting may have to change obviously.

We are planning to hold the COI meeting at 11am tomorrow as scheduled. I believe that there are still answers outstanding as listed above and therefore request that this is not reconvened until you actually do provide the answers

This is not trying to be problematic, but given the issues raised in the past and some questions around the numbers (eg figures) it would be prudent to be sure and raise any queries now, so we are agreeing with appropriate knowledge to make a decision.

Regards

Kerree

p.s Reference to 11.3 11.2 CMA mentioned in the cropsale agreement – there doesn't seem to be such in the 2005 CMA – have I missed something? Of the \$800,000 in proceeds account, how much is 04, how much is 05

There are differences between the CMA clause references in the CSAs due to different clause numbering in the 2004 CMA and 2005 CMA. When looking at the 2004 CSA, you will need to look at the 2004 CMA (i.e clause references in "Costa Expenses" and "Costa Fee" in the 2004 CSA will be to 11.2 and 11.3 of 2004 CMA).

I've asked Nick Courtney to confirm the crop proceed split between the 2004 and 2005 projects.

Kerree A Bezencon, Director  
B.Ec (Accounting & Finance),  
ASIA (Gr Dip Applied Finance & Investment),  
CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),  
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6.6

CROP SALE - ONGOING FUNDING  
NO SHORTFALL ISSUE

Timbercorp Securities Limited (Voluntary Administrators Appointed)  
ACN 092 311 469  
in its capacity as responsible entity for the  
2004 Timbercorp Citrus Project (ARSN 108 887 538)

and

Timbercorp Securities Limited (Voluntary Administrators Appointed)  
ACN 092 311 469

and

Timbercorp Limited (Voluntary Administrators Appointed)  
ACN 055 185 067

and

Citruscorp Management Pty Ltd (Voluntary Administrators Appointed)  
ACN 105 995 257

and

Mark Anthony Korda and Leanne Kylie Chesser  
in their capacity as Administrators of  
Timbercorp Securities Limited and Timbercorp Limited (Both Administrators Appointed)

and

CostaExchange Limited  
ACN 002 687 961

and

Agriexchange Murtho Pty Ltd  
ACN 093 583 049

**Sale of Crop Deed**  
2004 Timbercorp Citrus Project

Arnold Bloch Leibler  
Ref: JCS 011499489  
::odma\pcdocs\lab\678644\4a

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THIS DEED is made on

4<sup>th</sup> JUNE

2009

## PARTIES

**TIMBERCORP SECURITIES LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 092 311 469 in its capacity as Responsible Entity for the 2004 Timbercorp Citrus Project (ARSN 108 887 538) of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("Responsible Entity")

and

**TIMBERCORP SECURITIES LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("TSL")

and

**TIMBERCORP LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 055 185 067 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("TML")

and

**CITRUSCORP MANAGEMENT PTY LTD (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 105 995 257 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("Citruscorp")

and

**MARK ANTHONY KORDA AND LEANNE KYLIE CHESSE**

in their capacity as Administrators of Timbercorp Securities Limited (Voluntary Administrators Appointed), Timbercorp Limited (Voluntary Administrators Appointed) and Citruscorp Management Pty Ltd (Voluntary Administrators Appointed) all of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 ("Administrators")

and

**COSTAEXCHANGE LIMITED**

ACN 002 687 961 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207 ("Costa")

and

**AGRIEXCHANGE MURTHO PTY LTD**

ACN 093 583 049 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207 ("AMPL")

## BACKGROUND

A The Responsible Entity is the responsible entity for the 2004 Citrus Project.



- B Pursuant to the Constitution, the Responsible Entity was authorised and requested as the agent, representative and attorney of the Participant Growers to enter into the Citruslot Management Agreement.
- C Pursuant to the Citruslot Management Agreement, TSL has been engaged by each of the Participant Growers to sell each Participant Grower's Participating Interest in the Product or, if the Responsible Entity determines that any part of the Participant Grower's Participating Interest should not or could not be sold as Product, put such Citrus to commercial use, using its reasonable endeavours to seek to maximise returns, and on such terms and conditions as TSL in its absolute discretion determines.
- D On 23 April 2009, the Administrators were appointed as voluntary administrators to TSL pursuant to section 436A of the Corporations Act.
- E TSL has determined, to maximise returns to Participant Growers, it will sell the 2009 Crop to AMPL on the terms and conditions of this Deed and, for that purpose, TSL will enter into this Deed as agent and attorney for each Participant Grower in accordance with clause 7.2 of the Citruslot Management Agreement.
- F The parties have also agreed to vary the terms of the Citrus Orchard Management Agreement in accordance with this Deed.
- G The parties enter into this Deed to give effect to the agreements that they have made and their common intention.

## AGREED TERMS

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this Deed, unless the context requires otherwise:

**"2004 Citrus Project"** means the managed investment scheme known as the 2004 Timbercorp Citrus Project (ARSN 108 887 538).

**"2009 Crop"** means that part of the Crop which is ready for harvest, and able to be harvested, during the Relevant Period but which had not been harvested as at 6.00 am on the Completion Date.

**"2009 Product"** means Citrus in a saleable condition which have been harvested, sorted and packed from the 2009 Crop.

**"Actual Costs"** means:

- (a) Reduced Rent payable by TML to Align for the Extended Period under the Lease;
- (b) Water Rates for the Relevant Period;
- (c) the fees, costs and expenses relating to the managing of the Citrus Trees and the Orchard for the Relevant Period and harvesting the 2009 Crop, being an amount equal to the Management Fees; and
- (d) any other amounts incurred by Costa or AMPL at the request, or with the consent, of the Administrators to enable Costa to conduct the harvesting, sorting and packing of the 2009 Crop which would not have been incurred had the 2009 Crop not been sold to AMPL pursuant to this Deed.

**"Actual Proceeds"** means an amount equal to the price that would have been payable by Costa to Citruscorp under the Citrus Orchard Management Agreement for the 2009 Product, had the 2009 Product been sold by Costa on behalf of Citruscorp under the Citrus Orchard Management Agreement.

**"Actual Rent"** has the meaning given by the term "Rent" in the Lease.

**"Affected Obligations"** has the meaning given to that term in clause 10.1(b).

**"Agency Account"** has the meaning given in the Constitution.

**"Align"** means Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity for the Timbercorp Orchard Trust (ARSN 106 557 297).

**"Associate"** has the meaning given to that term by section 9 of the Corporations Act.

**"ASX"** means ASX Limited.

**"Bank"** means a corporation authorised by law to carry on the general business of banking in Australia.

**"Business Day"** means a day on which Banks are open for general banking business in Melbourne, excluding Saturdays, Sundays and public holidays.

**"Calendar Year"** means the period commencing on 1 January 2009 and ending on 31 December 2009.

**"Citrus"** means the citrus grown or growing on Orchard and whether or not harvested and any other products, rights, benefits or credits derived from the Citrus Trees.

**"Citrus Orchard Management Agreement"** means the agreement between Costa, Citruscorp, TSL (in both its personal capacity and as the Responsible Entity), TML and AMPL dated 13 May 2004.

**"Citrus Trees"** means the citrus trees planted on the Orchard.

**"Citruslot"** has the meaning given in the Constitution.

**"Citruslot Management Agreement"** means the agreement between TSL (in its personal capacity) and each several Participant Grower specified in the First Schedule to that agreement.

**"Claim"** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**"Completion"** means completion of the sale and purchase of the 2009 Crop contemplated in this Deed.

**"Completion Date"** means 4 June 2009.

**"Confidential Information"** means all information, regardless of its form, relating to the business or affairs of a party which:

- (a) is proprietary or confidential in nature or which is treated by that party as confidential; and
- (b) is not lawfully in the public domain.

**"Condition Subsequent"** means the condition contained in clause 9.1.

**"Constitution"** means the deed entered into by the Responsible Entity dated 27 April 2004 in respect of the 2004 Citrus Project.

**"Corporations Act"** means the *Corporations Act 2001* (Cth).

**"Crop"** means the Citrus taken from the Citrus Trees grown or growing on the Orchard, whichever is applicable.

**"Determination Date"** means the date on which the Actual Costs or Actual Proceeds (as the case may be) are agreed or determined in accordance with clause 6.

**"Encumbrance"** means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance.

**"Extended Period"** means the period from 1 July 2009 to the earlier of:

- (a) the date which is the end of the period in which Align agrees to accept a reduction in the Actual Rent which would otherwise be payable by TML; and
- (b) 30 November 2009.

**"Expert"** means a person appointed under this Deed to resolve a dispute between the parties.

**"Force Majeure"** means any event or circumstance outside a party's reasonable control including, but not limited to, fire, storm, flood, lightning, earthquake, natural disaster, explosion, war (whether declared or not), terrorism, invasion, rebellion, sabotage, epidemic, blockade, embargo, riot or disturbance.

**"Government Agency"** means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**"Lease"** means the lease between Align and TML dated 26 May 2004, as varied, in respect of the Orchard.

**"Liability"** means any debt or other monetary liability or penalty, fine or payment or any damages, losses, costs, charges, outgoing or expenses of whatever description.

**"Listing Rules"** means the official listing rules and requirements from time to time of the ASX.

**"Management Agreement"** means the management agreement between TSL and Citruscorp dated 12 May 2004.

**"Management Fees"** means an amount equal to all the fees and operating costs and expenses which would have been payable by Citruscorp to Costa under the Citrus Orchard Management Agreement in respect of services provided by Costa during the Relevant Period, if this Deed had not been executed.

**"Month"** means calendar month.

**"Orchard"** has the meaning given in the Citrus Orchard Management Agreement.

**"Participant Grower"** has the meaning given in the Constitution.

**"Participating Interest"** has the meaning given in the Constitution.

**"Product"** means Citrus produced in a saleable condition from the relevant Participant Grower's Citruslots or the Orchard, whichever is applicable.

**"Purchase Price"** means the amount calculated under clause 3.1.

**"Purchaser Adjustment Amount"** means the amount by which the Actual Proceeds exceeds the Actual Costs (to be expressed as a dollar amount).

**"Reduced Rent"** means the Actual Rent reduced in accordance with clause 9.1(a).

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

**"Relevant Period"** means:

- (a) the period from and including 23 April 2009 to and including 30 June 2009; and
- (b) if the Condition Subsequent is satisfied on or before 30 June 2009, the Extended Period.

**"Rent Reduction Agreement"** has the meaning given in clause 9.2.

**"Sub-Lease"** means the agreement between TSL (in its personal capacity), TML and Align dated 26 May 2004, as varied by the deed of variation dated 15 November 2005, in respect of the Orchard.

**"Vendor"** means TSL as agent and attorney for each Participant Grower.

**"Warranties"** means the warranties set out in clause 14(a) and 14(b).

**"Water Rates and Fees"** means the service charges levied annually for the supply of water and for sewerage and drainage services which are payable to a Government Agency or other entity in respect of the Orchard (or any part of it).

## **1.2 Words and expressions**

In this Deed, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed;
- (e) a reference to this Deed includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) the background or recitals to this Deed are adopted as and form part of this Deed;

- (h) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;
- (j) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of the legislation;
  - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it; and
- (p) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation.

### 1.3 Other rules of interpretation

In this Deed, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;
- (b) **(consents and approvals)** if the doing of any act, matter or thing requires the consent, approval or agreement of any party, that consent, approval or agreement must not be unreasonably withheld or delayed;
- (c) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this Deed is given by them or for their benefit jointly and severally;
- (d) **(Business Days)** if:
  - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
  - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period); and
- (e) **(inconsistency within document)** if a clause of this Deed is inconsistent with a schedule or annexure of this Deed, the clause prevails to the extent of the inconsistency.

## **2 Sale and purchase**

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### **2.1 Sale**

The Vendor agrees to sell all of its and the Participant Growers' right, title and interest in and to the 2009 Crop to AMPL and AMPL agrees to buy the 2009 Crop:

- (a) for the Purchase Price;
  - (b) free from all Encumbrances; and
  - (c) with effect from Completion,
- in accordance with this Deed.

### **2.2 Title and risk**

All of the Vendor's and the Participant Growers' right, title and interest in and to and risk in the 2009 Crop will pass to AMPL with effect on and from Completion. AMPL will be entitled on and from Completion to all the benefits of and relating to the 2009 Crop including the proceeds of their sale.

## **3 Purchase Price**

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### **3.1 Purchase Price**

Subject to clauses 3.2, the Purchase Price for the 2009 Crop is \$1.00 (inclusive of any GST).

### **3.2 Adjustment of the Purchase Price**

If the Relevant Period is extended beyond 30 June 2009 and if the Actual Proceeds exceed the Actual Costs, AMPL agrees to pay the Vendor the Purchaser Adjustment Amount.

### **3.3 Date of Adjustment**

Any adjustment required to be made pursuant to clause 3.2 will be made within 10 Business Days of the relevant Determination Date.

## **4 Completion**

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### **4.1 Date and place**

Completion must take place at the offices of Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne VIC 3000, on the Completion Date at 3.00 pm unless otherwise agreed by the parties.

### **4.2 Vendor's obligations**

At Completion, the Vendor must:

- (a) deliver and transfer control of the 2009 Crop to AMPL on the Citrus Trees at the Orchard; and
- (b) do all things desirable or necessary to complete the transactions contemplated by this Deed.

### **4.3 Purchaser's obligations**

At Completion, AMPL must:

- (a) pay the Purchase Price; and

- (b) do all things desirable or necessary to complete the transactions contemplated by this Deed.

## **5 Reporting**

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### **5.1 Reports**

Costa must provide to the Vendor the reports it would otherwise have been obliged to provide to Citruscorp had the 2009 Crop not been sold to AMPL pursuant to this Deed.

### **5.2 Audit**

The Vendor may, from time to time, on giving at least 10 Business Days prior notice, at its expense, cause an audit to be conducted of the applicable records of AMPL or Costa, in order to verify any matter or calculation in relation to the payments and adjustments required to be made pursuant to this Deed and any reports given to the Vendor in relation to such payments or calculations.

### **5.3 Applicable records**

In undertaking any audit the applicable records of AMPL or Costa will only be in relation to details contemplated by this Deed or necessary to make any calculation required to be made under this Deed and in no circumstances will the person undertaking the audit have access to the records of AMPL or Costa which relate to any other matter, transaction or thing.

### **5.4 Auditor**

Audits will be conducted by the Administrators or their agents or employees, during regular business hours at the offices of Costa or AMPL (as applicable) and in such a manner as not to interfere with normal business activities of Costa or AMPL (as applicable) or any of their Related Bodies Corporate.

## **6 Determination**

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### **6.1 Notification**

In respect of the Extended Period, AMPL must:

- (a) on or before 30 November 2009 or such other or later date as may be agreed in writing between AMPL and the Vendor, notify the Vendor of the amounts which AMPL considers to be the Actual Costs;
- (b) on or before the last day of the Month immediately following the Month in which the last of the 2009 Product has been sold, notify the Vendor of the amount which AMPL considers to be the Actual Proceeds (for the avoidance of doubt, where the 2009 Product is sold overseas, the 'Month in which the last of the 2009 Product has been sold' will be the Month in which AMPL is advised of the final price which will be paid for that Product, which is expected to be no later than 31 December 2009); and
- (c) provide such supporting information as the Vendor may reasonably request or require to enable the Vendor to determine the accuracy of those amounts.

### **6.2 Best endeavours**

The Vendor and AMPL will use their respective best endeavours to agree the amount of the Actual Costs and Actual Proceeds within 10 Business Days of the relevant notification having been received by the Vendor.

### **6.3 Determination by Expert**

If the Vendor and AMPL cannot agree the amount of the Actual Costs and Actual Proceeds within the relevant period set out in clause 6.2 (or such longer period as they may agree), the determination of the relevant amount must be referred, by written notice from one of them to the other, to an Expert:

- (a) agreed on by them; or
- (b) if agreement is not reached within seven days of the notice for referral, appointed by the then president of the Victorian Chapter of the Institute of Chartered Accountants or his or her duly appointed deputy.

### **6.4 Role of Expert**

The Expert will act as an expert and not as an arbitrator. The decision of the Expert will be final and binding on all parties in the absence of manifest error of law or breach of natural justice.

### **6.5 Venue, representation and format**

Unless otherwise agreed between the disputants, the place of the resolution of the Dispute will be Melbourne and the disputants will be entitled to legal representation. The rules of evidence will apply to the resolution process.

### **6.6 Timeframe**

The Vendor and AMPL will each use all reasonable endeavours to ensure that the Expert is able to make a decision as soon as is practical, including, but not limited to, providing the Expert with all information relevant to the determination.

### **6.7 Confidentiality**

Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the determination.

### **6.8 Costs**

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

## **7 Rent**

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### **7.1 Payment of rent**

AMPL acknowledges that, but for this Deed:

- (a) TSL is liable under the Sub-Lease to pay rent to TML from 1 July 2009 onwards; and
- (b) TML is liable under the Lease to pay Actual Rent to Align from 1 July 2009 onwards.

AMPL agrees that, subject to clause 9.1, it will pay the Reduced Rent due to Align for the Extended Period from the Actual Proceeds.

## **8 Management Fees**

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### **8.1 Acknowledgment**

- (a) Costa and AMPL each acknowledge and agree that, but for this Deed:



- (i) TSL is liable under the Management Agreement to pay fees for the Relevant Period to Citruscorp; and
- (ii) Citruscorp is liable under the Citrus Orchard Management Agreement to pay Management Fees to Costa; and
- (b) The parties each acknowledge and agree that the costs of managing the Citrus Trees and the Orchard for the Relevant Period and harvesting the 2009 Crop, being an amount equal to the Management Fees, will be included in the Actual Costs which will be paid to Costa by AMPL and Costa will be entitled to charge the Management Fees to AMPL as if AMPL were a party to the Citrus Orchard Management Agreement in place of Citruscorp for the purposes of those clauses in that agreement.

## **8.2 Limited recourse**

- (a) Notwithstanding any other provision contained in this document or in any other agreement in relation to the payment of Management Fees for the Relevant Period to which it is a party, the liability of TSL, Citruscorp and the Administrators under the provisions of this document and any other agreement in relation to the payment of Management Fees for the Relevant Period to which it is a party, will at all times and for all purposes be construed solely as a liability of AMPL to be satisfied from the Actual Proceeds and if the Actual Proceeds are insufficient to pay the Management Fees for the Relevant Period, Costa agrees that the Management Fees for the Relevant Period will be reduced to the amount of the Actual Proceeds available to be applied to the payment of such management fees.
- (b) For the avoidance of any doubt, Costa and AMPL each acknowledge and agree that they have no recourse to TSL, Citruscorp or the Administrators in respect of any shortfall in the Management Fees payable for the Relevant Period.

## **9 Condition Subsequent**

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### **9.1 Reduction in Actual Rent**

TSL, TML, Citruscorp, the Responsible Entity and AMPL will each use their best endeavours to:

- (a) negotiate a reduction in the Actual Rent for the period required to enable all of the Crop ready and able to be harvested in the 2009 Calendar Year to be harvested to be reduced to an amount agreed to in writing by AMPL; and
- (b) have Align execute an acknowledgment in substantially the same form as set out in the schedule to this Deed.

### **9.2 Automatic extension of Relevant Period**

If a reduction in the Actual Rent which is acceptable to AMPL (acting reasonably) is achieved, Align executes and provides the acknowledgement referred to in clause 9.1(b) and AMPL executes an agreement in form and substance acceptable to AMPL with TSL, TML, Citruscorp, the Responsible Entity and Align to document the reduction in the Actual Rent ("Rent Reduction Agreement") on or before 30 June 2009, then the Relevant Period will automatically be extended to include Extended Period.

### **9.3 Automatic termination of the Relevant Period**

If AMPL does not agree to the amount of reduction in the Actual Rent, Align does not execute or provide the acknowledgement referred to in clause 9.1(b) or AMPL does not agree to and execute the Rent Reduction Agreement on or before 30 June 2009, then the Relevant Period will automatically terminate on 30 June 2009.

## **10 Force majeure**

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### **10.1 Notice**

If Costa is prevented, in whole or in part, from carrying out its obligations under clause 12 by reason of a Force Majeure, it must give the Vendor prompt written notice of:

- (a) the particulars of the Force Majeure and its expected duration;
- (b) the obligations it cannot perform within the Relevant Period as a result of the Force Majeure ("**Affected Obligations**"); and
- (c) the measures it proposes to take to remedy or abate the Force Majeure.

### **10.2 Obligations suspended**

After notice has been given in accordance with clause 10.1:

- (a) the Affected Obligations will, to the extent they are affected by the Force Majeure, be suspended during but no longer than the continuation of the Force Majeure; and
- (b) any other party's obligations that are dependent upon the Affected Obligations will be suspended until Costa resumes performance.

### **10.3 Removing the Force Majeure**

Costa must use all reasonable endeavours to remove the Force Majeure as quickly as possible and resume performance of the Affected Obligations.

## **11 Relevant Period**

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Without limiting the automatic extension in clause 9.2, the Relevant Period may be extended with the agreement of all the parties:

- (a) for such time as is necessary to allow Costa to complete performance of the Affected Obligations pursuant to clause 10.3; or
- (b) for such other period as the parties may agree.

## **12 Ongoing obligations**

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### **12.1 Undertakings by Costa**

Costa undertakes to AMPL and the Vendor that, until such time as the Purchase Price (including any adjustment required pursuant to clause 3.2) has been paid in full, Costa will:

- (a) comply with the obligations it would have had to Citruscorp pursuant to clauses 5, 6 and 9 of the Citrus Orchard Management Agreement in respect of the harvesting and sale of the 2009 Crop, as if the 2009 Crop had not been sold to AMPL pursuant to this Deed and as if AMPL were a party to the Citrus Orchard Management Agreement in place of Citruscorp for the purposes of those clauses; and
- (b) not enter into a transaction with a Related Body Corporate to sell the 2009 Product at a price, or on terms, more favourable to the Related Body Corporate than would be offered to an arms' length purchaser, without the consent of the Vendor.

### **12.2 Termination of the Citrus Orchard Management Agreement**

The parties agree that:

- (a) if the Relevant Period is not extended beyond 30 June 2009, then Costa or its agent AMPL will be entitled at any time after 30 June 2009 to terminate the Citrus Orchard Management Agreement immediately by notice in writing to Citruscorp; and
- (b) the Citrus Orchard Management Agreement has been varied as expressly provide by this Deed.

### **13 Acknowledgements**

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TML, TSL, Citruscorp and the Responsible Entity each acknowledge and agree that the 2009 Crop has been sold pursuant to this Deed and that, as from the Completion Date (and save as expressly provided otherwise in this Deed), it does not have the rights and obligations it would otherwise have under the Lease, Sub-Lease, Citruslot Management Agreement, Management Agreement or the Citrus Orchard Management Agreement in respect of the 2009 Crop or 2009 Product including the right to payment of fees or expenses.

### **14 Warranties and acknowledgments**

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- (a) TSL and the Administrators represent and warrant to AMPL that:
  - (i) as at the Completion Date the Administrators have been duly and validly appointed as joint and several administrators of TSL pursuant to the Corporations Act; and
  - (ii) all rent in respect of the Orchard has been paid in full until 30 June 2009 and there are no further payment obligations due to Align in respect of the Lease until that date.
- (b) The Vendor represents and warrants to AMPL that the Vendor has full legal capacity and power to enter into and perform its obligations under this Deed including to pass legal title in the 2009 Crop to AMPL.
- (c) Save for those warranties and representations expressed in this Deed, and except for the Warranties and any warranties which cannot by law be excluded, AMPL acknowledges that neither the Vendor nor the Administrators are giving any warranties to AMPL. Further AMPL acknowledges that the 2009 Crop is being sold in an 'as is, where is' condition.
- (d) Any payments to be made by AMPL to the Vendor under this Deed must be made in full without any set-off, deduction, counterclaim or claim to a lien whatsoever, whether or not any such set-off, deduction, counterclaim or lien arises under this Deed.

### **15 AMPL's Representations**

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AMPL represents and warrants to the Vendor that as at the Completion Date:

- (a) **(status)** it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (b) **(power)** it has full legal capacity and power to:
  - (i) own property and carry on its business; and
  - (ii) enter into and perform its obligations under this Deed;
- (c) **(authorisations)** it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and

authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Deed;

- (d) **(binding obligations)** this Deed is valid, binding and enforceable against AMPL in accordance with its terms, subject to any necessary stamping and registration; and
- (e) **(no contravention)** the execution, delivery and performance of this Deed will not contravene:
  - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
  - (ii) any provision of its constitution or equivalent documents; or
  - (iii) any agreement, undertaking or instrument which is binding on it or any of its property.

## **16 Confidentiality and Announcements**

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### **16.1 Confidentiality**

Subject to clause 16.2, each party will (and each party will procure that its employees, officers and Associates will) keep strictly confidential and will not disclose to any third party without the prior written consent of the other parties:

- (a) the Confidential Information of any other party;
  - (b) any information concerning any other party;
  - (c) the existence of and contents of this Deed;
  - (d) any information of which it has become aware in connection with this Deed; or
  - (e) any transaction undertaken pursuant to this Deed,
- (whether in writing, orally or by any other means and whether directly or indirectly) other than information that is or becomes generally available to the public other than as a result of a breach of this Deed.

### **16.2 Exceptions**

A party may disclose Confidential Information:

- (a) as and to the extent required by law, under the Listing Rules of the ASX or under this Deed;
- (b) to the extent necessary, in the case of the Vendor and the Administrators, to properly conduct the administration of the Vendor (including reporting to the creditors of the Vendor);
- (c) to any officers, employees and agents of that party who:
  - (i) have a need to know the information, but only to the extent they have a need to know; and
  - (ii) before disclosure, are directed by that party to keep the Confidential Information confidential;
- (d) to the directors, secretary, professional advisers and bankers of that party so long as the party uses its best endeavours to ensure that the matters disclosed are kept confidential;
- (e) to the extent that a party may, at any time after any other party has failed to observe or perform all of its obligations under this Deed, consider necessary or desirable to preserve or enforce its interests or rights,

and provided, other than in the case of (b), that the party must give as much advance notice to the other parties as possible of its intention to make the disclosure and take all lawful steps to confine the disclosure of any Confidential Information and preserve its confidentiality.

**16.3 Injunctive relief**

Each party acknowledges that monetary damages alone may not be adequate compensation to the other parties for a breach of this clause 16 and that any of the other parties are entitled to seek an injunction from a court of competent jurisdiction if the party fails to comply or threatens to fail to comply with this clause 16.

**16.4 Survival of Clause**

This clause 16 survives the termination of this Deed.

**16.5 No public announcement**

No announcement of the transaction undertaken pursuant to this Deed will be made otherwise than by the announcing party having given a reasonable opportunity for the other party to review, and have input on, the form of the proposed announcement.

**17 GST**

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**17.1 Definitions**

For the purposes of this clause 17, Taxable Supply, Consideration and GST will have the meaning given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**17.2 Exclusive of GST**

If anything done, or required to be done, under this Deed, or anything done in settlement of the consequences of a breach of any warranty or other clause of this Deed, constitutes a Taxable Supply by one party to another party, unless otherwise provided in this Deed, the Consideration for that Taxable Supply will be exclusive of any GST.

**17.3 Consideration to be increased**

If the party making the Taxable Supply is liable for any GST on that Taxable Supply, subject to that party issuing a valid tax invoice (or adjustment note) to the party that receives the Taxable Supply, the Consideration received will be increased so that the party making the Taxable Supply receives, net of the GST liability, the Consideration otherwise calculated pursuant to this Deed.

**18 Administration matters**

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**18.1 Liability**

The Administrators' Liability in respect of this Deed is limited to the extent of their indemnity from the assets of the Vendor in their capacity as administrators of the Vendor.

**18.2 Claims**

No Claim will lie against the Vendor or the Administrators under this Deed unless made in writing and served upon the Administrators within 3 months after the end of the Relevant Period and in aggregate any such Claims shall not exceed the Purchase Price received.

## 19 Notices

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### 19.1 Method

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("notices") given by a party under or in connection with this Deed must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 19.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by email or facsimile to that address.

### 19.2 Receipt

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
  - (i) within Australia, on the second Business Day after the date of posting;
  - (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

### 19.3 Address of parties

Unless varied by notice in accordance with this clause 19, the parties' addresses and other details are:

Party: Responsible Entity, TSL, Citruscorp, TML and the Administrators  
Attention: Mark Korda  
Address: Level 24, 333 Collins Street, Melbourne, VIC, 3000  
Facsimile: +61 3 8623 3399  
E-mail: mkorda@kordamentha.com

with a copy to:

Attention: Jane Sheridan  
Address: Level 21, 333 Collins Street, Melbourne, VIC, 3000  
Facsimile: +61 3 9229 9900  
E-mail: jsheridan@abl.com.au

Party: Costa and AMPL  
Attention: Mano Babliolakis  
Address: Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
Facsimile: +62 8645 1672  
E-mail: mano.babliolakis@costaexchange.com.au

**19.4 Requirement for written notice**

For the avoidance of doubt, the requirement in clause 19.1(a) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions "written" or "in writing" in relation to some but not all notices.

**20 General**

---

**20.1 Entire agreement**

This Deed and the Citrus Orchard Management Agreement constitute the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter other than those set out in the Citrus Orchard Management Agreement are replaced by this Deed and have no further effect.

**20.2 Paramountcy**

If this Deed conflicts with any other document, agreement or arrangement, including but not limited to, the Citrus Orchard Management Agreement, this Deed prevails to the extent of the inconsistency.

**20.3 No merger**

The provisions of this Deed will not merge on completion of any transaction contemplated in this Deed and, to the extent any provision has not been fulfilled, will remain in force.

**20.4 Attorneys**

Each person who executes this Deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Deed under that power.

**20.5 Amendment**

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

**20.6 Assignment**

No party may assign, transfer or otherwise deal with this Deed or any right or obligation under this Deed without the prior written consent of each other party, which must not be unreasonably withheld.

**20.7 Severability**

Part or all of any provision of this Deed that is illegal or unenforceable will be severed from this Deed and will not affect the continued operation of the remaining provisions of this Deed.

**20.8 Waiver**

Waiver of any power or right under this Deed:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

**20.9 Rights, remedies additional**

Any rights and remedies that a person may have under this Deed are in addition to and do not replace or limit any other rights or remedies that the person may have.

**20.10 Further assurances**

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Deed and the transactions contemplated by it (including, but not limited to, the execution of documents).

**20.11 Costs**

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

**20.12 Stamp Duty**

If this Deed is subject to payment of duty to a Government Agency, such duty is payable by AMPL.

**20.13 Counterparts**

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

**20.14 Electronic delivery**

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

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

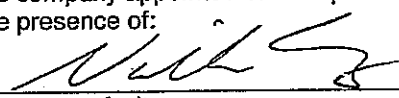
**20.15 Governing law and jurisdiction**

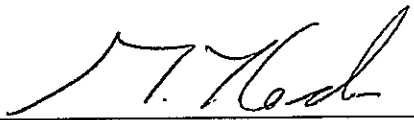
This Deed will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.



EXECUTED as an DEED

EXECUTED by **TIMBERCORP**  
**SECURITIES LIMITED** (Voluntary  
Administrators Appointed) in its capacity as  
responsible entity for the 2004 Timbercorp  
Citrus Project (ARSN 108 887 538) by  
being signed in its name by **MARK**  
**ANTHONY KORDA** and **LEANNE KYLIE**  
**CHESSER** the voluntary administrators of  
the company appointed on 23 April 2009 in  
the presence of:

  
\_\_\_\_\_  
Signature of witness

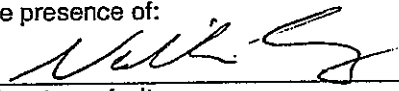
  
\_\_\_\_\_  
Signature of Mark Anthony Korda

NICHOLAS COURTNEY  
Name of witness (print)

C/- 24/333 COLLINS ST  
Address of witness (print)


  
\_\_\_\_\_  
Signature of Leanne Kylie Chesser

EXECUTED by **TIMBERCORP**  
**SECURITIES LIMITED** (Voluntary  
Administrators Appointed) in its own  
capacity and as agent and attorney for each  
Participant Grower by being signed in its  
name and on its behalf by **MARK**  
**ANTHONY KORDA** and **LEANNE KYLIE**  
**CHESSER** the voluntary administrators of  
the company appointed on 23 April 2009 in  
the presence of:

  
\_\_\_\_\_  
Signature of witness

NICHOLAS COURTNEY  
Name of witness (print)

C/- 24/333 COLLINS ST  
Address of witness (print)

  
\_\_\_\_\_  
Signature of Mark Anthony Korda

  
\_\_\_\_\_  
Signature of Leanne Kylie Chesser

EXECUTED by TIMBERCORP LIMITED )  
(Voluntary Administrators Appointed) by )  
being signed in its name and on its behalf )  
by MARK ANTHONY KORDA and )  
LEANNE KYLIE CHESSER the voluntary )  
administrators of the company appointed on )  
23 April 2009 in the presence of: )



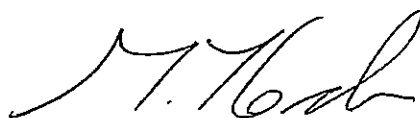
Signature of witness

NICHOLAS COURTNEY

Name of witness (print)

C/- 24/333 COLLINS ST

Address of witness (print)

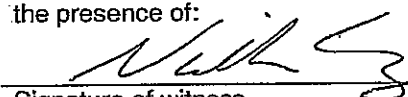


Signature of Mark Anthony Korda



Signature of Leanne Kylie Chesser

EXECUTED by CITRUSCORP )  
MANAGEMENT PTY LTD (Voluntary )  
Administrators Appointed) by being signed )  
in its name and on its behalf by MARK )  
ANTHONY KORDA and LEANNE KYLIE )  
CHESSER the voluntary administrators of )  
the company appointed on 23 April 2009 in )  
the presence of: )



Signature of witness

NICHOLAS COURTNEY

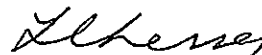
Name of witness (print)

C/- 24/333 COLLINS ST

Address of witness (print)



Signature of Mark Anthony Korda



Signature of Leanne Kylie Chesser

EXECUTED by COSTAEXCHANGE )  
LIMITED )



Signature of director

MANO BABIOLAKIS

Name of director (print)

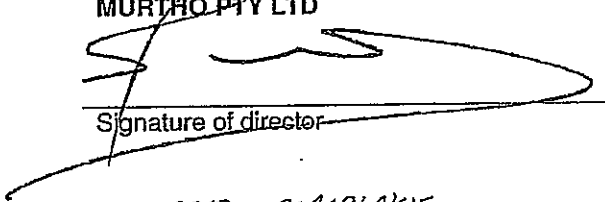


Signature of director / company secretary  
(delete as applicable)

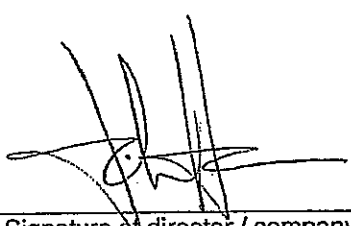
JOHN HARRIS

Name of director / company secretary (print)

EXECUTED by AGRIEXCHANGE  
MURTHO PTY LTD )

  
\_\_\_\_\_  
Signature of director

MARNO BABIOLAKIS  
\_\_\_\_\_  
Name of director (print)

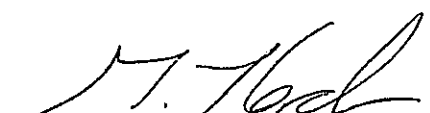
  
\_\_\_\_\_  
Signature of director / company secretary  
(delete as applicable)

JOHN HARRIS  
\_\_\_\_\_  
Name of director / company secretary (print)

EXECUTED by MARK ANTHONY KORDA )  
in his capacity as Administrator of )  
Timbercorp Securities Limited (Voluntary )  
Administrators Appointed) and Timbercorp )  
Limited (Voluntary Administrators )  
Appointed)

  
\_\_\_\_\_  
Witness

NICHOLAS COURTNEY  
\_\_\_\_\_  
Name of Witness (print)

  
\_\_\_\_\_  
Signature of Mark Anthony Korda.

EXECUTED by LEANNE KYLIE CHESSEY )  
in her capacity as Administrator of )  
Timbercorp Securities Limited (Voluntary )  
Administrators Appointed) and Timbercorp )  
Limited (Voluntary Administrators )  
Appointed)

  
\_\_\_\_\_  
Witness

NICHOLAS COURTNEY  
\_\_\_\_\_  
Name of Witness (print)

  
\_\_\_\_\_  
Signature of Leanne Kylie Chessier

## **SCHEDULE 1 - ACKNOWLEDGMENT**

**TO:**

**TIMBERCORP SECURITIES LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000  
("TSL")

and

**TIMBERCORP LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 055 185 067 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000  
("TML")

and

**MARK ANTHONY KORDA AND LEANNE KYLIE CHESSE**

in their capacity as Administrators of Timbercorp Securities Limited (Voluntary Administrators Appointed) and Timbercorp Limited (Voluntary Administrators Appointed) both of Level 24, 333 Collins Street, Melbourne, Victoria, 3000  
("Administrators")

and

**COSTAEXCHANGE LIMITED**

ACN 002 687 961 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
("Costa")

and

**AGRIEXCHANGE MURTHO PTY LTD**

ACN 093 583 049 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
("AMPL")

**FROM:**

**ALIGN FUNDS MANAGEMENT LIMITED**

(ACN 105 684 231) of 505 St Kilda Road, Melbourne, Victoria, 3004, in its capacity as responsible entity for the Timbercorp Orchard Trust (ARSN 106 557 297)  
("Align")

### **1 Acknowledgment**

---

1.1 Align acknowledges and agrees that:

- (a) all rent payments ("Rent") due under the lease between Align and TML dated 26 May 2004, as varied, in respect of the property known as Kangara Estate ("Lease") for the period from 1 July 2009 to [insert] ("Extended Period") will be paid by Agriexchange Murtho Pty Ltd ACN 093 583 049 ("AMPL"); and
- (b) it will accept payment from AMPL in full and final payment of the corresponding amounts which would otherwise be due as Rent from TML.

## 2 Limited recourse

---

- 2.1 Notwithstanding any other provision contained in any agreement in relation to the payment of Rent for the Extended Period to which it is a party, the liability of TSL, TML and the Administrators under the provisions of this acknowledgment and any other agreement in relation to the payment of the Rent for the Extended Period to which it is a party, will at all times and for all purposes be construed solely as a liability of AMPL to be satisfied from the actual proceeds received from the sale of the 2009 citrus crop ("Actual Proceeds") and if the Actual Proceeds are insufficient to pay the Rent for the Extended Period, Align agrees that the Rent for the Extended Period will be reduced to the amount of the Actual Proceeds available to be applied to the payment of such rent.
- 2.2 For the avoidance of any doubt, Align acknowledges and agrees that it has no recourse to TML, TSL or the Administrators in respect of any shortfall in the Rent payable for the Extended Period.

SIGNED by ALIGN FUNDS )  
MANAGEMENT LIMITED in its capacity as )  
responsible entity for the Timbercorp  
Orchard Trust

---

Signature of director

---

Signature of director / company secretary  
(delete as applicable)

---

Name of director (print)

---

Name of director / company secretary (print)

6 • 7

CROP SALE

ONGOING FUNDING  
NO SHORTFALL ISSUE

Timbercorp Securities Limited (Voluntary Administrators Appointed)  
ACN 092 311 469  
in its capacity as responsible entity for the  
2005 Timbercorp Citrus Project (ARSN 114 091 299)

and

Timbercorp Securities Limited (Voluntary Administrators Appointed)  
ACN 092 311 469

and

Timbercorp Limited (Voluntary Administrators Appointed)  
ACN 055 185 067

and

Citruscorp Management Pty Ltd (Voluntary Administrators Appointed)  
ACN 105 995 257

and

Mark Anthony Korda and Leanne Kylie Chesser  
in their capacity as Administrators of  
Timbercorp Securities Limited and Timbercorp Limited (Both Administrators Appointed)

and

CostaExchange Limited  
ACN 002 687 961

and

Agriexchange Murtho Pty Ltd  
ACN 093 583 049

**Sale of Crop Deed**  
2005 Timbercorp Citrus Project

Arnold Bloch Leibler  
Ref: JCS 011499489  
::odma\pcdocs\lab\678777\2

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THIS DEED is made on

14<sup>th</sup> JUNE

2009

## PARTIES

**TIMBERCORP SECURITIES LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 092 311 469 in its capacity as Responsible Entity for the 2005 Timbercorp Citrus Project (ARSN 114 091 299) of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("Responsible Entity")

and

**TIMBERCORP SECURITIES LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("TSL")

and

**TIMBERCORP LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 055 185 067 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("TML")

and

**CITRUSCORP MANAGEMENT PTY LTD (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 105 995 257 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000 ("Citruscorp")

and

**MARK ANTHONY KORDA AND LEANNE KYLIE CHESSE**

in their capacity as Administrators of Timbercorp Securities Limited (Voluntary Administrators Appointed), Timbercorp Limited (Voluntary Administrators Appointed) and Citruscorp Management Pty Ltd (Voluntary Administrators Appointed) all of Level 24, 333 Collins Street, Melbourne, Victoria, 3000 ("Administrators")

and

**COSTAEXCHANGE LIMITED**

ACN 002 687 961 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207 ("Costa")

and

**AGRIEXCHANGE MURTHO PTY LTD**

ACN 093 583 049 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207 ("AMPL")

## BACKGROUND

A The Responsible Entity is the responsible entity for the 2005 Citrus Project.

- B Pursuant to the Constitution, the Responsible Entity was authorised and requested as the agent, representative and attorney of the Participant Growers to enter into the Citruslot Management Agreement.
- C Pursuant to the Citruslot Management Agreement, TSL has been engaged by each of the Participant Growers to sell each Participant Grower's Participating Interest in the Product or, if the Responsible Entity determines that any part of the Participant Grower's Participating Interest should not or could not be sold as Product, put such Citrus to commercial use, using its reasonable endeavours to seek to maximise returns, and on such terms and conditions as TSL in its absolute discretion determines.
- D On 23 April 2009, the Administrators were appointed as voluntary administrators to TSL pursuant to section 436A of the Corporations Act.
- E TSL has determined, to maximise returns to Participant Growers, it will sell the 2009 Crop to AMPL on the terms and conditions of this Deed and, for that purpose, TSL will enter into this Deed as agent and attorney for each Participant Grower in accordance with clause 7.2 of the Citruslot Management Agreement.
- F The parties have also agreed to vary the terms of the Citrus Orchard Management Agreement in accordance with this Deed.
- G The parties enter into this Deed to give effect to the agreements that they have made and their common intention.

## AGREED TERMS

### 1 Definitions and Interpretation

---

#### 1.1 Definitions

In this Deed, unless the context requires otherwise:

**"2005 Citrus Project"** means the managed investment scheme known as the 2005 Timbercorp Citrus Project (ARSN 114 091 299).

**"2009 Crop"** means that part of the Crop which is ready for harvest, and able to be harvested, during the Relevant Period but which had not been harvested as at 6.00 am on the Completion Date.

**"2009 Product"** means Citrus in a saleable condition which have been harvested, sorted and packed from the 2009 Crop.

**"Actual Costs"** means:

- (a) Reduced Rent payable by TML to Align or OIM (as applicable) for the Extended Period under the Lease;
- (b) Water Rates for the Relevant Period;
- (c) the fees, costs and expenses relating to the managing of the Citrus Trees and the Orchard for the Relevant Period and harvesting the 2009 Crop, being an amount equal to the Management Fees; and
- (d) any other amounts incurred by Costa or AMPL at the request, or with the consent, of the Administrators to enable Costa to conduct the harvesting, sorting and packing of the 2009 Crop which would not have been incurred had the 2009 Crop not been sold to AMPL pursuant to this Deed.

**"Actual Proceeds"** means an amount equal to the price that would have been payable by Costa to Citruscorp under the Citrus Orchard Management Agreement for the 2009 Product, had the 2009 Product been sold by Costa on behalf of Citruscorp under the Citrus Orchard Management Agreement.

**"Actual Rent"** has the meaning given by the term "Rent" in the Lease.

**"Affected Obligations"** has the meaning given to that term in clause 10.1(b).

**"Agency Account"** has the meaning given in the Constitution.

**"Align"** means Align Funds Management Limited (ACN 105 684 231) in its capacity as responsible entity for the Timbercorp Orchard Trust (ARSN 106 557 297).

**"Associate"** has the meaning given to that term by section 9 of the Corporations Act.

**"ASX"** means ASX Limited.

**"Bank"** means a corporation authorised by law to carry on the general business of banking in Australia.

**"Business Day"** means a day on which Banks are open for general banking business in Melbourne, excluding Saturdays, Sundays and public holidays.

**"Calendar Year"** means the period commencing on 1 January 2009 and ending on 31 December 2009.

**"Citrus"** means the citrus grown or growing on Orchard and whether or not harvested and any other products, rights, benefits or credits derived from the Citrus Trees.

**"Citrus Orchard Management Agreement"** means the agreement between Costa, Citruscorp, TSL (in both its personal capacity and as the Responsible Entity), TML and AMPL dated 19 May 2005.

**"Citrus Trees"** means the citrus trees planted on the Orchard.

**"Citruslot"** has the meaning given in the Constitution.

**"Citruslot Management Agreement"** means the agreement between TSL (in its personal capacity) and each several Participant Grower named in the Schedule to the Licence Agreements.

**"Claim"** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**"Completion"** means completion of the sale and purchase of the 2009 Crop contemplated in this Deed.

**"Completion Date"** means 4 June 2009.

**"Confidential Information"** means all information, regardless of its form, relating to the business or affairs of a party which:

- (a) is proprietary or confidential in nature or which is treated by that party as confidential; and
- (b) is not lawfully in the public domain.

**"Condition Subsequent"** means the condition contained in clause 9.1.

**"Constitution"** means the deed entered into by the Responsible Entity dated 2 May 2005 in respect of the 2005 Citrus Project.

**"Corporations Act"** means the *Corporations Act 2001* (Cth).

**"Crop"** means the Citrus taken from the Citrus Trees grown or growing on the Orchard, whichever is applicable.

**"Determination Date"** means the date on which the Actual Costs or Actual Proceeds (as the case may be) are agreed or determined in accordance with clause 6.

**"Encumbrance"** means any mortgage, lien, hypothecation, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance.

**"Extended Period"** means the period from 1 July 2009 to the earlier of:

- (a) the date which is the end of the period in which Align or OIM (as applicable) agree to accept a reduction in the Actual Rent which would otherwise be payable by TML; and
- (b) 30 November 2009.

**"Expert"** means a person appointed under this Deed to resolve a dispute between the parties.

**"Force Majeure"** means any event or circumstance outside a party's reasonable control including, but not limited to, fire, storm, flood, lightning, earthquake, natural disaster, explosion, war (whether declared or not), terrorism, invasion, rebellion, sabotage, epidemic, blockade, embargo, riot or disturbance.

**"Government Agency"** means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**"Leases"** means the lease agreements between:

- (a) Align and TML dated 26 May 2004, as varied; and
- (b) OIM and TML dated 19 May 2005,

in respect of the Orchard.

**"Liability"** means any debt or other monetary liability or penalty, fine or payment or any damages, losses, costs, charges, outgoings or expenses of whatever description.

**"Licence Agreements"** means the licence agreements between:

- (a) TSL (in its personal capacity), TML, OIM and each Participant Grower (in respect of that part of the Orchard known as Solora Estate); and
- (b) TSL (in its personal capacity), TML, Align and each Participant Grower (in respect of that part of the Orchard known as Kangara Estate).

**"Listing Rules"** means the official listing rules and requirements from time to time of the ASX.

**"Management Agreement"** means the orchard management agreement between TSL and Citruscorp dated 19 May 2005.

**"Management Fees"** means an amount equal to all the fees and operating costs and expenses which would have been payable by Citruscorp to Costa under the Citrus Orchard Management Agreement in respect of services provided by Costa during the Relevant Period, if this Deed had not been executed.

**"Month"** means calendar month.

**"OIM"** means OIM#2 Pty Ltd (ACN 112 691 997) in its capacity as trustee of the Timbercorp Orchard Trust #2, a sub-trust of the Timbercorp Primary Infrastructure Fund (ARSN 116 024 830).

**"Orchard"** has the meaning given in the Citrus Orchard Management Agreement.

**"Participant Grower"** has the meaning given in the Constitution.

**"Participating Interest"** has the meaning given in the Constitution.

**"Product"** means Citrus produced in a saleable condition from the relevant Participant Grower's Citruslots or the Orchard, whichever is applicable.

**"Purchase Price"** means the amount calculated under clause 3.1.

**"Purchaser Adjustment Amount"** means the amount by which the Actual Proceeds exceeds the Actual Costs (to be expressed as a dollar amount).

**"Reduced Rent"** means the Actual Rent reduced in accordance with clause 9.1(a).

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

**"Relevant Period"** means:

- (a) the period from and including 23 April 2009 to and including 30 June 2009; and
- (b) if the Condition Subsequent is satisfied on or before 30 June 2009, the Extended Period.

**"Rent Reduction Agreement"** has the meaning given in clause 9.2.

**"Sub-Leases"** means the sub-lease agreements between:

- (a) TSL (in its personal capacity), TML and OIM dated 19 May 2005, as varied (in respect of that part of the Orchard known as Solara Estate); and
- (b) TSL (in its personal capacity), TML and Align dated 5 May 2005, as varied (in respect of that part of the Orchard known as Kangara Estate).

**"Vendor"** means TSL as agent and attorney for each Participant Grower.

**"Warranties"** means the warranties set out in clause 14(a) and 14(b).

**"Water Rates and Fees"** means the service charges levied annually for the supply of water and for sewerage and drainage services which are payable to a Government Agency or other entity in respect of the Orchard (or any part of it).

## **1.2 Words and expressions**

In this Deed, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Deed;
- (e) a reference to this Deed includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) the background or recitals to this Deed are adopted as and form part of this Deed;
- (h) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (i) a reference to "\$", "A\$" or "dollar" is a reference to Australian currency;
- (j) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (k) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (l) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (m) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (n) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of the legislation;
  - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it; and
- (p) the words "including", "for example", "such as" or other similar expressions (in any form) are not words of limitation.

## **1.3 Other rules of interpretation**

In this Deed, unless expressly provided otherwise:

- (a) **(method of payment)** any payment of money by one party to another will be made in Australian currency by bank cheque or by credit of cleared funds to a bank account specified by the recipient;

- (b) **(consents and approvals)** if the doing of any act, matter or thing requires the consent, approval or agreement of any party, that consent, approval or agreement must not be unreasonably withheld or delayed;
- (c) **(joint and several liability)** a promise, representation or warranty given by or in favour of two or more persons under this Deed is given by them or for their benefit jointly and severally;
- (d) **(Business Days)** if:
  - (i) the day on or by which any act, matter or thing is to be done is a day other than a Business Day, the act, matter or thing will be done on the next Business Day; and
  - (ii) any money falls due for payment on a date other than a Business Day, that money will be paid on the next Business Day (without interest or any other amount being payable in respect of the intervening period); and
- (e) **(inconsistency within document)** if a clause of this Deed is inconsistent with a schedule or annexure of this Deed, the clause prevails to the extent of the inconsistency.

## **2 Sale and purchase**

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### **2.1 Sale**

The Vendor agrees to sell all of its and the Participant Growers' right, title and interest in and to the 2009 Crop to AMPL and AMPL agrees to buy the 2009 Crop:

- (a) for the Purchase Price;
  - (b) free from all Encumbrances; and
  - (c) with effect from Completion,
- in accordance with this Deed.

### **2.2 Title and risk**

All of the Vendor's and the Participant Growers' right, title and interest in and to and risk in the 2009 Crop will pass to AMPL with effect on and from Completion. AMPL will be entitled on and from Completion to all the benefits of and relating to the 2009 Crop including the proceeds of their sale.

## **3 Purchase Price**

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### **3.1 Purchase Price**

Subject to clauses 3.2, the Purchase Price for the 2009 Crop is \$1.00 (inclusive of any GST).

### **3.2 Adjustment of the Purchase Price**

If the Relevant Period is extended beyond 30 June 2009 and if the Actual Proceeds exceed the Actual Costs, AMPL agrees to pay the Vendor the Purchaser Adjustment Amount.

### **3.3 Date of Adjustment**

Any adjustment required to be made pursuant to clause 3.2 will be made within 10 Business Days of the relevant Determination Date.

## **4 Completion**

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### **4.1 Date and place**

Completion must take place at the offices of Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne VIC 3000, on the Completion Date at 3.00 pm unless otherwise agreed by the parties.

### **4.2 Vendor's obligations**

At Completion, the Vendor must:

- (a) deliver and transfer control of the 2009 Crop to AMPL on the Citrus Trees at the Orchard; and
- (b) do all things desirable or necessary to complete the transactions contemplated by this Deed.

### **4.3 Purchaser's obligations**

At Completion, AMPL must:

- (a) pay the Purchase Price; and
- (b) do all things desirable or necessary to complete the transactions contemplated by this Deed.

## **5 Reporting**

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### **5.1 Reports**

Costa must provide to the Vendor the reports it would otherwise have been obliged to provide to Citruscorp had the 2009 Crop not been sold to AMPL pursuant to this Deed.

### **5.2 Audit**

The Vendor may, from time to time, on giving at least 10 Business Days prior notice, at its expense, cause an audit to be conducted of the applicable records of AMPL or Costa, in order to verify any matter or calculation in relation to the payments and adjustments required to be made pursuant to this Deed and any reports given to the Vendor in relation to such payments or calculations.

### **5.3 Applicable records**

In undertaking any audit the applicable records of AMPL or Costa will only be in relation to details contemplated by this Deed or necessary to make any calculation required to be made under this Deed and in no circumstances will the person undertaking the audit have access to the records of AMPL or Costa which relate to any other matter, transaction or thing.

### **5.4 Auditor**

Audits will be conducted by the Administrators or their agents or employees, during regular business hours at the offices of Costa or AMPL (as applicable) and in such a manner as not to interfere with normal business activities of Costa or AMPL (as applicable) or any of their Related Bodies Corporate.

## **6 Determination**

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### **6.1 Notification**

In respect of the Extended Period, AMPL must:



- (a) on or before 30 November 2009 or such other or later date as may be agreed in writing between AMPL and the Vendor, notify the Vendor of the amounts which AMPL considers to be the Actual Costs;
- (b) on or before the last day of the Month immediately following the Month in which the last of the 2009 Product has been sold, notify the Vendor of the amount which AMPL considers to be the Actual Proceeds (for the avoidance of doubt, where the 2009 Product is sold overseas, the 'Month in which the last of the 2009 Product has been sold' will be the Month in which AMPL is advised of the final price which will be paid for that Product, which is expected to be no later than 31 December 2009); and
- (c) provide such supporting information as the Vendor may reasonably request or require to enable the Vendor to determine the accuracy of those amounts.

## **6.2 Best endeavours**

The Vendor and AMPL will use their respective best endeavours to agree the amount of the Actual Costs and Actual Proceeds within 10 Business Days of the relevant notification having been received by the Vendor.

## **6.3 Determination by Expert**

If the Vendor and AMPL cannot agree the amount of the Actual Costs and Actual Proceeds within the relevant period set out in clause 6.2 (or such longer period as they may agree), the determination of the relevant amount must be referred, by written notice from one of them to the other, to an Expert:

- (a) agreed on by them; or
- (b) if agreement is not reached within seven days of the notice for referral, appointed by the then president of the Victorian Chapter of the Institute of Chartered Accountants or his or her duly appointed deputy.

## **6.4 Role of Expert**

The Expert will act as an expert and not as an arbitrator. The decision of the Expert will be final and binding on all parties in the absence of manifest error of law or breach of natural justice.

## **6.5 Venue, representation and format**

Unless otherwise agreed between the disputants, the place of the resolution of the Dispute will be Melbourne and the disputants will be entitled to legal representation. The rules of evidence will apply to the resolution process.

## **6.6 Timeframe**

The Vendor and AMPL will each use all reasonable endeavours to ensure that the Expert is able to make a decision as soon as is practical, including, but not limited to, providing the Expert with all information relevant to the determination.

## **6.7 Confidentiality**

Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the determination.

## **6.8 Costs**

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

## **7 Rent**

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### **7.1 Payment of rent**

AMPL acknowledges that, but for this Deed:

- (a) TSL is liable under the Sub-Leases to pay rent to TML from 1 July 2009 onwards; and
- (b) TML is liable under the Leases to pay Actual Rent to Align and OIM (as applicable) from 1 July 2009 onwards.

AMPL agrees that, subject to clause 9.1, it will pay the Reduced Rent due to Align and OIM for the Extended Period from the Actual Proceeds.

## **8 Management Fees**

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### **8.1 Acknowledgment**

- (a) Costa and AMPL each acknowledge and agree that, but for this Deed:
  - (i) TSL is liable under the Management Agreement to pay fees for the Relevant Period to Citruscorp; and
  - (ii) Citruscorp is liable under the Citrus Orchard Management Agreement to pay Management Fees to Costa; and
- (b) The parties each acknowledge and agree that the costs of managing the Citrus Trees and the Orchard for the Relevant Period and harvesting the 2009 Crop, being an amount equal to the Management Fees, will be included in the Actual Costs which will be paid to Costa by AMPL and Costa will be entitled to charge the Management Fees to AMPL as if AMPL were a party to the Citrus Orchard Management Agreement in place of Citruscorp for the purposes of those clauses in that agreement.

### **8.2 Limited recourse**

- (a) Notwithstanding any other provision contained in this document or in any other agreement in relation to the payment of Management Fees for the Relevant Period to which it is a party, the liability of TSL, Citruscorp and the Administrators under the provisions of this document and any other agreement in relation to the payment of Management Fees for the Relevant Period to which it is a party, will at all times and for all purposes be construed solely as a liability of AMPL to be satisfied from the Actual Proceeds and if the Actual Proceeds are insufficient to pay the Management Fees for the Relevant Period, Costa agrees that the Management Fees for the Relevant Period will be reduced to the amount of the Actual Proceeds available to be applied to the payment of such management fees.
- (b) For the avoidance of any doubt, Costa and AMPL each acknowledge and agree that they have no recourse to TSL, Citruscorp or the Administrators in respect of any shortfall in the Management Fees payable for the Relevant Period.

## **9 Condition Subsequent**

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### **9.1 Reduction in Actual Rent**

TSL, TML, Citruscorp, the Responsible Entity and AMPL will each use their best endeavours to:

- (a) negotiate a reduction in the Actual Rent for the period required to enable all of the Crop ready and able to be harvested in the 2009 Calendar Year to be harvested to be reduced to an amount agreed to in writing by AMPL; and
- (b) have Align and OIM each execute an acknowledgment in substantially the same form as set out in the schedule to this Deed.

## **9.2 Automatic extension of Relevant Period**

If a reduction in the Actual Rent which is acceptable to AMPL (acting reasonably) is achieved, Align and OIM both execute and provide the acknowledgements referred to in clause 9.1(b) and AMPL executes an agreement in form and substance acceptable to AMPL with TSL, TML, Citruscorp, the Responsible Entity and Align or OIM (as applicable) to document the reduction in the Actual Rent ("Rent Reduction Agreement") on or before 30 June 2009, then the Relevant Period will automatically be extended to include Extended Period.

## **9.3 Automatic termination of the Relevant Period**

If AMPL does not agree to the amount of reduction in the Actual Rent, Align or OIM does not execute or provide the acknowledgement referred to in clause 9.1(b) or AMPL does not agree to and execute the Rent Reduction Agreement on or before 30 June 2009, then the Relevant Period will automatically terminate on 30 June 2009.

# **-10 Force majeure**

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## **10.1 Notice**

If Costa is prevented, in whole or in part, from carrying out its obligations under clause 12 by reason of a Force Majeure, it must give the Vendor prompt written notice of:

- (a) the particulars of the Force Majeure and its expected duration;
- (b) the obligations it cannot perform within the Relevant Period as a result of the Force Majeure ("Affected Obligations"); and
- (c) the measures it proposes to take to remedy or abate the Force Majeure.

## **10.2 Obligations suspended**

After notice has been given in accordance with clause 10.1:

- (a) the Affected Obligations will, to the extent they are affected by the Force Majeure, be suspended during but no longer than the continuation of the Force Majeure; and
- (b) any other party's obligations that are dependent upon the Affected Obligations will be suspended until Costa resumes performance.

## **10.3 Removing the Force Majeure**

Costa must use all reasonable endeavours to remove the Force Majeure as quickly as possible and resume performance of the Affected Obligations.

# **11 Relevant Period**

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Without limiting the automatic extension in clause 9.2, the Relevant Period may be extended with the agreement of all the parties:

- (a) for such time as is necessary to allow Costa to complete performance of the Affected Obligations pursuant to clause 10.3; or
- (b) for such other period as the parties may agree.

## **12 Ongoing obligations**

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### **12.1 Undertakings by Costa**

Costa undertakes to AMPL and the Vendor that, until such time as the Purchase Price (including any adjustment required pursuant to clause 3.2) has been paid in full, Costa will:

- (a) comply with the obligations it would have had to Citruscorp pursuant to clauses 4, 5 and 8 of the Citrus Orchard Management Agreement in respect of the harvesting and sale of the 2009 Crop, as if the 2009 Crop had not been sold to AMPL pursuant to this Deed and as if AMPL were a party to the Citrus Orchard Management Agreement in place of Citruscorp for the purposes of those clauses; and
- (b) not enter into a transaction with a Related Body Corporate to sell the 2009 Product at a price, or on terms, more favourable to the Related Body Corporate than would be offered to an arms' length purchaser, without the consent of the Vendor.

### **12.2 Termination of the Citrus Orchard Management Agreement**

The parties agree that:

- (a) if the Relevant Period is not extended beyond 30 June 2009, then Costa or its agent AMPL will be entitled at any time after 30 June 2009 to terminate the Citrus Orchard Management Agreement immediately by notice in writing to Citruscorp; and
- (b) the Citrus Orchard Management Agreement has been varied as expressly provide by this Deed.

## **13 Acknowledgements**

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TML, TSL, Citruscorp and the Responsible Entity each acknowledge and agree that the 2009 Crop has been sold pursuant to this Deed and that, as from the Completion Date (and save as expressly provided otherwise in this Deed), it does not have the rights and obligations it would otherwise have under the Lease, Sub-Lease, Citruslot Management Agreement, Management Agreement or the Citrus Orchard Management Agreement in respect of the 2009 Crop or 2009 Product including the right to payment of fees or expenses.

## **14 Warranties and acknowledgments**

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- (a) TSL and the Administrators represent and warrant to AMPL that:
  - (i) as at the Completion Date the Administrators have been duly and validly appointed as joint and several administrators of TSL pursuant to the Corporations Act; and
  - (ii) all rent in respect of the Orchard has been paid in full until 30 June 2009 and there are no further payment obligations due to Align and OIM in respect of the Leases until that date.
- (b) The Vendor represents and warrants to AMPL that the Vendor has full legal capacity and power to enter into and perform its obligations under this Deed including to pass legal title in the 2009 Crop to AMPL.
- (c) Save for those warranties and representations expressed in this Deed, and except for the Warranties and any warranties which cannot by law be excluded, AMPL acknowledges that neither the Vendor nor the Administrators are giving

any warranties to AMPL. Further AMPL acknowledges that the 2009 Crop is being sold in an 'as is, where is' condition.

- (d) Any payments to be made by AMPL to the Vendor under this Deed must be made in full without any set-off, deduction, counterclaim or claim to a lien whatsoever, whether or not any such set-off, deduction, counterclaim or lien arises under this Deed.

## **15 AMPL's Representations**

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AMPL represents and warrants to the Vendor that as at the Completion Date:

- (a) **(status)** it is a body corporate duly incorporated under the laws of the place of its incorporation;
- (b) **(power)** it has full legal capacity and power to:
  - (i) own property and carry on its business; and
  - (ii) enter into and perform its obligations under this Deed;
- (c) **(authorisations)** it has taken all corporate and other action required and obtained or been granted all consents, approvals, permissions and authorisations, whether internal or external, necessary to enable it to enter into and perform its obligations under this Deed;
- (d) **(binding obligations)** this Deed is valid, binding and enforceable against AMPL in accordance with its terms, subject to any necessary stamping and registration; and
- (e) **(no contravention)** the execution, delivery and performance of this Deed will not contravene:
  - (i) any law, regulation, order, judgment or decree of any court or Government Agency which is binding on it or any of its property;
  - (ii) any provision of its constitution or equivalent documents; or
  - (iii) any agreement, undertaking or instrument which is binding on it or any of its property.

## **16 Confidentiality and Announcements**

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### **16.1 Confidentiality**

Subject to clause 16.2, each party will (and each party will procure that its employees, officers and Associates will) keep strictly confidential and will not disclose to any third party without the prior written consent of the other parties:

- (a) the Confidential Information of any other party;
- (b) any information concerning any other party;
- (c) the existence of and contents of this Deed;
- (d) any information of which it has become aware in connection with this Deed; or
- (e) any transaction undertaken pursuant to this Deed,

(whether in writing, orally or by any other means and whether directly or indirectly) other than information that is or becomes generally available to the public other than as a result of a breach of this Deed.

### **16.2 Exceptions**

A party may disclose Confidential Information:

- (a) as and to the extent required by law, under the Listing Rules of the ASX or under this Deed;
- (b) to the extent necessary, in the case of the Vendor and the Administrators, to properly conduct the administration of the Vendor (including reporting to the creditors of the Vendor);
- (c) to any officers, employees and agents of that party who:
  - (i) have a need to know the information, but only to the extent they have a need to know; and
  - (ii) before disclosure, are directed by that party to keep the Confidential Information confidential;
- (d) to the directors, secretary, professional advisers and bankers of that party so long as the party uses its best endeavours to ensure that the matters disclosed are kept confidential;
- (e) to the extent that a party may, at any time after any other party has failed to observe or perform all of its obligations under this Deed, consider necessary or desirable to preserve or enforce its interests or rights,

and provided, other than in the case of (b), that the party must give as much advance notice to the other parties as possible of its intention to make the disclosure and take all lawful steps to confine the disclosure of any Confidential Information and preserve its confidentiality.

#### **16.3 Injunctive relief**

Each party acknowledges that monetary damages alone may not be adequate compensation to the other parties for a breach of this clause 16 and that any of the other parties are entitled to seek an injunction from a court of competent jurisdiction if the party fails to comply or threatens to fail to comply with this clause 16.

#### **16.4 Survival of Clause**

This clause 16 survives the termination of this Deed.

#### **16.5 No public announcement**

No announcement of the transaction undertaken pursuant to this Deed will be made otherwise than by the announcing party having given a reasonable opportunity for the other party to review, and have input on, the form of the proposed announcement.

### **17 GST**

#### **17.1 Definitions**

For the purposes of this clause 17, Taxable Supply, Consideration and GST will have the meaning given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

#### **17.2 Exclusive of GST**

If anything done, or required to be done, under this Deed, or anything done in settlement of the consequences of a breach of any warranty or other clause of this Deed, constitutes a Taxable Supply by one party to another party, unless otherwise provided in this Deed, the Consideration for that Taxable Supply will be exclusive of any GST.

#### **17.3 Consideration to be increased**

If the party making the Taxable Supply is liable for any GST on that Taxable Supply, subject to that party issuing a valid tax invoice (or adjustment note) to the party that

receives the Taxable Supply, the Consideration received will be increased so that the party making the Taxable Supply receives, net of the GST liability, the Consideration otherwise calculated pursuant to this Deed.

## **18 Administration matters**

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### **18.1 Liability**

The Administrators' Liability in respect of this Deed is limited to the extent of their indemnity from the assets of the Vendor in their capacity as administrators of the Vendor.

### **18.2 Claims**

No Claim will lie against the Vendor or the Administrators under this Deed unless made in writing and served upon the Administrators within 3 months after the end of the Relevant Period and in aggregate any such Claims shall not exceed the Purchase Price received.

## **19 Notices**

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### **19.1 Method**

All notices, requests, demands, consents, approvals, offers, agreements or other communications ("**notices**") given by a party under or in connection with this Deed must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 19.3 or as varied by any notice); and
- (d) hand delivered, sent by prepaid post or transmitted by email or facsimile to that address.

### **19.2 Receipt**

A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post:
  - (i) within Australia, on the second Business Day after the date of posting;
  - (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting;
- (c) if transmitted by e-mail, on transmission; or
- (d) if transmitted by facsimile, at the time recorded on the transmission report indicating successful transmission of the entire notice,

but if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

### 19.3 Address of parties

Unless varied by notice in accordance with this clause 19, the parties' addresses and other details are:

Party: Responsible Entity, TSL, Citruscorp, TML and the Administrators  
Attention: Mark Korda  
Address: Level 24, 333 Collins Street, Melbourne, VIC, 3000  
Facsimile: +61 3 8623 3399  
E-mail: mkorda@kordamentha.com

with a copy to:

Attention: Jane Sheridan  
Address: Level 21, 333 Collins Street, Melbourne, VIC, 3000  
Facsimile: +61 3 9229 9900  
E-mail: jsheridan@abl.com.au

Party: Costa and AMPL  
Attention: Mano Babliolakis  
Address: Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
Facsimile: +62 8645 1672  
E-mail: mano.babliolakis@costaexchange.com.au

### 19.4 Requirement for written notice

For the avoidance of doubt, the requirement in clause 19.1(a) applies to all notices unless expressly excluded and no implication to the contrary is to be drawn from the use of the expressions "written" or "in writing" in relation to some but not all notices.

## 20 General

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### 20.1 Entire agreement

This Deed and the Citrus Orchard Management Agreement constitute the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter other than those set out in the Citrus Orchard Management Agreement are replaced by this Deed and have no further effect.

### 20.2 Paramountcy

If this Deed conflicts with any other document, agreement or arrangement, including but not limited to, the Citrus Orchard Management Agreement, this Deed prevails to the extent of the inconsistency.

### 20.3 No merger

The provisions of this Deed will not merge on completion of any transaction contemplated in this Deed and, to the extent any provision has not been fulfilled, will remain in force.

### 20.4 Attorneys

Each person who executes this Deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Deed under that power.

### 20.5 Amendment

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



**20.6 Assignment**

No party may assign, transfer or otherwise deal with this Deed or any right or obligation under this Deed without the prior written consent of each other party, which must not be unreasonably withheld.

**20.7 Severability**

Part or all of any provision of this Deed that is illegal or unenforceable will be severed from this Deed and will not affect the continued operation of the remaining provisions of this Deed.

**20.8 Waiver**

Waiver of any power or right under this Deed:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

**20.9 Rights, remedies additional**

Any rights and remedies that a person may have under this Deed are in addition to and do not replace or limit any other rights or remedies that the person may have.

**20.10 Further assurances**

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this Deed and the transactions contemplated by it (including, but not limited to, the execution of documents).

**20.11 Costs**

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

**20.12 Stamp Duty**

If this Deed is subject to payment of duty to a Government Agency, such duty is payable by AMPL.

**20.13 Counterparts**

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

**20.14 Electronic delivery**

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

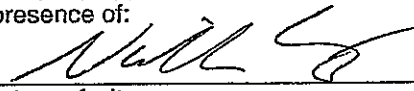
- (a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and
- (b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not effect the validity or effectiveness of the Relevant Document.

**20.15 Governing law and jurisdiction**

This Deed will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

EXECUTED as an DEED

EXECUTED by **TIMBERCORP**  
**SECURITIES LIMITED** (Voluntary  
Administrators Appointed) in its capacity as  
responsible entity for the 2005 Timbercorp  
Citrus Project (ARSN 114 091 299) by  
being signed in its name by **MARK**  
**ANTHONY KORDA** and **LEANNE KYLIE**  
**CHESSER** the voluntary administrators of  
the company appointed on 23 April 2009 in  
the presence of:

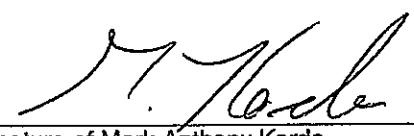
  
Signature of witness


NICHOLAS COURTNEY

Name of witness (print)

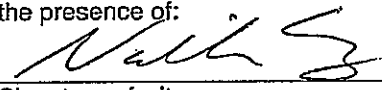
C/-24/333 COLLINS ST

Address of witness (print)

  
Signature of Mark Anthony Korda

  
Signature of Leanne Kylie Chesser

EXECUTED by **TIMBERCORP**  
**SECURITIES LIMITED** (Voluntary  
Administrators Appointed) in its own  
capacity and as agent and attorney for each  
Participant Grower by being signed in its  
name and on its behalf by **MARK**  
**ANTHONY KORDA** and **LEANNE KYLIE**  
**CHESSER** the voluntary administrators of  
the company appointed on 23 April 2009 in  
the presence of:

  
Signature of witness

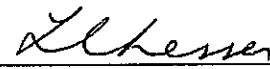
NICHOLAS COURTNEY

Name of witness (print)

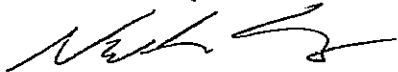
C/-24/333 COLLINS ST

Address of witness (print)

  
Signature of Mark Anthony Korda

  
Signature of Leanne Kylie Chesser

EXECUTED by **TIMBERCORP LIMITED**  
(Voluntary Administrators Appointed) by  
being signed in its name and on its behalf  
by **MARK ANTHONY KORDA** and  
**LEANNE KYLIE CHESSE** the voluntary  
administrators of the company appointed on  
23 April 2009 in the presence of:



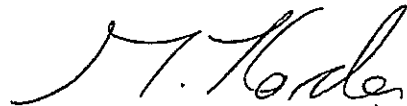
Signature of witness

NICHOLAS COURTNEY

Name of witness (print)

CL-24/333 COLLINS ST

Address of witness (print)



Signature of Mark Anthony Korda



Signature of Leanne Kylie Chesser

EXECUTED by **CITRUSCORP**  
**MANAGEMENT PTY LTD** (Voluntary  
Administrators Appointed) by being signed  
in its name and on its behalf by **MARK**  
**ANTHONY KORDA** and **LEANNE KYLIE**  
**CHESSE** the voluntary administrators of  
the company appointed on 23 April 2009 in  
the presence of:




Signature of witness

NICHOLAS COURTNEY


Name of witness (print)

CL-24/333 COLLINS ST

Address of witness (print)

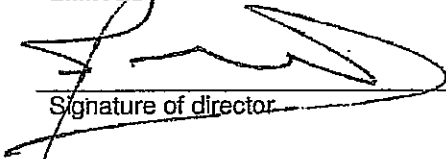


Signature of Mark Anthony Korda



Signature of Leanne Kylie Chesser

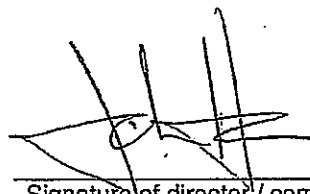
EXECUTED by **COSTAEXCHANGE**  
**LIMITED**



Signature of director

MANO RABIOULAKIS

Name of director (print)

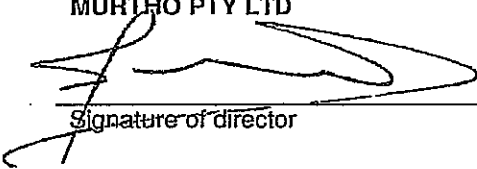


Signature of director / company secretary  
(delete as applicable)

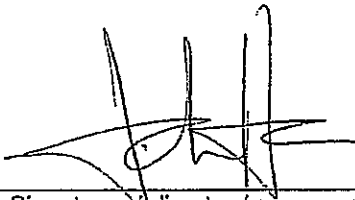
JOHN HARRIS

Name of director / company secretary (print)

EXECUTED by AGRIEXCHANGE  
MURTHO PTY LTD

  
\_\_\_\_\_  
Signature of director

MANO BABIDAKIS  
\_\_\_\_\_  
Name of director (print)

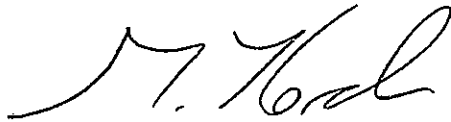
  
\_\_\_\_\_  
Signature of director / company secretary  
(delete as applicable)

JOHN HARRIS  
\_\_\_\_\_  
Name of director / company secretary (print)

EXECUTED by MARK ANTHONY KORDA )  
in his capacity as Administrator of )  
Timbercorp Securities Limited (Voluntary )  
Administrators Appointed) and Timbercorp )  
Limited (Voluntary Administrators )  
Appointed)

  
\_\_\_\_\_  
Witness

NICHOLAS COURTNEY  
\_\_\_\_\_  
Name of Witness (print)

  
\_\_\_\_\_  
Signature of Mark Anthony Korda

EXECUTED by LEANNE KYLIE CHESSEY )  
in her capacity as Administrator of )  
Timbercorp Securities Limited (Voluntary )  
Administrators Appointed) and Timbercorp )  
Limited (Voluntary Administrators )  
Appointed)

  
\_\_\_\_\_  
Witness

NICHOLAS COURTNEY  
\_\_\_\_\_  
Name of Witness (print)

  
\_\_\_\_\_  
Signature of Leanne Kylie Chessier

## **SCHEDULE 1 - ACKNOWLEDGMENT**

**TO:**

**TIMBERCORP SECURITIES LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000  
("TSL")

and

**TIMBERCORP LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 055 185 067 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000  
("TML")

and

**MARK ANTHONY KORDA AND LEANNE KYLIE CHESSE**

in their capacity as Administrators of Timbercorp Securities Limited (Voluntary Administrators Appointed) and Timbercorp Limited (Voluntary Administrators Appointed) both of Level 24, 333 Collins Street, Melbourne, Victoria, 3000  
("Administrators")

and

**COSTAEXCHANGE LIMITED**

ACN 002 687 961 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
("Costa")

and

**AGRIEXCHANGE MURTHO PTY LTD**

ACN 093 583 049 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
("AMPL")

**FROM:**

**ALIGN FUNDS MANAGEMENT LIMITED**

(ACN 105 684 231) of 505 St Kilda Road, Melbourne, Victoria, 3004, in its capacity as responsible entity for the Timbercorp Orchard Trust (ARSN 106 557 297)  
("Align")

### **1 Acknowledgment**

---

**1.1 Align acknowledges and agrees that:**

- (a) all rent payments ("Rent") due under the lease between Align and TML dated 26 May 2004, as varied, in respect of the property known as Kangara Estate ("Lease") for the period from 1 July 2009 to [insert] ("Extended Period") will be paid by Agriexchange Murtho Pty Ltd ACN 093 583 049 ("AMPL"); and
- (b) it will accept payment from AMPL in full and final payment of the corresponding amounts which would otherwise be due as Rent from TML.

## 2 Limited recourse

---

- 2.1 Notwithstanding any other provision contained in any agreement in relation to the payment of Rent for the Extended Period to which it is a party, the liability of TSL, TML and the Administrators under the provisions of this acknowledgment and any other agreement in relation to the payment of the Rent for the Extended Period to which it is a party, will at all times and for all purposes be construed solely as a liability of AMPL to be satisfied from the actual proceeds received from the sale of the 2009 citrus crop ("Actual Proceeds") and if the Actual Proceeds are insufficient to pay the Rent for the Extended Period, Align agrees that the Rent for the Extended Period will be reduced to the amount of the Actual Proceeds available to be applied to the payment of such rent.
- 2.2 For the avoidance of any doubt, Align acknowledges and agrees that it has no recourse to TML, TSL or the Administrators in respect of any shortfall in the Rent payable for the Extended Period.

SIGNED by ALIGN FUNDS )  
MANAGEMENT LIMITED in its capacity as )  
responsible entity for the Timbercorp  
Orchard Trust

---

Signature of director

---

Signature of director / company secretary  
(delete as applicable)

---

Name of director (print)

---

Name of director / company secretary (print)

## **SCHEDULE - OIM ACKNOWLEDGMENT**

**TO:**

**TIMBERCORP SECURITIES LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000  
("TSL")

and

**TIMBERCORP LIMITED (VOLUNTARY ADMINISTRATORS APPOINTED)**

ACN 055 185 067 of Level 8, 461 Bourke Street, Melbourne, Victoria, 3000  
("TML")

and

**MARK ANTHONY KORDA AND LEANNE KYLIE CHESSER**

in their capacity as Administrators of Timbercorp Securities Limited (Voluntary Administrators Appointed) and Timbercorp Limited (Voluntary Administrators Appointed) both of Level 24, 333 Collins Street, Melbourne, Victoria, 3000  
("Administrators")

and

**COSTAEXCHANGE LIMITED**

ACN 002 687 961 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
("Costa")

and

**AGRIEXCHANGE MURTHO PTY LTD**

ACN 093 583 049 of Level 2, 768 Lorimer Street, Port Melbourne, Victoria, 3207  
("AMPL")

**FROM:**

**OIM#2 PTY LTD**

(ACN 112 691 997) of 505 St Kilda Road, Melbourne, Victoria, 3004, in its capacity as responsible entity for the Timbercorp Orchard Trust #2  
("OIM")

### **1 Acknowledgment**

---

1.1 OIM acknowledges and agrees that:

- (a) all rent payments ("Rent") due under the lease between OIM and TML dated 19 May 2005, in respect of the property known as Solara Estate ("Lease") for the period from 1 July 2009 to [insert] ("Extended Period") will be paid by Agriflexchange Murtho Pty Ltd ACN 093 583 049 ("AMPL"); and
- (b) it will accept payment from AMPL in full and final payment of the corresponding amounts which would otherwise be due as Rent from TML.

## 2 Limited recourse

---

- 2.1 Notwithstanding any other provision contained in any agreement in relation to the payment of Rent for the Extended Period to which it is a party, the liability of TSL, TML and the Administrators under the provisions of this acknowledgment and any other agreement in relation to the payment of the Rent for the Extended Period to which it is a party, will at all times and for all purposes be construed solely as a liability of AMPL to be satisfied from the actual proceeds received from the sale of the 2009 citrus crop ("**Actual Proceeds**") and if the Actual Proceeds are insufficient to pay the Rent for the Extended Period, OIM agrees that the Rent for the Extended Period will be reduced to the amount of the Actual Proceeds available to be applied to the payment of such rent.
- 2.2 For the avoidance of any doubt, OIM acknowledges and agrees that it has no recourse to TML, TSL or the Administrators in respect of any shortfall in the Rent payable for the Extended Period.

SIGNED by OIM#2 PTY LTD in its capacity )  
as trustee of the Timbercorp Orchard Trust )  
#2

---

Signature of director

---

Signature of director / company secretary  
(delete as applicable)

---

Name of director (print)

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Name of director / company secretary (print)



constitution and the deed amending the 2005 Citrus Scheme constitution. We will not exercise this power to surrender the sub-leases or licence agreements until the Sale Contract is completed to ensure that the Growers receive consideration for the surrender of their rights.

#### Grower dissatisfaction

- 30 Now produced and shown to me and marked "MAK-8" is a letter from Arnold Bloch Leibler to Gadens Lawyers dated 22 December 2009.
- 31 Now produced and shown to me and marked "MAK-9" is an email from Kerree Bezencon dated 1 February 2010 which was sent to financial advisers.
- 32 Now produced and shown to me and marked "MAK-10" is a letter received by Arnold Bloch Leibler on 5 February 2010 at 12.53 pm from Tom May of herbertgeer, acting for the Growers' Committee in this proceeding.

#### Conclusion

33 In summary:

- (a) The 2005 Citrus Scheme the subject of this application is conducted on land owned by the TPIF sub-trust TOT#2;
- (b) The Receivers have been appointed as receivers and managers of the charged assets of TOT#2;
- (c) The citrus orchards growing on the land owned by the TPIF sub-trust are at risk of wasting; *No, CROP SALE AGREEMENT IN PLACE TIL 30/6/11 TO AVOID WASTING*
- (d) The Timbercorp Group is hopelessly insolvent and cannot maintain the citrus orchards growing on the land owned by the TPIF sub-trust; *INCORRECT, FLOW POSITIVE SEE CFS*
- (e) The Receivers have conducted a robust sale process (as described in the McEvoy Affidavit) and tested the market;
- (f) The Sale Contract is the result of the Receivers' test of the market;
- (g) The net proceeds of sale under the Sale Contract will be held on trust pending the Court's determination of the entitlements of interested parties, including Growers; and

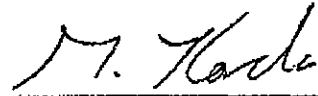
#869915

*offm* *ML*

1456789  
9

- (h) It is appropriate to extinguish the Growers' rights to enable the Sale Contract to complete.

SWORN at Melbourne in the State of )  
Victoria by MARK ANTHONY KORDA this )  
8<sup>th</sup> day of February 2010 )

)   
)

Before me:



CATHERINE HELEN MACRAE  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

#659015

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

SCI 2010 398

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  
2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)  
AND ORS

Plaintiffs

AFFIDAVIT OF MARK ANTHONY KORDA IN SUPPORT OF  
APPLICATION FOR DIRECTION REGARDING SALE OF CITRUS ASSETS (TPIF)

Date of document: 8 February 2010  
Filed on behalf of: the Plaintiffs

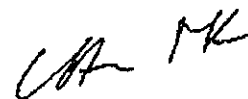
Prepared by:  
**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 01-1499489  
(L.Zwier@abl.com.au)

I, **MARK ANTHONY KORDA**, of Level 24, 333 Collins Street, Melbourne, in the state of Victoria, Chartered Accountant, SAY ON OATH that:

- 1 I am, with Leanne Kylie Chesser, the liquidator of the First Plaintiff, Timbercorp Securities Limited (in liquidation) (TSL).
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser to make this affidavit on her behalf. References in this affidavit to "we", "us", "our" or "ourselves" and "Liquidators" are references to Ms Chesser and me.

ABL/369915v2



### Personal background and experience

- 3 I am a chartered accountant and a partner of the firm KordaMentha Pty Ltd (ACN 100 169 391) (**KordaMentha**). I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Insolvency Practitioners Association of Australia and a member of the Institute of Chartered Accountants. Before founding KordaMentha in 2002, I had a 24-year career with the firm Arthur Andersen, during which I held the positions of Director of Corporate Finance, Managing Partner Asia Pacific Corporate Recovery Services Practice and Managing Partner Australia Accounting and Audit Practice. I was also a Member of the Australian Executive Committee and Board of Partners. I have been practising in the area of corporate insolvency and financial reconstructions for 20 years.

### Voluntary Administration of Timbercorp Group

- 4 On 23 April 2009, we were appointed as voluntary administrators of TSL. Also on 23 April 2009, we, and three other KordaMentha partners, namely Mark Francis Xavier Mentha, Craig Peter Shepard and Clifford Stuart Rocke, were appointed as voluntary administrators of the other Timbercorp group companies (together **Timbercorp Group**). All of the appointments were made by those companies pursuant to section 436A of the *Corporations Act 2001 (Cth)* (**the Act**).

### Liquidation

- 5 On 29 June 2009, at the second meeting of the creditors of all the Timbercorp Group and a separate meeting of the creditors of TSL, the creditors resolved to wind up the Timbercorp Group and TSL respectively. From 29 June 2009 we have been the liquidators of TSL.

### 2005 Citrus Scheme

- 6 TSL is currently the responsible entity (**RE**) of the 2005 Timbercorp Citrus Project, a registered managed investment scheme (**MIS**) under Part 5C of the Act (**2005 Citrus Scheme**). TSL is also the RE of the 2004 Timbercorp Citrus Project, however this application is not concerned with that project.
- 7 TSL is hopelessly insolvent and is unable to continue managing the 2005 Citrus Scheme.

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*CFM MK*

- 8 The members of the 2005 Citrus Scheme are referred to in the governing documents as "Growers" and I adopt that terminology here. The purpose of the 2005 Citrus Scheme is the cultivation of citrus trees and the harvesting and processing of citrus for commercial sale.

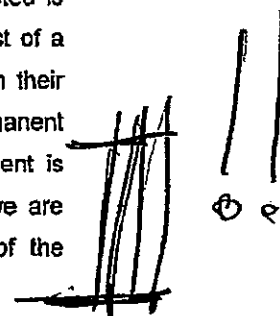
#### Purpose of this Application

- 9 The purpose of this application is to seek a direction pursuant to section 511 of the Act that we are justified in terminating the Growers' interests in the 2005 Citrus Scheme by surrendering or terminating each relevant Grower licence upon completion of an agreement to sell the property currently licensed to the Growers.



#### Citrus Schemes

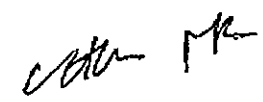
- 10 The 2005 Citrus Scheme is operated on land owned by Timbercorp Primary Industry Infrastructure Fund (TPIF), (a property trust listed on the ASX) through its wholly-owned sub-trust, Timbercorp Orchard Trust#2 (TOT#2) and by Align Funds Management Limited (ACN 105 884 231) in its capacity as RE of the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) (TOT). TPIF's primary business is to act as an independent owner of the properties leased to the Timbercorp Group for use in connection with the Timbercorp MIS.
- 11 This application concerns only one of the two properties on which the 2005 Citrus Scheme is conducted. It is known as Solara South and is owned by OIM#2 Pty Limited (Receivers and Managers Appointed) (OIM#2) as trustee of TOT#2 (Solara property). The other property on which the 2005 Citrus Scheme is conducted is known as Kangara (Kangara property). The Kangara property is the subject of a separate sale process being conducted by Paul Kirk and Stephen Longley in their capacity as receivers and managers of the assets of TOT, appointed by Permanent Nominees (Aust.) Limited as chargee. Once a sale and purchase agreement is entered into in respect of the Kangara property, we will seek orders that we are justified in surrendering or terminating the Growers' licences in respect of the Kangara property on completion of that sale and purchase agreement.



#### Receivers and Sale Process

- 12 On 16 September 2009, Australia and New Zealand Banking Group Limited (ANZ) appointed David Laurence McEvoy and Paul William Kirk of PricewaterhouseCoopers (Receivers) as receivers and managers of OIM#2, as trustee of TOT#2. I have read

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the affidavit of David Laurence McEvoy sworn on 25 January 2010 and filed in this proceeding (**McEvoy Affidavit**). A copy of the Receivers' notice of appointment is exhibited to the McEvoy Affidavit, marked DLM-4.

- 13 As described in paragraphs 15 - 32 of the McEvoy Affidavit, the Receivers have conducted a sale process of the Solara property (**Receivers' Sale Process**) and have entered into a sale and purchase agreement (**Sale Contract**) with Agriproperty Pty Ltd (ACN 140 954 874) (**Agriproperty**), guaranteed by CostaExchange Limited (ACN 002 687 961) (**Costa**). Pursuant to clause 5 of the Special Conditions to the Sale Contract, the Growers' licences for the Solara property will be surrendered or terminated by TSL on settlement. We are empowered to do so, but will not exercise those powers without a direction from the Court.

#### **TPIF Land**

- 14 As explained above, OIM#2 (as trustee for TOT#2) is the registered proprietor of the Solara property. OIM#2 (as trustee for TOT#2) leases the Solara property to Timbercorp Limited (ACN 055 185 167) (in liquidation) (TL). TL sub-leases the Solara property to TSL. TSL then grants a licence to each Grower to use the property for the cultivation of citrus trees and the harvesting and processing of citrus (**Grower Licence**). These leasing and licensing arrangements are governed by a suite of documents, which are described in paragraph 10 of the McEvoy Affidavit and exhibited as DLM-1, DLM-2 and DLM-3.
- 15 The leasing arrangements are also illustrated in a structure diagram. Now produced and shown to me marked "**MAK-1**" is the structure diagram for the 2005 Citrus Scheme.

#### **TPIF Citrus Sale Transaction**

- 16 We have not conducted a review of the Receivers' Sale Process. We assume that the Receivers have complied with their obligations in general. Clause 3.1 of the Solara Grower Rights Deed (see below at paragraphs 21 - 22) contains a confirmation from the Receivers to us that the Receivers have complied with their obligations under s 420A of the Act.
- 17 I have been provided with copies of the Sale Contract on a confidential basis. The Sale Contract contains a number of conditions precedent, including:

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*CAH MK*

- (a) the Court directing that the Liquidators of TSL are justified in procuring TSL, in its capacity as RE of the 2005 Citrus Scheme, to extinguish all of the rights of Growers in respect of the Solora property the subject of the Sale Contract, including the Grower Licences by no later than 3 March 2010; and
- (b) the Court making orders determining the rights of all and any persons to all or any part of the net proceeds of the sale under the Sale Contract, or ordering that those net proceeds be held on trust until the rights of those persons are determined by a further order of the Court.

18 I am informed by the Receivers that these conditions precedent are necessary because Agriproperty requires clear title to the Solora Property. To grant clear title, and so that the Receivers can assure Agriproperty that the Growers do not have a continuing claim, the Growers' rights must be extinguished upon completion of the Sale Contract.

19 The Liquidators and TSL are not parties to the Sale Contract.

20 I am told by Nick Courtney, an Associate Director of KordaMentha, the following:

- (a) on 11 December 2009 Nick Courtney had a telephone discussion with Stewart McCallum of PriceWaterhouseCoopers;
- (b) Stewart McCallum told Nick Courtney that Agriproperty was the preferred bidder;
- (c) Stewart McCallum sent Nick Courtney an e-mail attaching Agriproperty's offer. That offer included clause 2.3.7 which said the offer was dependent on "Growers' rights in connection with the Solora South property ... are terminated, surrendered or extinguished at settlement". Now produced and shown to me marked as confidential exhibit **MAK-2** is the e-mail from Stewart McCallum to Nick Courtney of 11 December 2009. I seek that this exhibit remain confidential. If the agreement with Agriproperty does not reach settlement it may prejudice any subsequent realisation.

21 We agreed to seek Court approval for the release of Grower rights because it was apparent that the Sale Process would not proceed without it and that the assets have been realised following a robust sale process and are at risk of wasting. We had entered into agreements with the manager of the 2005 Citrus Scheme operated on

#868915

*John MK*

the Solara property to ensure the ongoing maintenance of the citrus orchards. Those agreements were due to expire on 30 November 2009. We then extended the agreements to 31 December 2009 in the anticipation that the Sale Contract would be executed between these dates (the Sale Contract was executed on 18 December 2009). In light of the ongoing management costs of the citrus orchards and the potential for waste (which is described in paragraphs 36-38 of the McEvoy Affidavit), we believed the most appropriate course of action was to allow the Receivers' Sale Process to complete and for the rights of the Growers and other interested parties to the net proceeds of sale to be determined at a later date by the Court.

- 22 Between 17 December 2009 and 15 January 2010 we negotiated the terms of a deed recording our agreement to obtain Court approval for the release of the Growers' rights with the Receivers. The terms were recorded in a deed entitled the "Solara Grower Rights Deed". Execution of the Solara Grower Rights Deed was completed on 25 January 2010. The Solara Grower Rights Deed is exhibited to the McEvoy Affidavit, marked DLM-13. It was a term of the Solara Grower Rights Deed that we would file this application by 4 pm on 29 January 2010.

#### Power to Extinguish Grower Rights

- 23 TSL is RE for a number of MIS, including MIS for the cultivation of eucalypts (**Forestry Schemes**), almonds (**Almond Schemes**) and olives (**Olive Schemes**). Since shortly after the commencement of the voluntary administration of TSL and the Timbercorp Group companies we developed a strategy for, and then managed, an orderly realisation or recapitalisation of the Forestry Schemes, Almond Schemes and Olive Schemes. This process has resulted in an informal winding up of those schemes whereby the Court has made orders that we are justified in procuring TSL to amend the constitutions of each scheme to give TSL the power to terminate or surrender the Growers' licences or sub-leases to land on which the schemes are operated. We only terminate or surrender the licences or sub-leases once the Court has directed we are justified in entering into the sale agreement and the sale agreement has completed. I set out the history of the applications for the Forestry Schemes, Almond Schemes and Olive Schemes in more detail at paragraphs 41-57 in my affidavit sworn 10 November 2009 and filed in Supreme Court proceeding SCI 2009 9998 regarding the sale of olive assets (**Olives Affidavit**). Now produced and shown to me and marked "MAK-3" is my Olives Affidavit (without exhibits).

#B59015



- 24 It is apparent from this history that on three occasions we have sought and obtained approval from the Court to amend the scheme constitutions so as to give TSL the power to terminate or surrender the Growers' licences or sub-leases to land on which the schemes are operated. As a result, following the making of each of the sets of orders, we believed that similarly amending the Constitutions to other Projects following similar sale processes would be uncontroversial.
- 25 On 24 November 2009, our lawyers appeared on behalf of TL and TSL before Judd J in the matter of *Timbercorp Ltd & Anor v Plantation Land Limited* (unreported). This application concerned leases in the Forestry Schemes. During the course of that hearing, our lawyer briefly outlined the history of the informal winding up of the Timbercorp MIS and stated our intention to amend the constitution of the 2005 Citrus Scheme to terminate Grower rights, unless some objection was raised. Michael Fernon of Clarendon Lawyers, who act for a number of Growers and who have appeared at many of the hearings regarding the Timbercorp MIS, was at the bar table. No objection was raised then or subsequently. Now produced and shown to me and marked "MAK-4" is the transcript for the hearing on 24 November 2009. The discussion I refer to appears at pages 23-24 of the transcript.
- 26 The Australian Securities and Investment Commission did not attend the hearing on 24 November 2009.
- 27 On 14 December 2009, our lawyers wrote to Andrew Tregear of ASIC informing him of our intention to amend the 2005 Citrus Scheme constitution. A copy of this letter was also sent to Clarendon Lawyers and Maurice Blackburn as both firms act for Growers and have previously appeared in applications relating to the Timbercorp MIS. Now produced and shown to me and marked "MAK-5" is the letter of 14 December 2009 to Andrew Tregear and the e-mail copying that letter to Clarendon Lawyers and Maurice Blackburn.
- 28 We did not receive any reply to the letter from Clarendon Lawyers or Maurice Blackburn. On 18 December 2009, Andrew Tregear replied stating that ASIC was unable to comment. Now produced and shown to me and marked "MAK-6" is Andrew Tregear's reply of 18 December 2009.
- 29 On 28 January 2010, we amended the 2005 Citrus Scheme constitution to make explicit the RE's power to surrender or terminate the Grower Licences. Now produced and shown to me and marked "MAK-7" is the 2005 Citrus Scheme

#889915

*CM* *ML*

6.9

RE to  
ack for  
growers

11. RESPONSIBLE ENTITY'S POWERS

Each Participant Grower agrees that the Responsible Entity has irrevocable power as the agent, representative and attorney of the Participant Grower and whether in the name of the Participant Grower or the Responsible Entity or both:

- (a) subject to the requirements of ASIC and of the Corporations Act, to receive and hold the Application Money;
- (b) to invest any money held in a special trust account in any Authorised Investment;
- (c) to invest moneys standing in the Agency Account in any Authorised Investment in accordance with clause 16;
- (d) to use the Application Money of the Participant Grower in discharging the Participant Grower's obligations under the Grower Agreements or under this Deed;
- (e) to prepare reports and accounts in relation to the Citruslot Operations and in relation to the processing of Citrus and the sale of Product;
- (f) to monitor the performance of all parties to the Project Documents;
- (g) to appoint agents to enter into the Project Documents on behalf of a Participant Grower and to exercise all rights and powers of the Participant Grower under any Project Documents;
- (h) generally to enter, make or engage in transactions, undertakings, activities and arrangements of every kind and nature which a natural person of full age and capacity could enter, make or engage in and which constitute or are part of or relate to or are incidental to the Citruslot Operations on behalf of the Participant Grower;
- (i) to appoint auditors to audit and/or monitor the accounting records and other records of the Responsible Entity and any party to a Project Document in relation to the Citrus and Product from the Project;
- (j) subject to there being adequate moneys in respect of any costs or expenses (or indemnities satisfactory to the Responsible Entity instead of them), to make claims and bring legal or arbitration proceedings against any person who is a party to any Grower Agreement or Project Document, to take legal or other arbitral or alternative dispute resolution proceedings on behalf of the Participant Grower or Participant Growers and to defend or compromise any claim or legal or arbitral proceedings arising out of the interest of the Participant Grower and relating to any Grower Agreement;
- (k) to execute any deed, agreement, certificate or other document and to do all such things as are necessary or desirable to further the powers granted to the Responsible Entity in this clause 11, including for the purposes of protecting, insofar as is legally possible, the Participant Grower's tenure to its Citruslots; and
- (l) to lease the Land from the owner or sublessor of the Land, and licence it to the Participant Grower.

12. AGENCY ACCOUNT

12.1 Agency Account

The Responsible Entity must keep or cause to be kept a separate Agency Account or

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

IN THE MATTER OF THE TIMBERCORP RIGHTS PROCEEDINGS

S APCI 2011 0103 (Almond Land Rights Appeal Proceeding)

S CI 2011 6777 (Fenceport Rights Proceeding)

S CI 2011 6604 (Liparoo & Yungera Rights Proceeding)

S CI 2011 6606 (Solara Rights Proceeding)

S CI 2010 1354 (BB Olives Rights Proceeding)

EXHIBIT NOTE

Date of document:

12 October 2012

Filed on behalf of:

The Representative Growers

Prepared by:

Clarendon Lawyers

Tel: 03 8681 4400

Level 17, Rialto North Tower

Fax: 03 8681 4499

525 Collins Street

Solicitors Code: 101294

MELBOURNE VIC 3000

MJF 1100412

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "exhibit CJA-AA" now produced and shown to CELIA JANE ARMSTRONG at the time of swearing her affidavit on 12 October 2012.

Before me:.....



**SARAH DORN**

of Clarendon Lawyers Pty Ltd

Level 17, Rialto North Tower

525 Collins St, Melbourne Victoria 3000

an Australian Legal Practitioner within the  
meaning of the *Legal Profession Act 2004*

**CJA-AA**

**Bundle of documents relating to grower keenness  
in the 2004 and 2005 citrus projects**

7

GROWERS

KEENNESS

(see 501 FABAL  
RE 83% INVOICES PAID UP)

Please respond

- WE ARE LIKELY TO PARTICIPATE AT THE BASIC ENTITLEMENT LEVEL
- WE ARE LIKELY TO PARTICIPATE BEYOND THE BASIC ENTITLEMENT LEVEL

1<sup>st</sup> letter

### **CITRUS GROWERS 2004 & 2005**

We require an **URGENT** response.

We have succeeded in placing a bid proposal on citrus assets which will include grower participation.

You will have the CHANCE TO OWN THE ASSET.

We need **urgently** to gauge your interest. Please send back this email with your reply

**DELETE WHICH DOES NOT APPLY**

**YES, I'M INTERESTED**

**NO, I'M NOT INTERESTED**

Aspects of the proposal will be:

- We anticipate a **once-only** payment, **substantially** reduced from your usual ongoing October commitment (possibly around \$4,500 per lot).
- Anticipated to be cash flow positive almost immediately.
- The assets would be owned unencumbered - you would own the asset outright.
- No corporate debt would be involved.
- No further financial commitments.
- You wouldn't ever have to pay subleases, and M IS management fees charges, rental fees, and other hidden charges.
- You would have a vertically integrated corporate structure, which is not paying subcontractors substantial fees that impact dramatically on the bottom line of the organization.
- Costs would be transparent.
- The corporate structure would be owned by all growers who partake in the offering.
- There are current proceeds available, which could be used to help offset the grower contributions.
- This offers a far better outcome, compared to the apportionment of sale proceeds that you might receive after Korda Mentha take out all their costs.

**WHAT'S NEEDED FROM YOU THE GROWER ??**

- **WE NEED TO GET YOUR RESPONSES NOW (WITHIN THE NEXT 36 HOURS) ABOUT THIS IDEA - PLEASE SEND BACK THIS EMAIL NOW WITH YOUR RESPONSE (strike out what's NOT applicable ABOVE)**
- **WE NEED YOU TO FILL OUT YOUR PROXY FORMS TO CHANGE THE RESPONSIBLE ENTITY - IN ORDER TO FACILITATE THIS BID**
- **WE NEED YOU TO BECOME MEMBERS**

FIND THIS ALL ON THE LINK: [www.tggalmondandolivegrowers.com.au](http://www.tggalmondandolivegrowers.com.au)

2<sup>nd</sup> Letter on web-site also

FURTHER FORMAL INFORMATION ALSO AVAILABLE ON THE SITE PROVIDED BELOW BUT COPIED FOR YOUR INFORMATION

ATTENTION – CITRUS GROWERS

*INFORMATION IS NEEDED FROM GROWERS. THE PURPOSE OF GATHERING THIS INFORMATION IS EXCLUSIVELY FOR THE PURPOSE OF BEING ABLE TO INFORM THE SUPREME COURT OF VICTORIA OF THE VIEW OF GROWERS AND IS NOT IN ANY WAY AN OFFER OR INVITATION TO TREAT.*

PLEASE RESPOND BY EMAIL TO [mpointer@yca.com.au](mailto:mpointer@yca.com.au) WITH ONE OF THE TWO FOLLOWING STATEMENTS:

- **WE ARE LIKELY TO PARTICIPATE AT THE BASIC ENTITLEMENT LEVEL**
- **WE ARE LIKELY TO PARTICIPATE BEYOND THE BASIC ENTITLEMENT LEVEL**

#### PROPOSAL

1. There be established a new company, Australian Sunrise Citrus Limited, to purchase all the assets at "Solara", being the property on which the 2005 Timbercorp Citrus Project (2005 Project) has been carried on, free from all encumbrances. The assets include the land, trees, packing shed, and all other improvements.
2. The purchase price to be offered by Australian Sunrise Citrus Limited for the assets will be \$15 million payable on 30th June 2010
3. The purchase price of \$15 million will be funded as follows:-
  - (a) Between \$7,216,000 and \$8,118,000 from the sale of 4,510 megalitres of water entitlements to Tandou Limited, pursuant to an Agreement for Permanent Transfer of Water payable on 31st May 2010. Tandou Limited will then lease the water entitlements to Australian Sunrise Citrus Limited at a rental being 10% p.a. of the price paid for the water entitlements.
  - (b) The balance of the purchase price of \$15,000,000 by:-
    - (i) The subscription by Growers in the 2005 Project, at the indicative rate of \$4500 per lot in the 2005 Project, payable on 10 May 2010 (Basic Entitlement).

(ii) In the event that not all 2005 Growers exercise their rights pursuant to (i) above, each 2005 Grower will be entitled, in addition to the Basic Entitlement, to make an additional subscription at the same price, payable on 10 May 2010, limited only to the amount not raised by the process in (i) above

(iii) To the extent that the whole of the balance is not raised pursuant to (i) and (ii) above, Growers under the 2004 Timbercorp Citrus Project, Debenture Holders in Timbercorp Orchard Trust and other persons will be entitled to subscribe at the same price, payable on 10th June 2010.

(c) It is anticipated that this will be cash-flow positive but some allowance for oversubscriptions/further contributions will be considered in order to provide a readily available extra buffer for working-capital, if required

Regards

Kerree A Bezencon, Director

B.Ec (Accounting & Finance),

ASIA(Gr Dip Applied Finance & Investment),

CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),

CFP (Certified Financial Planner),

SSA (Specialist SMSF Advisor)

This email was sent by Kerree Bezencon, Siger Super Services Pty Ltd, ABN 18 105 441 521, PO Box 1147, Healesville VIC 3777, Tf 03 5962 6097, Fax 03 5962 6086, 8 Hygiene Street, Noosaville QLD 4566, Tf 07 5473 0790, Fax 07 5473 0796, Mobile 0419 10 15 20, Email - mail@siger.com.au to jeff.english@rtoowoomba.com.au

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VISION 6

**Extraordinary Resolution 1 - Removal of Current Responsible Entity**

*Subject to Extraordinary Resolution 2 being passed and ASIC varying the Australian Financial Services Licence (No. 246650) of Food And Beverage Australia Limited (ACN 007 996 081) to permit it to be the Responsible Entity of the Project, the current responsible entity of the Project, Timbercorp Securities Limited (ACN 092 311 469) (in liquidation) be removed as the Responsible Entity of the Project.*

Michael Pointer moved to pass Extraordinary Resolution 1, Kerree Bezencon seconded the motion.

The proxy votes were read out:

Proxy votes in favour of the resolution were: 1,223 votes out of 1,550 (78%) "For"; nil "Against".

The motion was carried.

78%  
SHOULD BE 86% (05)  
78 (04)

The following extraordinary resolution was put to the meeting and voted upon:

**Extraordinary Resolution 2 - Appointment of New Responsible Entity**

*Subject to Extraordinary Resolution 1 being passed and ASIC varying its current Australian Financial Services Licence (No. 246650) to permit it to operate the Project, Food And Beverage Australia Limited (ACN 007 996 081) be appointed as the Responsible Entity of the Project.*

Chris Day added that such appointment is to take effect on 22<sup>nd</sup> November 2010, subject to either the satisfactory execution of an unconditional contract between CostaExchange and Align or the failure to conclude such a contract by that date.

Michael Pointer moved to pass Extraordinary Resolution 2, Kerree Bezencon seconded the motion.

The proxy votes were read out:

Proxy votes in favour of the resolution were: 1,223 votes out of 1,550 (78%) "For"; nil "Against".

The motion was carried.

SHOULD BE 86% (05)  
(78% 04) 78%

NOT AT THAT POINT SEE KM/DAY EMAIL

Antony Munro stated that the Agreement is signed, and that precedent says that we must have the Court decide. He advised that this will not happen in two weeks.

Chris Day requested that the minutes record that Food And Beverage Australia Limited's AFS Licence No. 246650 was, with effect from the 16<sup>th</sup> of September 2010 varied to include an "in kind" horticulture authorisation in addition to its existing "in kind" viticulture authorisation. ASIC CAPACIT

**4. CLOSURE**

There being no further business, the meeting closed at 3.55 pm.

Adopted as a true and correct record of the meeting:

Peter Holt

Chairman

Date:



## **SUPPORT (GROWERS, DEBENTUREHOLDERS, ANNUITYHOLDERS, UNITHOLDERS)**

1. The extent of our support and grower appetite was not disclosed adequately. Not only were the figures wrong - 86% of 2005 growers and 78% of 2004 growers voted to change the RE in order that available opportunities to restructure could be facilitated - but it was not disclosed how significant this was. This was an unheard of result, due to the difficulty in getting 50% of the total growers (not just 75% of the meeting). The only people not participating were either overseas, Timbercorp executives or simply uncontactable. The high level of response from growers, despite the time-lapse of some 19 months since administration illustrates the degree of grower interest. It was not disclosed that a history of interest shown by growers in continuing the enterprise and owning the assets has occurred over a significant long timeframe including.
  - A survey which was conducted and which required a written response from growers (this was not just an easy telephone survey) 80% of citrus growers replied that they were interested to participate in a proposal to own the citrus project assets
  - Previous surveys which showed keen grower interest - a 72% interest in a proposed almond assets purchase following a survey in October 2009,
  - the ASIC survey, which in July 09 showed 64% of growers were interested in paying monies to continue projects. This survey was conducted across all projects covering- a total of some 18,000 growers.
  - The response from growers who are not in not currently growers in the citrus project projects, but are keen to take up an interest in purchasing assets and continuing to participate in the agricultural industry .
  - The issuing of invoices in the avocado project -where over 83% take-up/payment by growers in the Avocado project has occurred
  - the fact that we have been continually in touch with PwC over this timeframe is also further evidence of a very strong interest by growers
2. it was not disclosed that the appetite for these projects was not "tax driven".The growers in the schemes are mainly mums and dads, not Collins Street farmers, with a large proportion of ownership held by self managed super funds , whose motivation to invest was not for tax (15% or 0 if in pension phase) They invested because they very much liked the aspect of having a different non- correlated asset class with an annuity type income stream that suited very much the long term timeframe of super funds. Many had a **real interest in supporting the agricultural industry**, and still do as evidenced by the support to date

3. It has not been disclosed that any such analysis of grower appetite for the PwC sale proposal was ever conducted by KORDA MENTHA

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

IN THE MATTER OF THE TIMBERCORP RIGHTS PROCEEDINGS

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S CI 2011 6604 (Liparoo & Yungera Rights Proceeding)

S CI 2011 6606 (Solara Rights Proceeding)

S CI 2010 1354 (BB Olives Rights Proceeding)

EXHIBIT NOTE

Date of document:  
Filed on behalf of:  
Prepared by:  
Clarendon Lawyers  
Level 17, Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

12 October 2012  
The Representative Growers

Tel: 03 8681 4400  
Fax: 03 8681 4499  
Solicitors Code: 101294  
MJF 1100412

[michael.fernon@clarendonlawyers.com.au](mailto:michael.fernon@clarendonlawyers.com.au)

This is the exhibit marked "exhibit CJA-BB" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 12 October 2012.

Before me:.....

**SARAH DORN**  
of Clarendon Lawyers Pty Ltd  
Level 17, Rialto North Tower  
525 Collins St, Melbourne Victoria 3000  
an Australian Legal Practitioner within the  
meaning of the *Legal Profession Act 2004*

**CJA-BB**

**Bundle of documents evidencing different valuation  
methods and sales history**

# 8 EVIDENCE

OF

DIFFERENT VALUATION

METHODS + SALES HISTORY

- 2ND<sup>'</sup> MARKET
- AUCTIONS - TIMBERCORP  
- INDUSTRY
- VALUATION

**Kerree Bezencon**

---

**From:** Max Tolson [max.tolson@mitologroup.com.au]  
**Sent:** Tuesday, 9 February 2010 5:28 PM  
**To:** Kerree Bezencon  
**Subject:** Solora orchard value

Dear Kerree,

Further to your enquiry regarding the value of land for citrus orchards, and in order to estimate the value of the citrus properties at Solora and Kangara, I would make the following comments –

The general cost of bare land suitable for citrus and close to a water source is approximately \$2,500 per hectare. Once you add the cost of improvements, including capital works and irrigation infrastructure and fixed improvements such as roads fences any buildings etc the value of the land increases by \$5,000 to \$10,000 per hectare depending on the age, health and variety mix of the citrus trees planted. In addition to the land and improvements there is also the value of water; between eight and twelve megalitres per hectare is normally required for citrus with values per megalitre ranging from \$1,800 to \$2,400 per megalitre depending on where the licence was originally held (value can vary between states and between catchments). So the total orchard value would normally be:

Bare land	\$2,500
Improvements including growing trees	\$5,000 to \$10,000
Irrigation water	\$14,400 to \$28,800
<b>Total</b>	<b>\$21,900 to \$41,300 per hectare</b>

Any machinery, stock etc would be extra

In the case of the Solora property, it has a mix of old and young trees with a range of varieties and has been well managed and established or redeveloped - and so should be at the higher end of the above value range. My understanding is that the Solora orchard has 10.78 megalitres per hectare of South Australian water licence worth say \$2,300 per megalitre; that is water valued at \$24,794 per planted hectare of orchard.

Recent low prices are not reflective of the medium to long-term value and replacement cost of these orchards. The worst drought since irrigation commenced in the Murray Valley has affected the market prices for citrus orchards but there is some evidence that the drought has broken and values could increase as a result.

As evidenced by recent high yields and prices from sections of the Solora orchard the property value could well be above those outlined above particularly when the scale of production and marketing are considered and the competitive advantage this allows compared to the many smaller growers in the industry..

Regards,

**Max Tolson**

---

This email has been scanned by the MessageLabs Email Security System.  
 For more information please visit <http://www.messagelabs.com/email>

---

8.1

**Re: Request for assistance in determining the value of your investment in the 2006 Timbercorp Almond Project**

*Investment Name:* XXXXXXXX XXXXX

You have asked us to assist you in determining the value of the 10 lots you hold in the 2006 Timbercorp Almond Project. A qualified valuer should be used to estimate the market value. As we are not qualified valuers, we can only provide guidance to assist you in determining a value for your lots. You should consider the tax implications of any sale of your lots and we strongly recommend you seek your own tax advice.

A valuation is generally determined by reference to the market value of the asset. Market value is a price at which a willing seller would sell to a willing buyer, after proper marketing, with each party acting knowledgeably, prudently and without compulsion.

Three ways of estimating the value of lots are:

- (i) the market price of recent similar transactions
- (ii) the sum of the after-tax cash flows to date, with consideration of the tax implications of any sale
- (iii) the net present value (NPV) of the future cashflows

Each of the methodologies above could be regarded as more applicable for different ages of the investment and we recommend, where possible, that you compare the values obtained from the different methods.

**Market price**

There is not an established market for the sale of secondary lots. However, from time to time Timbercorp has registered transfers between buyers and sellers. Timbercorp has also conducted auctions of lots where growers have defaulted under payment obligations. Generally, the prices paid by buyers have been consistent with valuations performed using methods (ii) or (iii).

Timbercorp conducted an auction of lots from various projects on 9 November 2005. A summary of the results from the auction is attached to this letter as Schedule 1.

Costs incurred and proceeds received since the auction will affect the value of the lots; as such a summary of such costs and proceeds for each project has been included in Schedule 1.

### **Sum of after-tax cashflows to date**

An investment in a lot is long-term in nature, generally offering 100% tax deductibility for costs to the initial subscriber. A number of parties have purchased established lots in the early years of a project at or around the 'tax-adjusted' sum of the after-tax costs (based on the top marginal rate of 46.5%) of the investment. This is because the tax deduction claimed by the initial investor will not generally be available to a prospective buyer, but all future pre tax cashflows remain the same.

In order to calculate the after-tax cost, add the initial and annual costs that have been incurred to date (i.e. establishment, rent/licence fee and maintenance but not including amounts relating to finance), and then multiply the result by 53.5%. **Please note an adjustment needs to be made for any project costs that have been incurred but not yet paid by the current owner of the lots.**

The sum of after-tax costs, as a basis for a valuation, is generally used only in the early years of a project's life where yearly cashflow is still negative or has only recently become positive.

As at 1 October 2012, the sum of after tax cashflows of your investment, assuming a marginal tax rate of 46.5%, is \$5,593.20 per lot or \$55,932.00 for your 10 lots. A valuation utilising the sum of after tax costs as the basis needs to take into account the tax implication of sale.

### **NPV of future cash flows:**

This valuation method takes the expected future cashflows and discounts each amount back into today's dollars using the investor's required rate of return. The 'required rate of return' is specific to each investor and relates to the investor's risk profile and the perceived risk of the cashflows generated by the project. It is typically somewhere between 8% and 20% per annum. **HURDLE RATE**

To value your lots using the NPV method, you will need to estimate the future cashflows from the project and use a required rate of return that is appropriate to you or to a prospective buyer. This method of valuation is generally used in the middle or later years of a project's life.

**This letter is only intended to provide you with guidance in valuing your lots. We again stress that we are not qualified valuers and that you should seek independent taxation advice in relation to any proposed sale.**

# Timbercorp Lot Auction - 9 November 2005

## Results Summary

Project	Number of lots sold	Reserve Price per lot (ex GST)	Average Price Paid incl Timbercorp Purchases (ex GST)*
<b>Eucalypts**</b>			
1997 Eucalypts - Double Rotation (early)	23	\$12,600.00	\$12,613
1997 Eucalypts - Double Rotation (late)	3	\$12,600.00	\$12,650
1998 Eucalypts - Double Rotation (early)	69	\$10,600.00	\$10,607
1998 Eucalypts - Double Rotation (late)	18	\$10,600.00	\$10,600
1998 Eucalypts (early)	10	\$6,300.00	\$6,350
1998 Eucalypts (late)	26	\$6,300.00	\$6,425
1999 Eucalypts (early)	27	\$5,300.00	\$5,350
1999 Eucalypts (standard plantings)	223	\$5,300.00	\$5,303
2000 Eucalypts	71	\$4,100.00	\$4,136
2001 Eucalypts (early)	35	\$4,100.00	\$4,100
2001 Eucalypts (early) JV1	24	\$2,800.00	\$2,900
2001 Eucalypts (early) JV2	24	\$1,300.00	\$1,363
2002 Eucalypts Early	20	\$3,100.00	\$3,150
2003 Eucalypts Early	11	\$2,500.00	\$2,600
2003 Eucalypts Pre Payment	6	\$2,000.00	\$2,050
<b>Olives:</b>			
2000 Olive - PO	110	\$8,100.00	\$8,122
2001 Olive	83	\$8,200.00	\$8,207
2002 Olive	6	\$5,700.00	\$5,775
2002 Olive Post June	2	\$5,700.00	\$5,800
2003 Olive Early	21	\$4,000.00	\$4,040
<b>Almonds:</b>			
2001 Almond	8	\$9,500.00	\$9,950
2002 Almond Early	13	\$10,800.00	\$11,269
2002 Almond Standard	10	\$8,900.00	\$9,500
2003 Almond Early	40	\$5,900.00	\$6,310
2004 Almond Early JV1	19	\$2,400.00	\$2,750
<b>Citrus:</b>			
2004 Citrus Early	20	\$3,100.00	\$3,150
	<b>922</b>		

\* These prices do not include the adjustment amounts paid by purchasers relating to on-going payments from auction day to 30 June 2006

8.2

TICORP

RESULTS



8.3

RADICLE P/L 2NDY MARKET  
(ALSO ~~SELL~~ MY TREES)

**Kerree Bezencon**

---

**From:** John McLennan [jmcclennanuta@yahoo.com.au]  
**Sent:** Wednesday, 10 October 2012 5:02 PM  
**To:** kerree@siger.com.au  
**Subject:** MIS  
**Attachments:** RADICLE ADD027.jpg

Kerree this add appeared in Ethical Investor magazine in February 2008  
Radicle was required to use 3rd party valuations as a base for the offer price.

Cheers

John

(Adviser Edge).  
NEVER 5%

---

No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 10.0.1427 / Virus Database: 2441/5320 - Release Date: 10/09/12



# We Buy Secondary MIS Project Interests

Radicle Projects is pioneering the secondary market in Agribusiness Managed Investment Scheme interests. We offer you and your client an opportunity to sell us MIS interests for cash, allowing them to rationalise their portfolios and if necessary make room for new projects.

#### WE ARE:

- the holder of an AFSL (number 306312)
- (we believe) the first to make a market in secondary MIS interests in Australia on a commercial scale.
- Buying on our own account – we are not an agent and we are not reselling. We buy and hold the interests, and we pay the manager their normal fees for project management, so we make good partners for your clients involved in projects.
- The subsidiary of a UK listed company with around AU\$35m in cash, so you can have confidence that we have the funds to settle.

#### WHAT WE ARE BUYING OR INTERESTED IN BUYING:

- Cash generative horticultural projects managed by Timbercorp, Gunns, Great Southern, and many of the smaller managers.
- Woodlots within 5 years of projected first harvest.
- We can also acquire interests in stapled land companies and trusts.

**NOW IS THE TIME TO CONSIDER YOUR ADVICE TO YOUR CLIENT FOR 2008.**

Radicle Projects Pty Ltd Australia  
Level 4, 405 Collins St, Melbourne VIC 3000  
TEL 03 8611 6711 FAX 03 8611 6712

**radicle**

8.4

AVO AVOLOTS  
FABAL  
LOT SALE

----- Original Message -----

**From:** Irene Kamm

**To:** Bezencon, Regis

**Sent:** Monday, March 01, 2010 12:28 PM

**Subject:** 2006 Queensland Avocado Project - Notification of Public Tender Terms

**2006 Queensland Avocado Project Communication - Notification of Public Tender Terms**

ALL BOUGHT UP

Good morning Growers,

In the week beginning the 22<sup>nd</sup> of February, 2010 FABAL issued Letters of Termination in respect of 437 Avolots to Growers who continued to be in default of their obligations pursuant to, amongst other constituent documents, the constitution of the 2006 Queensland Avocado Project notwithstanding:

- ❖ the dispatch to them of Letters of Demand on the 24<sup>th</sup> of November, 2009; and
- ❖ a great deal of subsequent follow-up by FABAL's Commercial Division staff.

In accordance with its powers pursuant to the constitution of the Project, FABAL has elected to offer those 437 terminated Avolots to the public at large by means of a nationally advertised public tender.

At the direction of FABAL's CEO, Chris Day, attached is a .pdf copy of the actual text of a public tender notice that appeared in the "Public Tender" section of "The Weekend Australian" last Saturday, the 27<sup>th</sup> of February, 2010.

The terms of the public tender speak for themselves however please note that if you wish to submit a tender offer for three (3) or more Avolots in the 2006 Queensland Avocado Project your tender offer must be received by FABAL by 10:00 AM Adelaide time next Monday, the 8<sup>th</sup> of March, 2010.

**SUMMARY**

If you have any questions in relation to the above, the attached or any other related matters please contact Peter Kerin, Jessica Blackburn, Ian Gray or me at your convenience.

Yours sincerely,

Irene Kamm

**Irene Kamm**  
Client Services Manager

Food And Beverage Australia Limited  
PO Box 719  
5-7 King William Road  
UNLEY SA 5061  
P: (08) 8208 4000 | F: (08) 8208 4099  
Email: [admin@fabal.com.au](mailto:admin@fabal.com.au)

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## PowerWater

OGD01458-09

### INVITATION TO TENDER

#### WEDDELL POWER STATION SETS 1, 2 AND 3 - DESIGN AND CONSTRUCT CONTRACT - SWITCHYARD EXTENSION AND BALANCE OF PLANT MODIFICATIONS

The Power and Water Corporation invites companies to tender for the above project.

Further information about the Power and Water Corporation can be found at <http://www.powerwater.com.au>.

Documents are available from Department of Corporate and Information Services, Contract and Procurement Services at Enterprise House, corner Knuckey and Woods Streets, Darwin, Northern Territory or from <http://www.nt.gov.au/tenders>

For further information contact Johannes Rickermann, on (08) 8924 5031.

Tenders are to be lodged, in the manner prescribed in the Request for Tender documents, by 2:00pm CST on Wednesday, 31 March 2010.

### INVITATION TO TENDER (RFT 01-2010) FOR THE SUPPLY OF PROJECT MANAGEMENT SERVICES FOR GUMALA ABORIGINAL CORPORATION (GAC)

Tenders are invited and will be received until 4pm Monday 29 March 2010, for the supply of project management services to Gumala Aboriginal Corporation, based in Tom Price, Western Australia.

Tender documents will be available at the GAC head office, 1 Stadium Road, Tom Price, or electronically by downloading from the GAC website ([www.gumala.com.au](http://www.gumala.com.au)).

Please direct all enquiries to Francois Langlois, General Manager, on (08) 9188 1845 or by email: [francois.langlois@gumala.com.au](mailto:francois.langlois@gumala.com.au).

Tenders should be contained in a sealed envelope clearly marked with the Tender name and number, and lodged at the GAC head office, 1 Stadium Road, Tom Price; posted to PO Box 61, Tom Price WA 6751; or emailed to: [francois.langlois@gumala.com.au](mailto:francois.langlois@gumala.com.au).

Emailed tenders must be followed up with a hand-delivered or posted original not more than 3 working days after the closing date. Facsimile tenders will not be accepted.



Gumala  
Aboriginal  
Corporation  
(ICN 2744)

adcorp F38718A

## Tender Opportunities

### Ergon Energy Accommodation Tender 2010

Invitation to Tender - (ITT) 2010

Tender closes 3pm, 17 March 2010.

Further tender information is available through the Tenders link at: [www.ergon.com.au/about\\_us/tenders.asp](http://www.ergon.com.au/about_us/tenders.asp) through the Current Business Opportunities link at: [www.tenders.qld.gov.au/](http://www.tenders.qld.gov.au/) and through HRG Australia by registering your interest at: <https://reporting.au.hrgworldwide.com/form/register/>

everything in our power



Everyone  
needs a  
Will

Your Will -  
Caring for People  
is an easy to read

## PUBLIC TENDER

Food And Beverage Australia Ltd. ("FABAL") is the Responsible Entity of the 2006 Queensland Avocado Project managed investment scheme (ARSN 119 199 941) ("the Project") (formerly the 2006 Timbercorp Avocado Project).

Pursuant to the constitution of the Project FABAL has terminated Growers' interests in and rights pursuant to 437 Avolots in the Project and now offers for sale by public tender the rights pursuant to those terminated Avolots.

All tender offers must be for a minimum parcel of three (3) Avolots and, upon a tender offer being accepted by FABAL, the successful tenderer must pay:

1. the accepted tender offer price;
2. \$1,705.00 in respect of each and every Avolot (being 2009/2010 Grower fees) that is successfully tendered for; and
3. an administration fee of \$220.00 per parcel of Avolots successfully tendered for, within seven (7) calendar days of the dispatch by FABAL of notification of the acceptance of a tender offer. Any tender offer must be received by FABAL by fax (to 08 8208 4099) or by email (to [irene.kamm@fabal.com.au](mailto:irene.kamm@fabal.com.au)) by 10:00 AM ACSST on Monday the 8th of March, 2010. FABAL reserves unto itself the unfettered right to accept or reject any tender offer.

By Order:  
Chris Day  
Chief Executive Officer  
Food And Beverage Australia Limited  
Unley, South Australia  
27th February, 2010



Government of  
Western Australia  
Main Roads Western Australia

## Crash Books, 2008/2009/2010 and Statistical Consultancy

Tender Number: MRWA147/09

The production of the 2008, 2009 and 2010 crash statistics books and additional statistical consultancy for the Office of Road Safety (ORS).

Documents available: from [www.tenders.wa.gov.au](http://www.tenders.wa.gov.au)

Enquiries: Matthew Legge on Ph: (08) 9323 4530

Closing Date: Wednesday, 17th March 2010 at 2:30pm (WST)

adcorp F38479

## Tender Opportunities

### Health Assessment Program for Power Up Health and Wellbeing

Invitation to Tender - Contract 2009/0651/X

Tender closes 3pm, 17 March 2010.

Further tender information is available through the Tenders link at

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**From:** Kerree Bezencon [mailto:kerree@siger.com.au]  
**Sent:** Wednesday, 10 February 2010 3:47 PM  
**To:** Chris Day  
**Subject:** RE: Timbercorp Citrus Projects

HANDLING DEFAULTS / SALE OF LOTS  
KM DIFFICULTIES  
GROWER RESPONSE TO INVOICES 8<sup>3</sup>

Dear Chris,

Cashflows as promised.

Might I please also ask that you further elaborate on the "over the counter" auctions – I am aware of the defaulting grower process but if you could elaborate on this for court in a written format that would really help the cause, in particular ensuring that they understand that there are very keen and willing purchasers ready to take up those grower lots and support the corporatisation.

And could you be more expansive and positive about the grower support that you have experienced also in a written format that we can produce for court.

Equally, can you again be more expansive on your ability and willingness to produce a PDS quickly and your expertise in restructuring projects and making them successful – please be as complimentary about your skills and successes, as possible so it cannot be debated that about your capability.

.Sorry to press you but all this is URGENT – possible to do this today?

Kerree

Would you believe that Chris Garnaut is deliberately not supporting a change of RE, whether it be you or others, saying it is best that it be left, with them arguing the apportionment!!!!.

Kerree A Bezencon, Director  
B.Ec (Accounting & Finance),  
ASIA (Gr Dip Applied Finance & Investment),  
CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),  
CFP (Certified Financial Planner),  
SSA (Specialist SMSF Advisor)



Siger Super Services Pty Ltd, ABN 18 105 441 521  
PO Box 1147, Healesville VIC 3777  
Tf 03 5962 6097, Fax 03 5962 6086

8 Hygieta Street, Noosaville QLD 4566  
Tf 07 5473 0790, Fax 07 5473 0796

Mobile 0419 10 15 20  
Email – [mail@siger.com.au](mailto:mail@siger.com.au)

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**From:** Chris Day [mailto:[chris.day@fabal.com.au](mailto:chris.day@fabal.com.au)]  
**Sent:** Wednesday, 10 February 2010 3:20 PM  
**To:** Kerree Bezencon  
**Cc:** Peter Kerin  
**Subject:** Timbercorp Citrus Projects

Dear Kerree

Thank you for your discussion earlier today.

We are happy to advise you of our current status re our projects. We have recently accepted the role as RE for the 2006 Timbercorp Avocado Project and have the business on a reasonable financial footing after 4 months in our role. <sup>LOW</sup>  
We have provided growers and their advisers with considerable information to support the fact that this is a <sup>DEFAULTS</sup> reasonable business moving forward. In response to working with growers, we have been successful in securing fees <sup>%</sup> from 83% by value and 87% by number in 2009/2010. FABAL is working on securing a portion of the underlying land for them through a new public offering but directed primarily at the grower for their wealth generation.

FABAL is willing to review the above projects and look at the RE seriously should your grower group wish us to do so. However, like the projects you are already working upon, Korda Mentha, are being obstructive to us in the 2006 <sup>KM</sup> Avocados and not providing any required information for our reference. We have been running almost blind for 4 <sup>DIFFICULT</sup> months. In order to assist you, we would require significant information to fully understand the financial mechanics of the Citrus projects. Your TGGG would have to be responsible for this as we are getting nowhere with <sup>✓ AUCTION + SALE OF LOTS.</sup>

FABAL is also willing to create an over the counter trading system for defaulting grower interests. This security would be a default security and may need to follow the protocol in the constitution for the project.

At the appropriate time, FABAL has the expertise and resources to prepare and market to the existing growers (and new investors) a new security that may be required to support the future strength of the project. This may be in the form of a PDS or Prospectus, depending upon the most appropriate method for the development of the growers and other investors.

This is all subject to the review of the financial and legal framework of the current project when the information becomes available.

I hope that this is all you required in the short term and we remain interested in working with TGGG on solid projects.

Kind regards

Chris

**Chris Day**

Chief Executive Officer

Email: [chris.day@fabal.com.au](mailto:chris.day@fabal.com.au)

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Mobile: 0418 552 200

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